

Title IX
Decision-Maker
Training
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Salem-Keizer Public Schools

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Agenda

- ▶ General overview of Title IX roles
- ▶ Overview of Title IX and applicable laws
- ▶ Jurisdiction Issues for Title IX
- ▶ “Grievance” Process

Roles in Title IX

Title IX Coordinator

Investigator (this can be the Title IX Coordinator)

Decision-Maker

Appeals Decision-Maker

Specifics of TIX Coordinator's Role



-ASSISTS WITH INTAKE OF COMPLAINT
-EXPLAINS PROCESS
-OFFERS INFORMAL RESOLUTION



ASSISTS WITH APPLICATION OF INTERIM MEASURES



ASSIGNS INVESTIGATOR OR CONDUCTS INVESTIGATION



ENSURES COMPLIANCE WITH TIX AND DISTRICT POLICY ACROSS THE SYSTEM

Specifics of Investigator's Role



CONDUCTS INTERVIEWS



GATHERS AND REVIEWS
EVIDENCE



WRITES THE
INVESTIGATIVE REPORT

Specifics of Decision-Maker Role



FACILITATES “MODIFIED CROSS-
EXAMINATION” QUESTIONING FOR
K-12



WRITES DETERMINATION OF
RESPONSIBILITY

Title IX & Other

- ▶ Applicable Laws

SB 155: Updated Oregon Sexual Conduct Law related to actions of adults toward students.

Title IX: Updated regulations related to sexual harassment and sex discrimination involving any member of the school community.

ORS 342.704:
Oregon's Sexual Harassment Law related to sexual harassment involving any member of the school community.

Definition of Sexual Conduct

Verbal or physical conduct OR verbal, written or electronic communications by a school employee, a contractor, an agent or a volunteer that involve a student and that are:

1. Sexual advances or requests for sexual favors directed toward the student; **OR**
2. Of a sexual nature that are directed toward the student or that have the effect of:
 - unreasonably interfering with the student's educational performance, **OR**
 - of creating an intimidating, hostile or offensive educational environment.

SB 155: Reporting

School employees must continue to report suspected abuse to DHS or law enforcement and to the designated licensed administrator.

School employees must report suspected sexual conduct to the designated licensed administrator.

The designated licensed administrator must report suspected sexual conduct to:

- TSPC (for licensed employees, contractors, agents, or volunteers) or
- ODE (for non-licensed employees, contractors, agents, or volunteers).

Sexual Harassment: Most Common Scenarios

Scenario 1

- ▶ Student reports hazing involving touching of sexual body parts on bus on way to wrestling tournament.

Scenario 2

- ▶ Student reports he received nude photo of female student from her ex-boyfriend, who sent it to multiple people.

Scenario 3

- ▶ Student reports off-campus sexual assault at party over weekend. Students are active on social media related to incident.

Scenario 4

- ▶ Instructional assistant reports inappropriate jokes and comments made by colleague.

Title IX “Sexual Harassment” Includes . . .

- ▶ Quid pro quo 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 recipient’s education program or activity.**
- ▶ Sexual assault, dating violence, domestic violence, or stalking, as defined in federal laws.

34 CFR 106.30(a).

Oregon “Sexual Harassment” Includes . . .

A demand or request for sexual favors in exchange for benefits;

Unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that interferes with a student’s educational program or activity or that creates an intimidating, offensive or hostile educational environment; and

Assault when sexual contact occurs without a person’s consent because the person is under the influence of drugs or alcohol, is unconscious or is pressured through physical force, coercion or explicit or implied threats.

Sexual Harassment: Key Differences

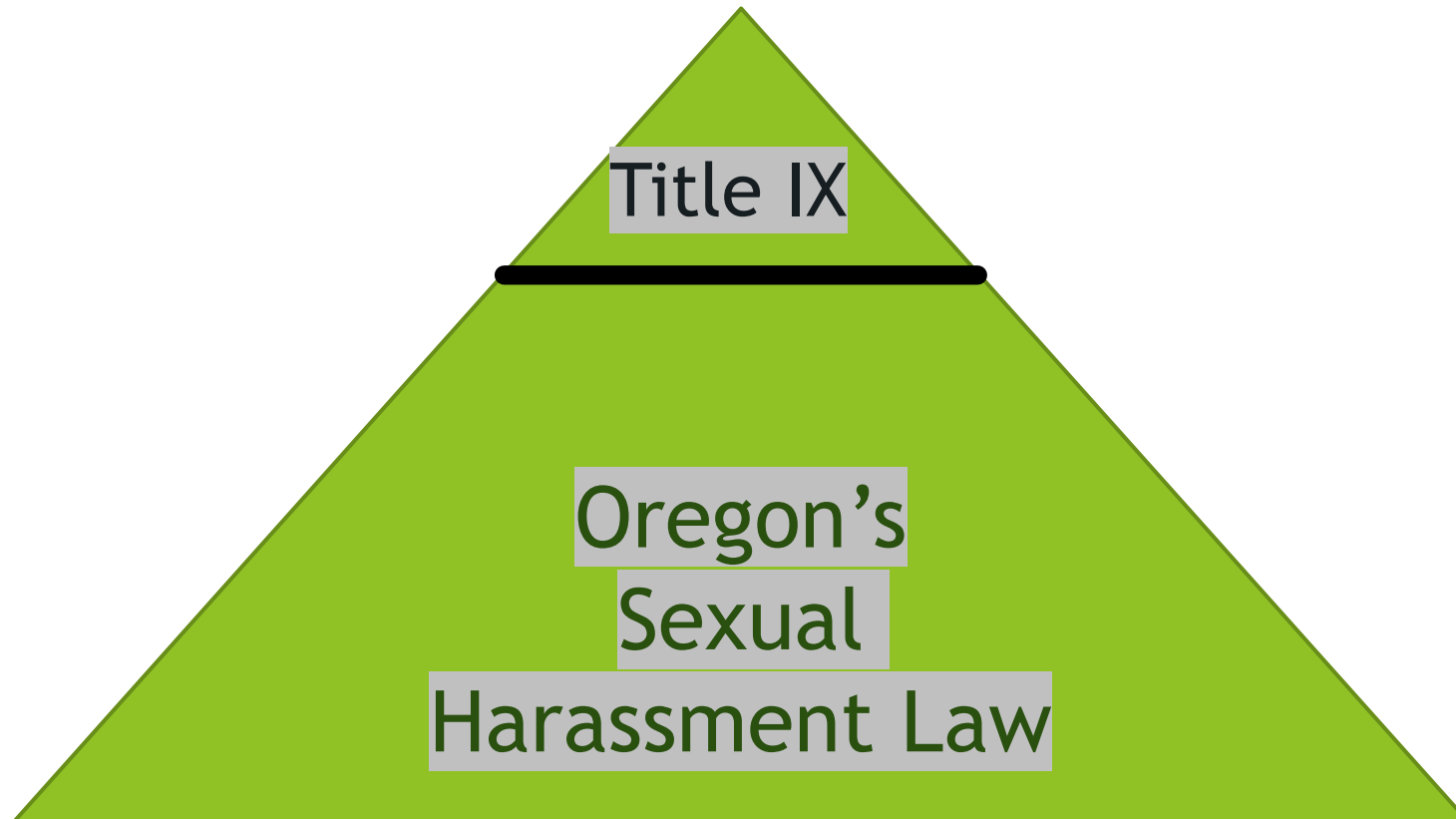
Title IX

- ▶ so severe, pervasive, and objectively offensive
- ▶ that it effectively denies a person equal access to the recipient's education program or activity
- ▶ As determined by reasonable person

Oregon Law

- ▶ Unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and
- ▶ that interferes with a student's educational program or activity or
- ▶ that creates an intimidating, offensive or hostile educational environment

Very Few Complaints will be Covered by Title IX



Title IX Sex Discrimination

- ▶ Treating one person differently than another based on sex in determining whether the person satisfies requirements or conditions for the provision of aid, benefits, or services.
- ▶ Denying any person such aid, benefit, or service
- ▶ Subjecting any person to separate or different rules of behavior, sanctions, or other treatment

Title IX: Jurisdiction

- ▶ At the time of filing a formal complaint, a complainant **must be participating in or attempting to participate in the education program or activity** of the recipient with which the formal complaint is filed. 34 CFR 106.30(a).
- ▶ Alleged conduct must occur **against a person in the United States**. 34 CFR 106.44(a).
- ▶ “Education program or activity” includes **locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs**, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. 34 CFR 106.44(a).

Oregon Law: Jurisdiction

- ▶ **The policies apply to persons who:**
 - ▶ Are on or immediately adjacent to school grounds or district property;
 - ▶ Are at any school-sponsored or district-sponsored activity or program; or
 - ▶ Are off school or district property, if a student or staff member acts toward the person in a manner that creates a hostile environment for the person while at school or a school-sponsored or district-sponsored activity or program.

Jurisdiction: Key Differences

Title IX

- ▶ Against a person in the United States.
- ▶ Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs.
- ▶ Includes student orgs.

Oregon Law

- ▶ Application to students and staff is conduct-focused and not geographically limited.
- ▶ Also applies to third parties, without geographic restrictions.

Scenario: Does the District have Jurisdiction?

A student reportedly sexually assaulted another student over break. It did not happen at school and is not connected to a school sponsored event. Does this need to be investigated by the school administrator?

A SIRC is likely warranted if there is an allegation of sexual assault that occurred in the community - contact Shelley Rutledge to consult. If the students attend the same school or participate in a school-sponsored activity/team together then there is likely going to be an impact on the educational environment and the concern needs to be investigated using the sexual harassment policy.

Mandatory Dismissal: Determination of Jurisdiction

- ▶ Decision-maker must dismiss complaint if there is no Title IX jurisdiction based upon factual findings either because of location of conduct or seriousness of conduct.
- ▶ The parties would be simultaneously notified and it would then transition into an investigation using Oregon's sexual harassment law, which would still result in a finding and submission to the parties of the conclusion.

Discretionary Dismissal

- ▶ Respondent is no longer enrolled as student or employed as employee
- ▶ Circumstances occur that prevent the District from gathering information to substantiate Title IX violation (e.g. victim does not respond to inquiries).
- ▶ Complainant requests Title IX complaint be dismissed.

Title IX Grievance

- ▶ Process

Overview of Grievance Process

- ▶ Intake of Complaint
- ▶ Interim Measures Provided
- ▶ Determination of whether Title IX and/or Oregon Sexual Harassment complaint
- ▶ Notification letters sent to complainant/respondent
- ▶ Investigation conducted/draft provided with 10 day period for input
- ▶ Investigation report completed & provided to decision-maker
- ▶ Decisionmaker provides opportunity for cross-examination questions
- ▶ Finalizes decision on “responsibility” of Title IX violation
- ▶ Potential appeal

Who Can File a Complaint?

Title IX

- ▶ Only complainant.
- ▶ Institution can proceed if pattern of conduct.

Oregon law

- ▶ Complainant, parent or third party.

Title IX Investigation

Follow SKPS's Title IX Policy

[Sexual Harassment Policy](#) ♦ HUM-A029

[Title IX Grievance Procedure](#) ♦ HUM-P020

The Title IX Coordinator will coordinate the district's investigation. The investigation must:

- Include objective evaluation of all relevant evidence
- Provide an equal opportunity for the parties to present witnesses, and other evidence.
- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint.

Title IX Investigation Report

Prior to completion of the investigative report, the **investigator** must send to each party the evidence subject to inspection and review. Parties must have at least 10 days to submit a written response, which the **investigator** will consider prior to completion of the investigative report.

Investigator's Report

Summary of Allegations

Timeline of Investigation Process

Summary of Interviews

Summary of Supporting Evidence

Findings of Fact

Beginning of Decision-Maker's Role



Independent review of the investigative report and all directly related evidence, as well as party responses, by a person who did not serve as the investigator.



A “modified cross-examination” process of allowing parties to submit written questions, read written responses, and submit limited follow-up questions.

Title IX Determination of Responsibility



The person deciding the question of responsibility (the “decision-maker”) must be someone other than the Title IX Coordinator or the investigator(s).



The decision-maker must issue a written determination



The district must provide the written determination to the parties simultaneously.

Bias & Conflicts of Interest

- ▶ No person designated as the investigator, decision-maker, or any person designated by the district to facilitate an informal resolution process may have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
 - ▶ A conflict of interest occurs when personal or private interests may compromise one's judgment, decisions, or actions. Conflict of interests may arise from family, friendships, past relationship as student-teacher, financial investments, or other social factors.
 - ▶ A bias is defined as a tendency, inclination, or prejudice toward/against someone. A conflict of interest or bias exists that disqualifies a person from being involved in the investigation or decision-making process if it prevents the person from impartially participating in the process.

Modified Cross-Examination

Parties may submit written questions that are asked of the other party or witnesses. The written answers are submitted to that party, with limited follow-up.

The decision-maker receives the questions and then determines if they are acceptable to provide to the other party.

- Questions to be Excluded
 - Unrelated to allegations
 - Related to complainant's sexual predisposition or unrelated sexual behavior, unless it goes to prove consent or to prove someone other than respondent committed the behavior.

Text for Letter

Enclosed is the final investigation report submitted by the Title IX investigator. As part of the Title IX process, both the complainant and respondent have the opportunity to submit relevant questions to the other party, referred to as “modified cross-examination” in the law. The decision-maker will determine whether the submitted questions are relevant to the investigation prior to submitting them to the other party. Both parties will receive each other’s responses and can submit follow-up questions.

Please provide any cross-examination questions back to me no later than <<Date>>. If no questions are received, the decision-maker will move forward with the determination of “responsibility” related to a potential Title IX violation based upon the final investigation report and relevant evidence and will determine sanctions and remedies, if any.

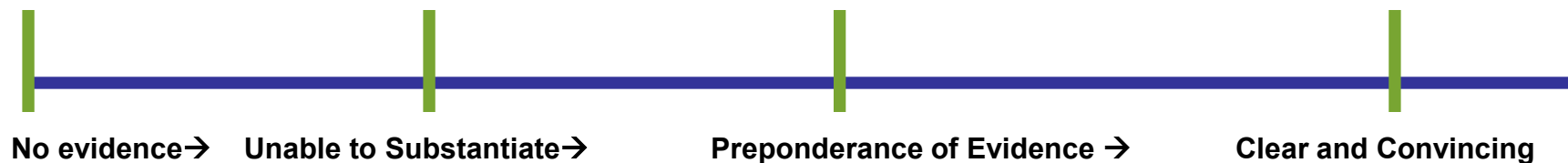
- ▶ Send final investigative report to parties and advisors. Parties can be informed of their right to submit written questions with a 3-day due dates.
- ▶ Decision-maker screens the questions. Appropriate questions are forwarded, with responses due within 3 days.
- ▶ Answers are received by decision-maker and shared with the parties. Parties are informed of their right to ask follow-up questions, with responses due within 3 days.
- ▶ Decision-maker would screen any follow-up questions and forward questions, shares answers with parties.
- ▶ Determination of responsibility is made.

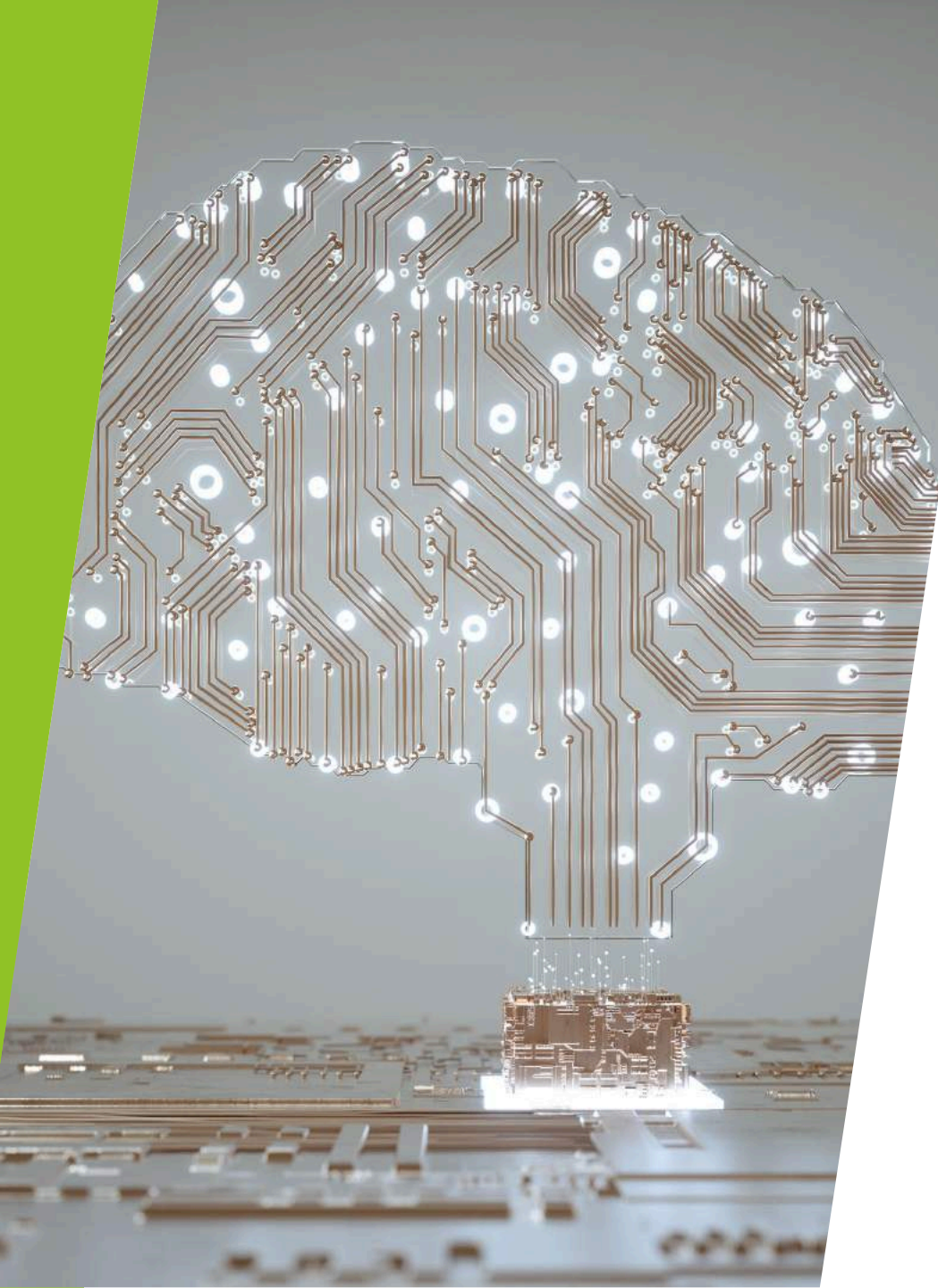
Process for Decision-Maker

Standard of Proof

- Conclusion regarding whether there is responsibility for Title IX violation is based upon preponderance of evidence standard:

Is responsibility for a Title IX violation more likely than not based upon the evidence?





Trauma Informed Approach

- ▶ Understand how trauma can impact why the incident occurred, how the parties are able to recall events and how they are able to process information they are receiving from the District.
- ▶ Appreciate that a non-linear report of events does not diminish credibility of the reporter.

Acknowledge the impact of the investigation process on the parties:

- ▶ Care taken not to blame victims, or to minimize the actions of the other student from the outset.
- ▶ Safe location
- ▶ Support person
- ▶ Clear communication about next steps
- ▶ Regular check-ins to provide support to both parties
- ▶ Avoiding use of judgmental language (“Why did you. . .” “The alleged event. . .”)
- ▶ Clear communication about outcomes, to the extent allowed.

Trauma Informed Approach

Determining Credibility

- Noticeable demeanor changes (flushed, agitated, avoiding eye contact) generally does not come into credibility determination.
- Motive: what does the witness have to gain or lose?
- Inconsistent statements?*
- Corroboration?
- Past record?*
- Hearsay or direct witness?



Making a Decision

- ▶ Review the Title IX policy, and definition of sexual harassment
- ▶ Breakdown the definition of the elements
- ▶ Assess the evidence and apply to the elements
- ▶ If conflict in testimony, resolve through credibility determination
- ▶ If there is a preponderance of evidence to support each element of the definition, there is a policy violation. The converse would result in no finding of policy violation.

Written Determination

- ▶ The written determination of responsibility should be sent simultaneously to both parties, and should include:
 - ▶ The allegations
 - ▶ Procedural steps from formal complaint through determination
 - ▶ Findings of fact
 - ▶ Conclusions of fact
 - ▶ Results of each allegation and rationale (responsible or not responsible)
 - ▶ Sanctions and remedies
 - ▶ Appeal bases and procedures

As the Title IX Decision Maker, I have reviewed and accepted the above-factual findings to incorporate into my decision. The parties were provided an opportunity to submit written cross-examination questions. No questions were received.

Results of Allegations

After reviewing the Title IX Investigation Findings-Final Report dated 11/30/2023, it has been concluded that Student 2 is responsible for violating the SKPS Title IX Sexual Harassment Board Policy. Specifically, Respondent engaged in “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”—here, impacting the Respondent’s ability to access his education program and activity. This determination is supported by the facts, as presented by the investigative report, above.

Sanctions and Remedies

The following disciplinary sanctions for the Respondent are recommended:

Alternative placement to online educational program
Removal from soccer team

The following remedies are designed to restore or preserve equal access to the district’s education program or activity to be provided to the Complainant

Access to school counselor
Continued educational support
Additional support of coaching staff if Complainant participates in athletics in the future

Appeal Process

Either party may file an appeal within 15 days, on the following bases:

Procedural irregularity
Newly discovered or available evidence
Bias or conflict of interest

The appeal process is also described in ProcedureHUMP020

If you have any further questions, please contact Title IX Coordinator at <<>>.

Title IX Appeals

Either party may file an appeal from a determination regarding responsibility or from a dismissal of a formal complaint, within 15 days of the decision, on the following bases:

- ▶ 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; or
- ▶ 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.

- ▶ Notify the other party in writing;
- ▶ Implement appeal procedures equally for both parties;
- ▶ Ensure the decision-maker(s) for the appeal is not the same person as the decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- ▶ Ensure the decision-maker for the appeal is free from conflicts of interest and bias;
- ▶ Give both parties a reasonable equal opportunity to submit a written statement in support of, or challenging the outcome;
- ▶ Issue a written decision describing the result of the appeal and the rationale for the result; and
- ▶ Provide the written decision simultaneously to both parties.

District's Responsibility During an Appeal:

Recordkeeping: TITLE IX

- ▶ Must maintain records for 7 years:
 - ▶ Investigation Records
 - ▶ Disciplinary Sanctions
 - ▶ Remedies
 - ▶ Appeals
 - ▶ Records of any Action Taken



Questions?

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