



TITLE IX GRIEVANCE PROCESSES

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GRIEVANCE PROCESS REQUIREMENTS



“Prompt and equitable resolution of complaints of sex discrimination must be in writing.” (§106.45)

Notes about Respondents:

- The requirements related to a respondent apply only to sex discrimination complaints alleging that a person violated the recipient’s prohibition on sex discrimination.
- When a sex discrimination complaint alleges that a recipient’s policy or practice discriminates on the basis of sex, the recipient is not considered a Respondent.



GRIEVANCE PROCESS REQUIREMENTS



INSTITUTIONAL GRIEVANCE PROCEDURES MUST:

Treat complainants and respondents equitably



Require that any person designated as a Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual complainant or respondent. The decisionmaker may be the same person as the Title IX Coordinator or investigator

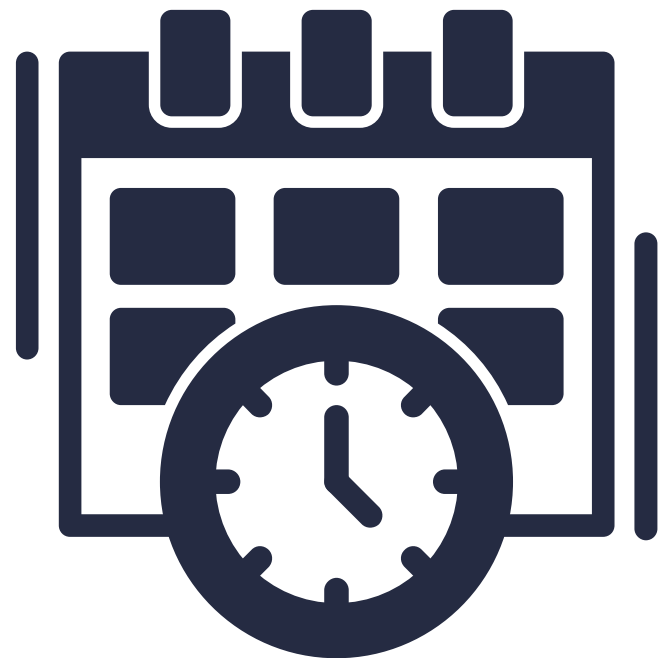
Include a presumption that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of the recipient's grievance procedures for complaints of sex discrimination



GRIEVANCE PROCESS REQUIREMENTS



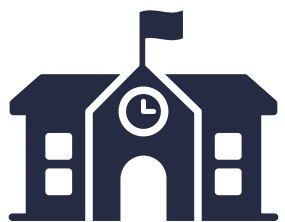
INSTITUTIONAL GRIEVANCE PROCEDURES MUST:



Establish reasonably **prompt timeframes** for the major stages of the grievance procedures

Major stages include, for example, evaluation (i.e., the recipient's decision whether to dismiss or investigate a complaint of sex discrimination); investigation; determination; and appeal, if any

Include a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay



GRIEVANCE PROCESS REQUIREMENTS



INSTITUTIONAL GRIEVANCE PROCEDURES MUST:



Take reasonable steps to protect the privacy of the parties and witnesses during the pendency of a recipient's grievance procedures

These steps cannot not restrict the ability of the parties to:

- Obtain and present evidence, including by speaking to witnesses
- Consult with their family members, confidential resources, or advisors; or
- Otherwise prepare for or participate in the grievance procedures



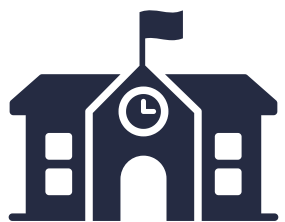
GRIEVANCE PROCESS REQUIREMENTS



INSTITUTIONAL GRIEVANCE PROCEDURES MUST:



Require an objective evaluation of all evidence that is relevant, as defined under these regulations, and not otherwise impermissible—including both inculpatory and exculpatory evidence—and provide that credibility determinations must not be based on a person’s status as a complainant, respondent, or witness



IMPERMISSIBLE EVIDENCE



INSTITUTIONAL GRIEVANCE PROCEDURES MUST:

Exclude the following types of evidence, and questions seeking that evidence, as impermissible (i.e., must not be accessed or considered, except by the recipient to determine whether an exception outlined below applies; must not be disclosed; and must not otherwise be used), regardless of whether they are relevant:

1

Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality

2

A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the recipient obtains that party's or witness's voluntary, written consent for use in the recipient's grievance procedures



IMPERMISSIBLE EVIDENCE



INSTITUTIONAL GRIEVANCE PROCEDURES MUST:

Exclude the following types of evidence, and questions seeking that evidence, as impermissible (i.e., must not be accessed or considered, except by the recipient to determine whether an exception outlined below applies; must not be disclosed; and must not otherwise be used), regardless of whether they are relevant:

3

Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless:

- Evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or
- Is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment



The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.





If a recipient adopts grievance procedures that apply to the resolution of some, but not all, complaints **articulate consistent principles** for how the recipient will determine which procedures apply.



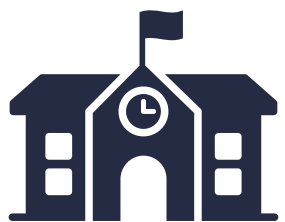
GRIEVANCE PROCESS REQUIREMENTS



SPECIFIC TO SEX-BASED HARASSMENT COMPLAINTS

Grievance procedures must:

- 1** Describe the range of supportive measures available to complainants and respondents
- 2** List, or describe the range of, the possible disciplinary sanctions that the recipient may impose and remedies that the recipient may provide following a determination that sex-based harassment occurred



GRIEVANCE PROCESS REQUIREMENTS



SPECIFIC TO SEX-BASED HARASSMENT COMPLAINTS IN POSTSECONDARY INSTITUTIONS INVOLVING STUDENT COMPLAINANTS OR STUDENT RESPONDENTS



Include written grievance procedures for prompt and equitable resolution of complaints while also including provisions that incorporate the requirements of §106.45



GRIEVANCE PROCESS REQUIREMENTS



SPECIFIC TO SEX-BASED HARASSMENT COMPLAINTS IN POSTSECONDARY INSTITUTIONS INVOLVING STUDENT COMPLAINANTS OR STUDENT RESPONDENTS

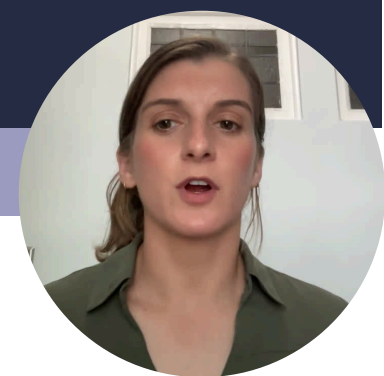
Student Employees

- When a complainant or respondent is both a student and an employee of a postsecondary institution:
 - The postsecondary institution must make a fact-specific inquiry to determine whether the requirements of this section apply.
 - In making this determination, a postsecondary institution must, at a minimum, consider whether the party's **primary relationship with the postsecondary institution** is to receive an education and whether the alleged sex-based harassment occurred while the party was performing employment-related work.



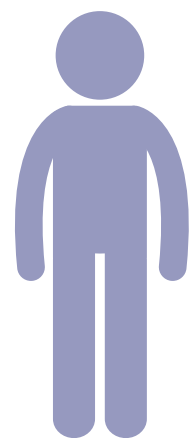


COMPLAINTS



MAKING A COMPLAINT

COMPLAINTS OF SEX DISCRIMINATION, INCLUDING SEX-BASED HARASSMENT MAY BE MADE BY:



A Complainant



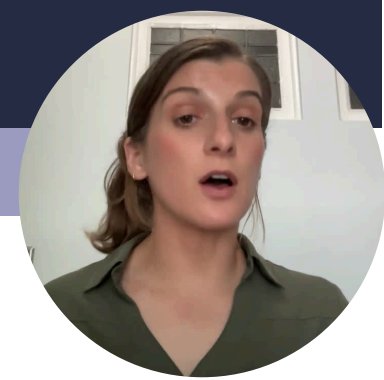
A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant

IX

The Title IX Coordinator after making the determination specified in §106.44(f)(1)(v)

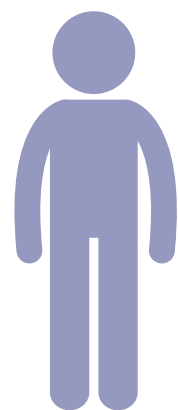
! Making a complaint involves requesting that the recipient investigate and make a determination about alleged discrimination under Title IX.





MAKING A COMPLAINT

COMPLAINTS OF SEX DISCRIMINATION, OTHER THAN SEX-BASED HARASSMENT MAY BE MADE BY:



A Complainant



A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant



The Title IX Coordinator after making the determination specified in §106.44(f)(1)(v)



Any student or employee



Any person who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination



DISMISSAL OF A COMPLAINT



A RECIPIENT MAY DISMISS A COMPLAINT OF SEX DISCRIMINATION OR SEX-BASED HARASSMENT FOR ANY OF THE FOLLOWING REASONS:

- ⊗ Recipient is unable to identify the respondent after taking reasonable steps to do so
- ⊗ Respondent is not participating in the recipient's education program or activity and is not employed by the recipient
- ⊗ The recipient determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination



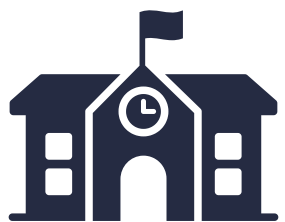
Prior to dismissing the complaint under this paragraph, the recipient must make reasonable efforts to clarify the allegations with the complainant.

DISMISSAL OF A COMPLAINT



A RECIPIENT MAY DISMISS A COMPLAINT OF SEX DISCRIMINATION OR SEX-BASED HARASSMENT FOR ANY OF THE FOLLOWING REASONS:

- ⊗ Complainant voluntarily withdraws any or all of the allegations in the complaint,
- ⊗ Title IX Coordinator declines to initiate a complaint, and
- ⊗ The recipient determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven



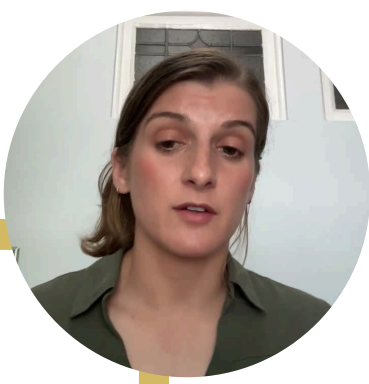


Upon dismissal, a recipient must promptly notify the Complainant of the basis for the dismissal.

If the dismissal occurs after the Respondent has been notified of the allegations, then the recipient must also notify the Respondent of the dismissal and the basis for the dismissal promptly following notification to the Complainant, or simultaneously if notification is in writing.



DISMISSAL OF A COMPLAINT



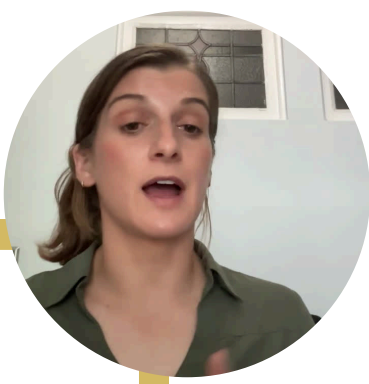
A recipient must notify the complainant that a dismissal **may be appealed** and provide the complainant with an opportunity to appeal the dismissal of a complaint on the following bases:



- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.



DISMISSAL OF A COMPLAINT



If the dismissal occurs after the respondent has been notified of the allegations, then the recipient must also notify the respondent that the dismissal may be appealed on the aforementioned bases.



DISMISSAL OF A COMPLAINT



IF THE DISMISSAL IS APPEALED, THE RECIPIENT MUST:

- ✔ Notify the parties of any appeal, including notice of the allegations if notice was not previously provided to the respondent
- ✔ Implement appeal procedures equally for the parties
- ✔ Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint and has been trained under Title IX
- ✔ Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome
- ✔ Notify the parties of the result of the appeal and the rationale for the result



DISMISSAL OF A COMPLAINT



A RECIPIENT THAT DISMISSES A COMPLAINT MUST, AT MINIMUM:

- Offer supportive measures to the complainant as appropriate
- Offer supportive measures to the respondent as appropriate for dismissals in which the respondent has been notified of the allegations and that were dismissed under the following circumstances:
 - The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the recipient determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX or this part even if proven; and
 - The recipient determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination
- Require its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity



DISMISSAL OF A COMPLAINT



WHEN DISMISSING A COMPLAINT ALLEGING SEX-BASED HARASSMENT INVOLVING A STUDENT COMPLAINANT OR A STUDENT RESPONDENT, A POSTSECONDARY INSTITUTION MUST:

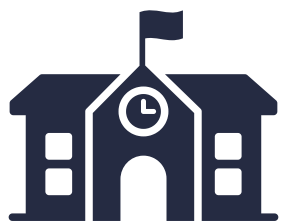
- Provide the parties, simultaneously, with written notice of the dismissal and the basis for the dismissal, if dismissing a complaint under any of the bases in §106.45, except if the dismissal occurs before the respondent has been notified of the allegations, in which case the recipient must provide such written notice only to the complainant
- Obtain the complainant's withdrawal in writing if dismissing a complaint based on the complainant's voluntary withdrawal of the complaint or allegations under §106.45



CONSOLIDATION OF COMPLAINTS



- A recipient may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances.
- If one of the complaints to be consolidated is a complaint of sex-based harassment involving a student complainant or student respondent at a postsecondary institution, the grievance procedures for investigating and resolving the consolidated complaint must comply with the requirements of §106.46 in addition to the requirements of this section.
- When more than one complainant or more than one respondent is involved, references in this section and in §106.46 to a party, complainant, or respondent include the plural, as applicable.

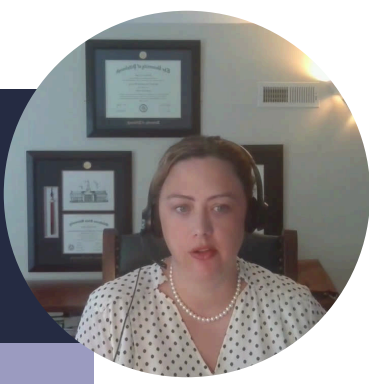




NOTICE OF ALLEGATIONS

Upon initiation of the recipient's grievance procedures, a recipient must provide notice of the allegations to the parties whose identities are known.

NOTICE OF ALLEGATIONS



THE NOTICE MUST INCLUDE:

- ✓ The recipient's grievance procedures **and** any informal resolution process
- ✓ Sufficient information available at the time to allow the parties to respond to the allegations, including:
 - The identities of the parties involved in the incident(s)
 - The conduct alleged to constitute sex discrimination under Title IX or this part
 - The date(s) and location(s) of the alleged incident(s), to the extent that information is available to the recipient
- ✓ A statement that retaliation is prohibited
- ✓ A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence
 - If the recipient provides a description of the evidence, the parties are entitled to an equal opportunity to access to the relevant and not otherwise impermissible evidence upon the request of any party.





If, in the course of an investigation, the recipient decides to investigate **additional allegations** of sex discrimination by the Respondent toward the Complainant that are not included in the notice or that are included in a complaint that is consolidated, the recipient **must provide notice** of the additional allegations to the parties whose identities are known.



WRITTEN NOTICE OF ALLEGATIONS



Upon the initiation of the postsecondary institution's sex-based harassment grievance procedures under this section, a postsecondary institution must provide **written** notice to the parties whose identities are known with sufficient time for the parties to prepare a response before any initial interview.





The written notice must include the following information required under §106.45:



The recipient's grievance procedures and any informal resolution process



Sufficient information available at the time to allow the parties to respond to the allegations, including:

- The identities of the parties involved in the incident(s)
- The conduct alleged to constitute sex discrimination under Title IX or this part
- The date(s) and location(s) of the alleged incident(s), to the extent that information is available to the recipient



A statement that retaliation is prohibited





In addition to the 106.45 requirements, the written notice must include the following information under 106.46:



Respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the grievance procedures and that prior to the determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker



They may have an advisor of their choice to serve in the role, and that the advisor may be, but is not required to be, an attorney

In addition to the 106.45 requirements, the written notice must include the following information under 106.46:

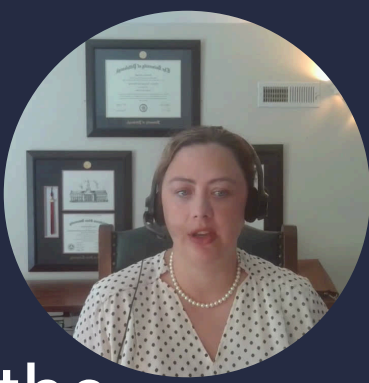


They are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigative report that accurately summarizes this evidence

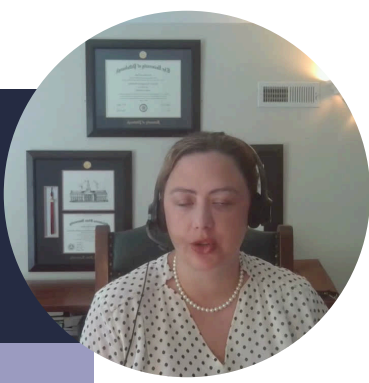
- If the postsecondary institution provides access to an investigative report, the parties are entitled to an equal opportunity to access to the relevant and not otherwise impermissible evidence upon the request of any party



If applicable, the postsecondary institution's code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance procedure



NOTICE OF ALLEGATIONS



If, in the course of an investigation, the recipient decides to investigate **additional allegations** of sex-based harassment by the respondent toward the complainant that are not included in the written notice or that are included in a complaint that is consolidated, the recipient must **provide written notice** of the additional allegations to the parties whose identities are known.

To the extent the postsecondary institution has reasonable concerns for the safety of any person as a result of providing this notice, the postsecondary institution **may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately**. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.





COMPLAINT INVESTIGATIONS

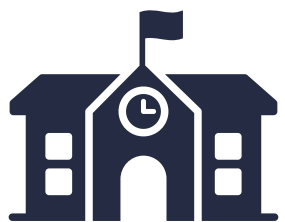
A recipient must provide for **adequate, reliable, and impartial** investigation of complaints.

COMPLAINT INVESTIGATIONS



RECIPIENTS MUST:

- Ensure that the burden is on the recipient—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred
- Provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible
- Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance



COMPLAINT INVESTIGATIONS



RECIPIENTS MUST:

- Provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible in the following manner:
 - A recipient must provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence.
 - If the recipient provides a description of the evidence, it must further provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party

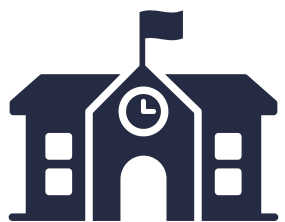


COMPLAINT INVESTIGATIONS



RECIPIENTS MUST:

- Provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible in the following manner:
 - A recipient must take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures.
 - Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.





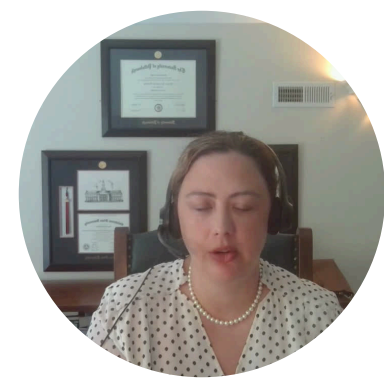
COMPLAINT INVESTIGATIONS

When investigating a complaint alleging **sex-based harassment** and throughout the **postsecondary institution's** grievance procedures for complaints of sex-based harassment involving a **student complainant or a student respondent**, a postsecondary institution:



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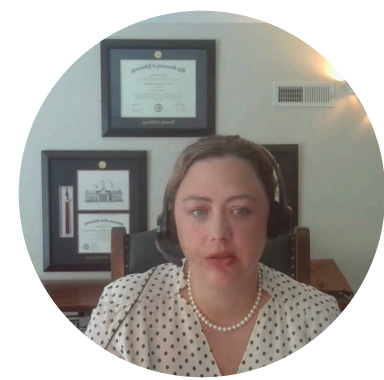
COMPLAINT INVESTIGATION



- **Meeting Invitation:** Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare to participate
- **Right to an Advisor:** Provide the parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of the advisor for the complainant or respondent in any meeting or proceeding; however, the postsecondary institution may establish restrictions regarding the extent to which the advisor may participate in the grievance procedures, as long as the restrictions apply equally to the parties

2

COMPLAINT INVESTIGATION



- **Right to Have Others Present:** Provide the parties with the same opportunities, if any, to have persons other than the advisor of the parties' choice present during any meeting or proceeding
- **Expert Witnesses:** Has discretion to determine whether the parties may present expert witnesses as long as the determination applies equally to the parties
- **Extensions:** Allow for the reasonable extension of timeframes on a case-by-case basis for good cause with written notice to the parties that includes the reason for the delay

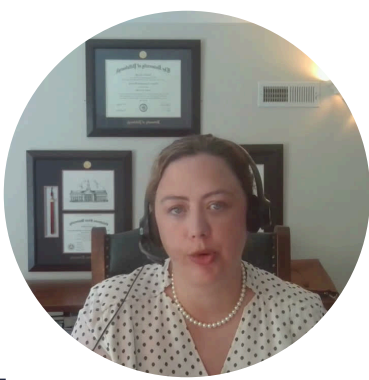
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COMPLAINT INVESTIGATION



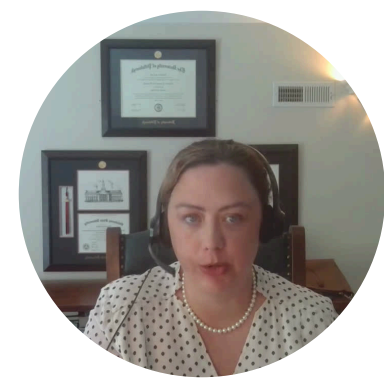
Access to Evidence: Provide each party and the party's advisor, if any, with an equal opportunity to access the evidence that is relevant to the allegations of sex-based harassment and not otherwise impermissible in the following manner:

- Provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or the same written investigative report that accurately summarizes this evidence
- If the postsecondary institution provides access to an investigative report, it must further provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party



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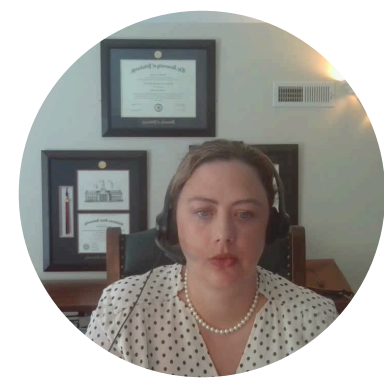
COMPLAINT INVESTIGATION



- ➔ **Right to Review and Respond to Evidence:** Provide the parties with a reasonable opportunity to review and respond to the evidence or the investigative report prior to the determination whether sex-based harassment occurred.
 - If a postsecondary institution conducts a live hearing as part of its grievance procedures, it must provide this opportunity to review the evidence in advance of the live hearing; it is at the postsecondary institution's discretion whether to provide this opportunity to respond prior to the live hearing, during the live hearing, or both prior to and during the live hearing

5

COMPLAINT INVESTIGATION



- **Unauthorized Disclosure of Information and Evidence:** A postsecondary institution must take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the sex-based harassment grievance procedures.
- For purposes of this paragraph, disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex-based harassment are authorized



QUESTIONING PARTIES AND WITNESSES

To aid in evaluating allegations
and assessing credibility

ASSESSING CREDIBILITY



REGULATORY LANGUAGE

“A recipient must provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party’s or witness’s credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.”

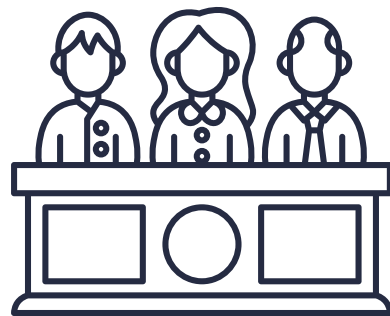


ASSESSING CREDIBILITY



PROCESS FOR QUESTIONING PARTIES AND WITNESSES

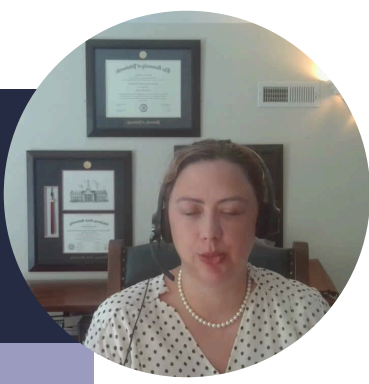
A postsecondary institution must provide a process that enables the decisionmaker to **question parties and witnesses** to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment.



- With a live hearing
- Without a live hearing (individual meetings)



WITHOUT A LIVE HEARING



WHEN A POSTSECONDARY INSTITUTION CHOOSES NOT TO CONDUCT A LIVE HEARING , THE PROCESS FOR PROPOSING AND ASKING RELEVANT AND NOT OTHERWISE IMPERMISSIBLE QUESTIONS AND FOLLOW-UP QUESTIONS OF PARTIES AND WITNESSES, INCLUDING QUESTIONS CHALLENGING CREDIBILITY, MUST:

1

Allow investigator and decision-maker to ask questions during individual meetings

2

Allow each party to propose questions and have the investigator and decision-maker ask those questions

3

Provide each party with a transcript and provide enough time for the parties to propose additional follow up questions



WITH A LIVE HEARING



WHEN A POSTSECONDARY INSTITUTION CHOOSES TO CONDUCT A LIVE HEARING, THE PROCESS FOR PROPOSING AND ASKING RELEVANT AND NOT OTHERWISE IMPERMISSIBLE QUESTIONS AND FOLLOW-UP QUESTIONS OF PARTIES AND WITNESSES, INCLUDING QUESTIONS CHALLENGING CREDIBILITY, MUST ALLOW THE DECISIONMAKER TO ASK SUCH QUESTIONS, AND EITHER:

1

Allow each party to propose questions and have the decision-maker ask those questions

2

Allow a party's advisor to ask proposed questions to the other party or witnesses



EVALUATING QUESTIONS



PROCEDURES FOR THE DECISIONMAKER TO EVALUATE THE QUESTIONS AND LIMITATIONS ON QUESTIONS

- Determine whether a proposed question is relevant and not otherwise impermissible, prior to the question being posed, and must explain any decision to exclude a question as not relevant or otherwise impermissible.
- If question is relevant and not otherwise impermissible, then the question must be asked except that a postsecondary institution must not permit questions that are unclear or harassing of the party or witness being questioned.
- Give a party an opportunity to clarify or revise a question that the decisionmaker has determined is unclear or harassing and, if the party sufficiently clarifies or revises a question to satisfy the terms of this paragraph, the question must be asked.
- A postsecondary institution may also adopt and apply other reasonable rules regarding decorum, provided they apply equally to the parties.





REFUSAL TO RESPOND TO QUESTIONS

- A decisionmaker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible.
- The decisionmaker must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.



LIVE HEARING PROCEDURES



A POSTSECONDARY INSTITUTION'S SEX-BASED HARASSMENT GRIEVANCE PROCEDURES MAY, BUT NEED NOT, PROVIDE FOR A LIVE HEARING.

- It may conduct the live hearing with the parties physically present in the same geographic location.
- At the postsecondary institution's discretion the institution may, or upon the request of either party it must, conduct the live hearing with the parties physically present in separate locations, with technology enabling the decisionmaker and parties to simultaneously see and hear the party or the witness while that person is speaking.
- Must create an audio or audiovisual recording or transcript, of any live hearing and make it available to the parties for inspection and review.





DETERMINATION OF RESPONSIBILITY



DETERMINATIONS

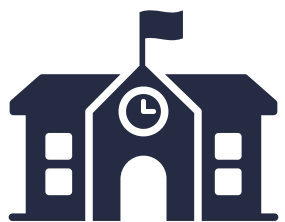


FOLLOWING AN INVESTIGATION AND EVALUATION OF RELEVANT EVIDENCE, RECIPIENTS MUST:



Use the **preponderance of the evidence** standard of proof to determine whether sex discrimination occurred

Unless the recipient uses the **clear and convincing evidence** standard of proof in all other comparable proceedings, including proceedings relating to other discrimination complaints, in which case the recipient may elect to use that standard of proof in determining whether sex discrimination occurred.



DETERMINATIONS

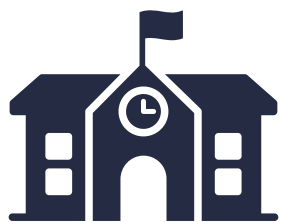


FOLLOWING AN INVESTIGATION AND EVALUATION OF RELEVANT EVIDENCE, RECIPIENTS MUST:



Notify the parties in writing of the determination whether sex discrimination occurred under Title IX

Determinations are to include the **rationale** for such determination, and the **procedures and permissible bases** for the complainant and respondent **to appeal**, if applicable.



DETERMINATIONS



IF THERE IS A DETERMINATION THAT SEX DISCRIMINATION OCCURRED, THE TITLE IX COORDINATOR IS RESPONSIBLE FOR:

- Coordinating the provision and implementation of remedies to a complainant and other persons the recipient identifies as having had equal access to the recipient's education program or activity limited or denied by sex discrimination
- Coordinating the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions
- Taking other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity



A recipient may not impose disciplinary sanctions on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the recipient's grievance procedures that the respondent engaged in prohibited sex discrimination.





All institutions must comply with §106.45, and if applicable §106.46, before the imposition of any disciplinary sanctions against a respondent.

DETERMINATIONS



RECIPIENTS MUST:

“Not discipline a party, witness, or others participating in a recipient’s grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the recipient’s determination whether sex discrimination occurred.”



DETERMINATIONS



THE WRITTEN DETERMINATION MUST INCLUDE:

- ✔ A description of the alleged sex-based harassment
- ✔ Information about the policies and procedures that the postsecondary institution used to evaluate the allegations
- ✔ The decisionmaker's evaluation of the relevant and not otherwise impermissible evidence and determination whether sex-based harassment occurred



DETERMINATIONS



THE WRITTEN DETERMINATION MUST INCLUDE:

- ✔ When the decisionmaker finds that sex-based harassment occurred:
 - 1 Any disciplinary sanctions imposed on the respondent
 - Whether remedies other than the imposition of disciplinary sanctions will be provided to the complainant, and, to the extent appropriate, other students
 - 2 identified by the postsecondary institution to be experiencing the effects of the sex-based harassment

- ✔ The postsecondary institution's procedures for the complainant and respondent to appeal

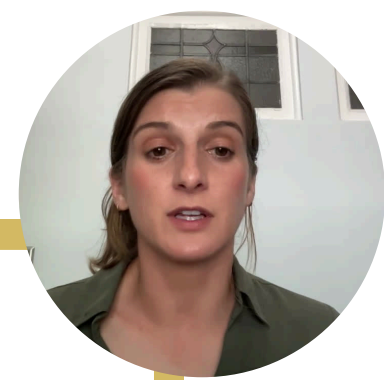




The postsecondary institution must provide the determination whether sex-based harassment occurred in writing to the parties simultaneously.



DETERMINATIONS



The determination regarding responsibility becomes final either on the date that the postsecondary institution provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.

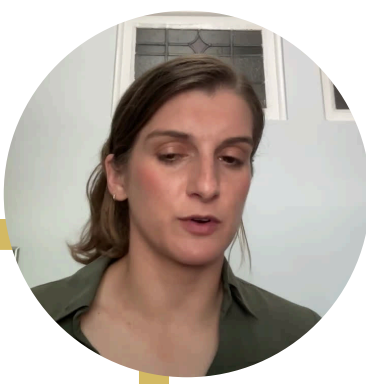




APPEALS



APPEAL PROCESS



In addition to an appeal of a dismissal of a complaint, a recipient must offer the parties an appeal process that, at a minimum, is the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints.

For a complaint of sex-based harassment involving a student complainant or student respondent, a postsecondary institution must also offer an appeal on the following bases:



APPEAL PROCESS

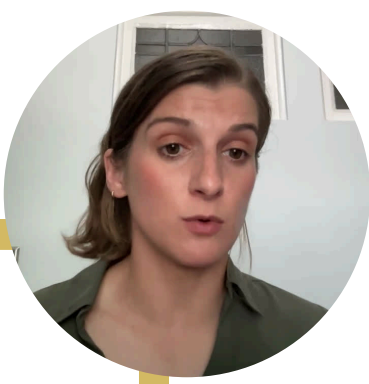


BASES FOR APPEAL FOR INCIDENTS OF SEX-BASED HARASSMENT AT POSTSECONDARY INSTITUTIONS:

- 1** Procedural irregularity that would change the outcome
- 2** New evidence **that would change the outcome** and that was not reasonably available when the determination whether sex-based harassment occurred or dismissal was made
- 3** The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome



APPEAL PROCESS



A postsecondary institution may offer an appeal to the parties on additional bases, so long as the procedures and additional bases for appeal are equally available to all parties.



APPEAL PROCESS



AS TO ALL APPEALS, THE POSTSECONDARY INSTITUTION MUST COMPLY WITH THE FOLLOWING REQUIREMENTS IN WRITING:

- ✓ Notify the parties of any appeal, including notice of the allegations consistent with paragraph (c) of this section if notice was not previously provided to the respondent
- ✓ Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome
- ✓ Notify the parties of the result of the appeal and the rationale for the result





ADDITIONAL PROVISIONS





If a recipient adopts additional provisions as part of its grievance procedures for handling complaints of sex discrimination, including sex-based harassment, such additional provisions must apply equally to the parties





INFORMAL RESOLUTION



INFORMAL RESOLUTION



In lieu of resolving a complaint through the recipient's grievance procedures, the parties may instead elect to participate in an informal resolution process under §106.44(k) if provided by the recipient consistent with that paragraph.



If a postsecondary institution offers or provides the parties to the grievance procedures under §106.45 and under this section with an informal resolution process under §106.44(k), the postsecondary institution must inform the parties in writing of the offer and their rights and responsibilities in the informal resolution process and otherwise comply with the provisions of §106.44(k)(3) in writing.