

# TITLE IX COMPLIANCE TRAINING: NAVIGATING THE TITLE IX FINAL RULE

**RATWIK, ROSZAK & MALONEY, P.A.**

**Erin E. Benson**  
eeb@ratwiklaw.com



## OUTLINE OF TODAY'S TRAINING

What Everyone Needs to Know about the Title IX Final Rule

Step One – Role of the Title IX Coordinator

Step Two – Role of the Title IX Investigator

Step Three – Role of the Title IX Decisionmaker

Step Four – Implementation of the Decision and the Appeals Process

Step Five – Aftermath of Title IX Grievance Process



# WHAT EVERYONE NEEDS TO KNOW ABOUT THE TITLE IX FINAL RULE

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## THE TITLE IX FINAL RULE

In April 2024, the U.S. Department of Education released the Title IX Final Rule, which took effect on August 1, 2024. The Final Rule expands school districts' obligations to provide training to staff, includes new definitions, and expands the definition of sex discrimination. However, the Final Rule has removed many of the previous requirements throughout the grievance process.



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# TRAINING



ALL EMPLOYEES



TITLE IX  
PERSONNEL




ADDITIONAL  
REQUIREMENTS FOR  
TITLE IX COORDINATORS



## TRAINING FOR ALL EMPLOYEES

- All Employees Must Be Trained On:
- Obligation to Address Sex Discrimination
- Scope of Conduct that Constitutes Sex Discrimination
- All applicable notification and information requirements under 34 C.F.R. 106.40(b)(2) and 106.44.



## TRAINING FOR TITLE IX PERSONNEL

Investigators, Decisionmakers, and Others Responsible for Implementing Grievance Procedures or with Authority to Modify or Termination Supportive Measures Must Be Trained On:

- Everything on the Previous Slide
- Grievance Procedures
- How to Serve Impartially
- Meaning of “Relevant”



## TRAINING FOR FACILITATORS OF INFORMAL RESOLUTION PROCESS

Facilitators of an Informal Resolution Process Must Be Trained On:

- Everything on Slide for All Employees
- Rules and Practices of Informal Resolution Process
- How to Serve Impartially, Including Avoiding Conflicts of Interest and Bias



## TRAINING FOR TITLE IX COORDINATOR AND DESIGNEES

### Title IX Coordinators Must Be Trained On:

- Everything on the Previous Three Slides
- Specific Responsibilities of the Title IX Coordinator
- Recordkeeping Requirements
- Prevention of Discrimination
- Ensuring Equal Access
- Any Other Training Required to Comply with Title IX




## IMPORTANT DEFINITIONS



DISCRIMINATION  
ON THE BASIS OF  
SEX

sex stereotypes, sex characteristics,  
pregnancy or related conditions, sexual  
orientation, and gender identity




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SEX-BASED  
HARASSMENT

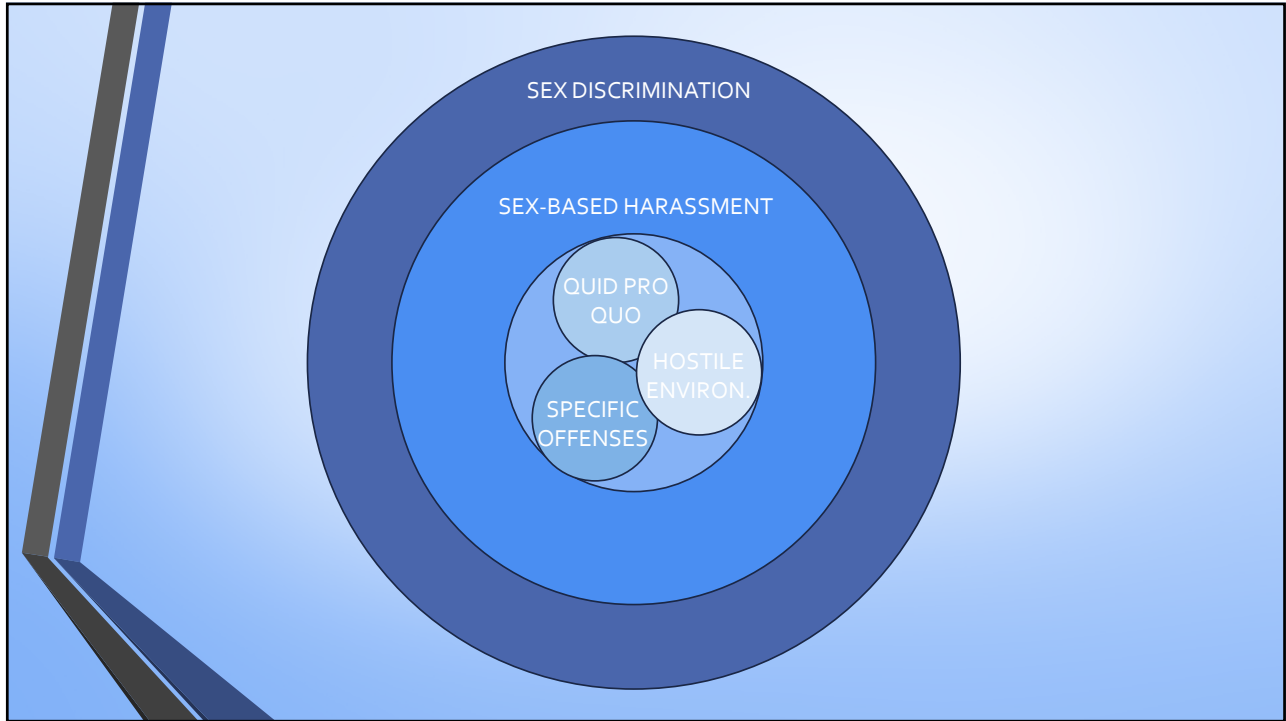
Formerly referred to as "sexual  
harassment"

Now includes:

- Quid Quo Pro Harassment
- Hostile Environment
- Specific Offenses (Sexual Assault, Dating Violence, Domestic Violence, & Stalking)



The slide features a dark grey background on the left with the text 'SEX-BASED HARASSMENT' in white. A blue rounded rectangle on the right contains the text 'Formerly referred to as "sexual harassment"'. A white arrow points down from this box to another blue rounded rectangle containing the text 'Now includes:' followed by a bulleted list: '- Quid Quo Pro Harassment', '- Hostile Environment', and '- Specific Offenses (Sexual Assault, Dating Violence, Domestic Violence, & Stalking)'. The RRM logo is in the bottom right corner.



# PREGNANCY OR RELATED CONDITIONS

An illustration of a pregnant woman with dark, curly hair, wearing a purple sleeveless dress, shown in profile from the waist up. She is looking down at her belly.

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# KNOWLEDGE

(formerly referred to as "actual knowledge")



# COMPLAINT





INDIVIDUALS INVOLVED

COMPLAINANT

RESPONDENT

PARTIES



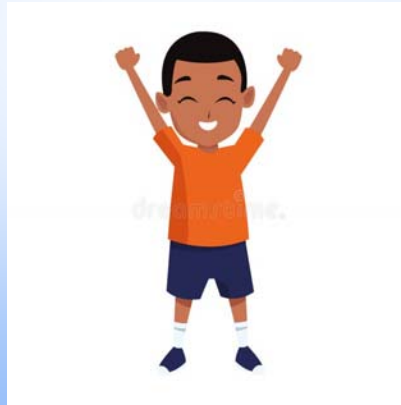
The slide features a dark grey background on the left with the text 'INDIVIDUALS INVOLVED' in white. On the right, three blue rounded rectangular boxes are stacked vertically, containing the words 'COMPLAINANT', 'RESPONDENT', and 'PARTIES' in white capital letters. In the bottom right corner, there is a logo consisting of the letters 'RRM' in a serif font, with three vertical lines to its left and the text 'Russo, Rossi & Mahoney, P.A.' in a smaller font below it.

CONFIDENTIAL EMPLOYEE  
(more common in colleges)



The slide has a light blue background with a dark grey geometric shape on the left. The text 'CONFIDENTIAL EMPLOYEE' is written in large black capital letters, with '(more common in colleges)' in a smaller black font below it. In the center, there is a cartoon illustration of a young girl with brown skin, brown hair in pigtails, wearing a pink shirt and blue pants, with her hand to her chin in a thinking pose. In the bottom right corner, there is a logo consisting of the letters 'RRM' in a serif font, with three vertical lines to its left and the text 'Russo, Rossi & Mahoney, P.A.' in a smaller font below it.

# SUPPORTIVE MEASURES





# EDUCATION PROGRAM OR ACTIVITY



# GENERAL RESPONSIBILITIES

FOR PUBLIC ELEMENTARY/SECONDARY SCHOOLS



- ## School Districts Must:
- 1  
Adopt a Non-Discrimination Policy
  - 2  
Adopt Grievance Procedures
  - 3  
Identify Barriers in Reporting
  - 4  
Designate a Title IX Coordinator
- 

## NOTICE OF NON-DISCRIMINATION

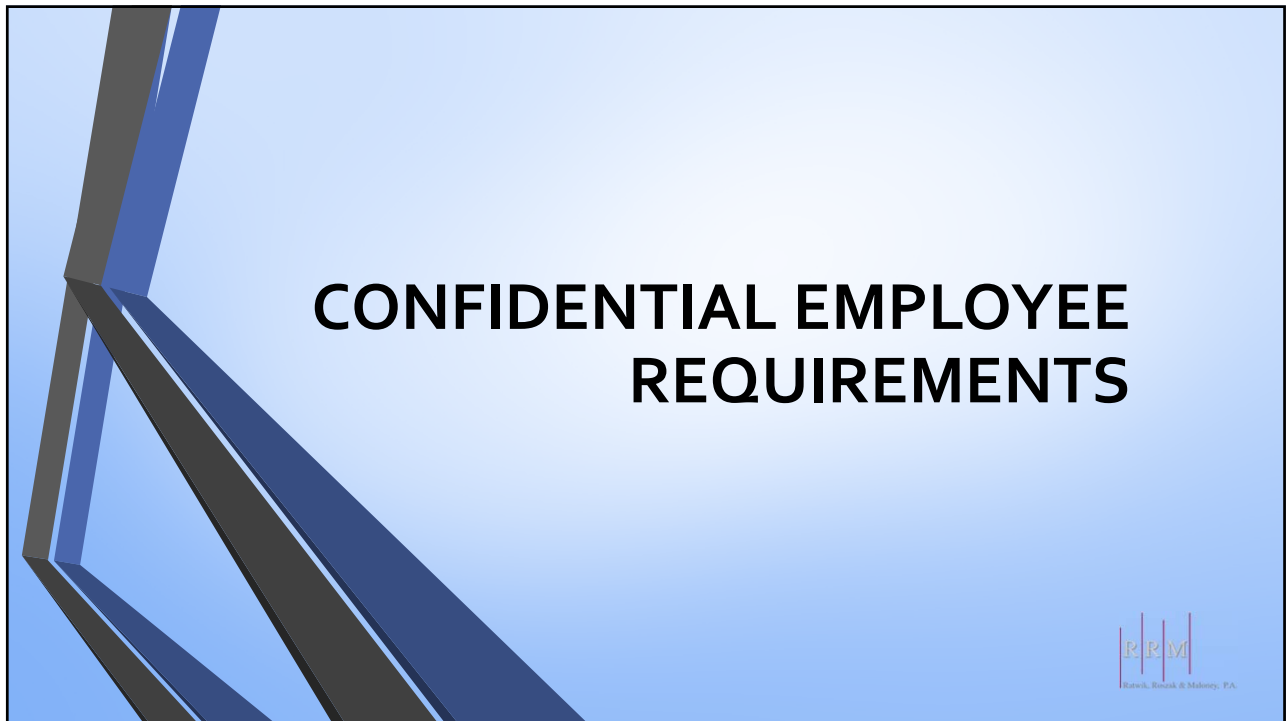
- Statement that school district does not discriminate on basis of sex
- Inquiries may be referred to Title IX Coordinator or Office of Civil Rights
- Contact information for Title IX Coordinator
- How to locate Title IX policy and grievance procedures
- How to report allegations



## PUBLICATION OF NOTICE OF NONDISCRIMINATION


Notice must be included on the school or school district's website, and in each handbook, catalog, announcement, bulletin, and application form that it makes available to students, parents, guardians, employees, applicants for employment or admission, and unions, or which are otherwise used in connection with the recruitment of students or employees.





**PREGNANCY  
OR RELATED  
CONDITIONS  
FOR  
STUDENTS**

- Status
- Pregnancy or Related Conditions
- Provide Title IX Coordinator Contact & Other Information
- Actions to Prevent Discrimination & Ensure Equal Access
- Notice Requirements



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**PREGNANCY  
OR RELATED  
CONDITIONS  
FOR  
STUDENTS**

- Reasonable Modifications
- Voluntary Leaves of Absence
- Lactation Space
- Limitation on Supporting Documentation
- Comparable Treatment
- Certification to Participate



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**PARENTAL, FAMILY,  
MARITAL STATUS,  
PREGNANCY, OR  
RELATED  
CONDITIONS IN  
PRE-EMPLOYMENT  
AND EMPLOYMENT**

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Status

---

Pregnancy or Related Conditions

---

Comparable Treatment

---

Voluntary Leave of Absence

---

Lactation Time and Space

---

Pre-Employment Inquiries (Marital Status & Sex)



## **GENERAL RULES FOR RESPONDING TO SEX-BASED HARASSMENT**

- "A school district with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must respond promptly and effectively."

34 C.F.R. § 106.44(a)(1) (as amended).

- **KEY POINT:** Treat the parties equitably



# STEP 1: THE ROLE OF THE TITLE IX COORDINATOR

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## RECEIPT OF A COMPLAINT

- Who May Bring a Complaint
  - Complainant
  - Parent, Guardian, or Authorized Legal Representative
  - Title IX Coordinator
  - Any Student or Employee
  - Any Person Participating or Attempting to Participate in the School District's Education Program or Activity

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## RECEIPT OF A COMPLAINT

- Responding to a “Report” or “Knowledge” of Sex Discrimination
- Initiation of a Complaint
  - Factors the Title IX Coordinator must consider:
    - Complainant’s request
    - Reasonable Safety Concerns
    - Risk of Additional Sex Discrimination
    - Severity
    - Age and Relationship of Parties
    - Scope
    - Availability of Evidence
    - Prevention of Recurrence



## RECEIPT OF A COMPLAINT CONTINUED...

- Consolidation of Complaints
  - KEY POINT: While consolidation is allowed under the Title IX Final Rule, the school or school district may want to consider the data privacy implications before consolidating complaints.
- Students with Disabilities



## INITIAL EVALUATION OF A COMPLAINT

The Title IX Final Rule eliminated mandatory dismissals.

Permissive Dismissal of Complaint:

- Unable to identify respondent
- Complainant voluntarily withdraws, Title IX Coordinator declines to initiate a complaint, and the school district determines does not rise to sex discrimination
- Respondent is not participating in school district or employed by school district
- Alleged conduct, even if proven, would not constitute sex discrimination



EARLY  
DISMISSAL

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## RESPONSIBILITIES WHEN DISMISSING A COMPLAINT



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## REFERRAL OF A COMPLAINT TO OTHER STAFF OR ENTITIES

- Referral of Allegations of Harassment Based on Protected Class
- Referral of Allegations of Bullying
- Referral of Allegations of Code of Conduct Violation
- Referral to Law Enforcement
- Maltreatment of Minors Reporting



## NOTICE OF ALLEGATIONS

- Who Must Receive the Notice of Allegations
  - All Known Parties
- Contents of the Notice
  - Grievance Process
  - Allegations
  - Retaliation is Prohibited
  - Equal Opportunity to Access Evidence

## NOTICE OF ALLEGATIONS CONTINUED...



- Timing
- Interim Supportive Measures
  - Modification of Supportive Measures



## EMERGENCY REMOVAL OF RESPONDENTS

### Student Respondents

- Presumption of Non-Removal
- Standards for Immediate Removal
- Procedural Requirements for Removal
- Non-Applicability to Conduct Outside Title IX

### Employee Respondents

- Permissible Removal of Non-Student Employee
- Factors to Consider
- Directives During Administrative Leave





ADVANCED  
MANEUVERS FOR  
RESPONDING TO  
COMPLAINTS

- Requests from Law Enforcement or Social Services Not to Investigate
- Public Comment at School Board Meetings
- Media Attention

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## ADVANCED MANEUVERS FOR RESPONDING TO COMPLAINTS CONTINUED...

- Restraining Orders
- Complaints Against Title IX Personnel
- Investigating Complaints Under Another Policy



## STEP 2: THE ROLE OF THE TITLE IX INVESTIGATOR





## STEPS IN A TITLE IX INVESTIGATION



## INDEPENDENT INVESTIGATORS

Under the Title IX Final Rule, the Title IX Investigator and the Title IX Decisionmaker may be the same person as long as the individual does not have a conflict of interest or bias. However, the Title IX Investigator and the Title IX Coordinator cannot be the same.





**BEFORE YOU BEGIN YOUR INVESTIGATION**

Upfront Reporting


- Law Enforcement
- Maltreatment of Minors Reporting



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**DATA PRIVACY CONSIDERATIONS**

1. Must comply with state and federal law
2. Title IX trumps state law when in conflict
3. Data Practices/*Tennessee* Warnings

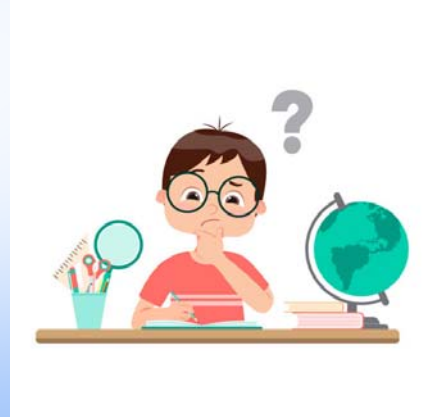


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## PREPARING FOR AN INVESTIGATION

- Determine the Scope and Strategy
  - Review Policies
  - Identify Witnesses
  - Presentation of Evidence
- Determine Who Will Be Present for Interviews
  - Notices of Interview No Longer Required
  - Advisors No Longer Required
- Prepare Responses to Common Distractions



## INTERVIEW BASICS

Review the *Tennessee* Warning with the Interviewee



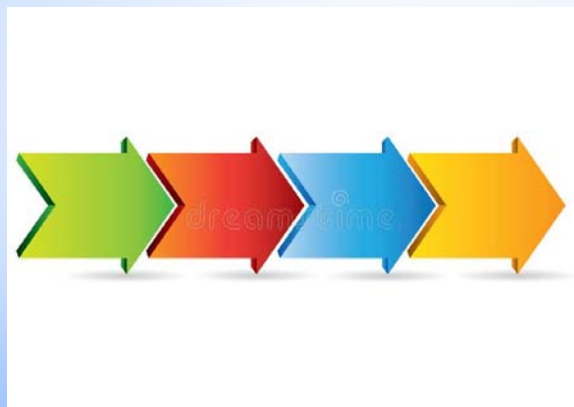
Explain the Purpose of the Interview



## Define Your Role



## Explain the Process



## Do Not Promise Confidentiality



**TOP SECRET**



## Ask Specific & Tough Questions



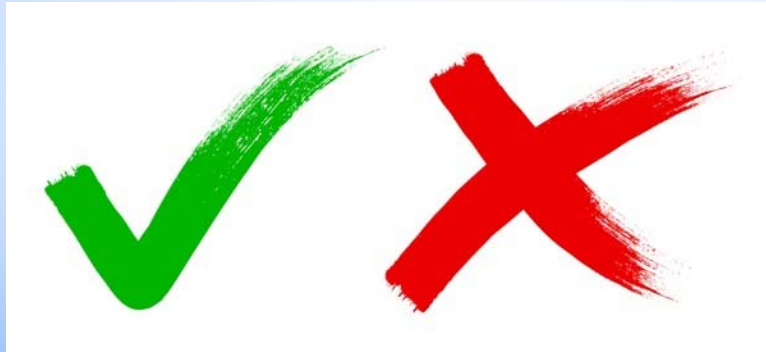
## Ask For Documents



## Ask For Other Potential Witnesses



## Do Not Guarantee Results



### TIPS FOR INTERVIEWING COMPLAINANTS AND WITNESSES

- Ask Short, Open-Ended Questions
- Who, What, Where, When, Why, How
- Assume the Investigator Will Defend Interview Questions in Court or Administrative Appeal
- Keep Bias in Mind
- Observe Demeanor
- Follow Up
- Visual Representation





## TIPS FOR INTERVIEWING COMPLAINANTS AND WITNESSES CONTINUED...

- Disclose as Little as Possible
- As if Extent of Complaint Covered
- Impact
- Understand Concerns
- Take Appropriate Action
- Do Not Make Promises
- Retaliation
- Supportive Measures



## TIPS FOR INTERVIEWING RESPONDENTS

- Avoiding Bias
- Opening Remarks
- Refusals to Answer
- Follow-Up Questions



## TIPS FOR INTERVIEWING RESPONDENTS CONTINUED...

- Additional Tips for Interviewing Respondents
  - Be Prepared for Defensiveness
  - Insist on Details
  - Go Beyond Verifying
  - Do Not Threaten
  - Do Not Discuss Discipline
  - Do Not Make Promises
  - Do Not Reveal Names of Witnesses



## ASSESSING CREDIBILITY

Eye Contact

Hesitancies

Change in Skin Color

Pitch of Voice

Affect Over Course of Interview

Influencing Outcome of Investigation

Skewed Reality

Consistency

**\* Remember Caveat when Assessing Credibility\***





## PRESERVING ELECTRONIC EVIDENCE

- Act Promptly
- Computer Evidence
- Video Surveillance
- Social Media



## RELEVANCE

The Title IX Final Rule defines “relevant” as related to the allegations of sex discrimination under investigation as part of the grievance procedures under 34 C.F.R. § 106.45. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred. 34 C.F.R. § 106.2 (as amended).

# IMPERMISSIBLE EVIDENCE

- Privileged Evidence
- Medical Records
- Prior Sexual Conduct



# EVIDENCE GATHERED

- Review of evidence
- Response to Evidence

## Tips for Documenting the Evidence:

- Include Interview Specifics
- Include Relevant Information
- Reference Exhibits
- Write Objectively



## INVESTIGATION REPORTS

- Under the old Title IX Regulations, the investigator was required to create an investigative report that fairly summarized the relevant evidence.
- The new Title IX Final Rule does not mention an investigative report in the context of elementary and secondary education.



## AVOIDING BIASES AND CONFLICTS OF INTEREST



CONFLICTS OF  
INTEREST



BIAS



ADDRESSING  
IMPLICIT BIAS



# ADVANCED MANEUVERS: HIGH STRESS INVESTIGATION SCENARIOS




## STEP 3: THE ROLE OF THE TITLE IX DECISIONMAKER



STANDARD OF REVIEW

Preponderance of the Evidence

Clear and Convincing Evidence



The slide features a dark grey background on the left with the text 'STANDARD OF REVIEW' in white. On the right, a light blue gradient background contains two rounded rectangular boxes. The top box is a lighter shade of blue and contains the text 'Preponderance of the Evidence'. The bottom box is a darker shade of blue and contains the text 'Clear and Convincing Evidence'. In the bottom right corner, there is a logo consisting of the letters 'RRM' in a serif font, with three vertical lines to its left, and the text 'Russo, Rossi & Maloney, P.A.' in a smaller font below it.


WRITTEN DETERMINATIONS REGARDING RESPONSIBILITY

Issuance of a Written Determination

Contents of the Determination

Referral of the Determination

Finality of the Determination



The slide features a dark grey background on the left with the text 'WRITTEN DETERMINATIONS REGARDING RESPONSIBILITY' in white. On the right, a light blue gradient background contains four horizontal lines, each followed by a text element: 'Issuance of a Written Determination', 'Contents of the Determination', 'Referral of the Determination', and 'Finality of the Determination'. In the bottom right corner, there is a logo consisting of the letters 'RRM' in a serif font, with three vertical lines to its left, and the text 'Russo, Rossi & Maloney, P.A.' in a smaller font below it.

# ADVANCED MANEUVERS: HIGH STRESS SCENARIOS FOR DECISIONMAKERS



## STEP 4: IMPLEMENTATION OF THE DECISION AND THE APPEALS PROCESS



## REQUIRED APPEALS PROCESS

The Title IX Final Rule eliminated the specific grounds for appeal. Instead, it states the school or school district 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. 34 C.F.R. § 106.45(i) (as amended).



## APPEAL PROCESS



- Notify the parties in writing when an appeal is filed
- Appellate Decisionmaker should be someone different than the Title IX Coordinator, Title IX Investigator, and Title IX Decisionmaker
- Give both parties a reasonable opportunity to submit a written response
- Issue a written decision with rationale

# STEP 5: AFTERMATH OF TITLE IX GRIEVANCE PROCESS



## RETALIATION

Retaliation

Peer Retaliation

Retaliation Requirements





# Practical Scenarios



**THANK YOU FOR  
ATTENDING!**

