

Title IX Decision-Maker Training

Presented To:
The Mississippi School Board
Association

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ADAMS AND REESE LLP

Presented By:

Elizabeth Lee Maron

elizabeth.maron@arlaw.com

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Title IX



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

20 U.S.C 1681(a) Title IX
Education Amendments of 1972



Where and When?

34 CFR Part 106 – Amendments
to Title IX Regulations and New
Sections

Effective date: August 14, 2020

Posting
Training
Materials

§106.45(b)(10)(D)

(10) Recordkeeping. (i) A recipient must maintain for a period of seven years records of ****

All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

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District Responsibility

Title IX obligates *recipients*, not individual students or employees, to operate education programs or activities free from sex discrimination, so it is the recipient's burden to gather relevant evidence and carry the burden of proof.



JOBs (Responsibilities) in the Title IX Processes



- Title IX coordinator
 - Dismissals
 - Facilitator
 - Investigator
 - Initial decision maker (separate person)
 - Appeal decision maker (separate person)
- 

What do these Jobs entail?



Initial Decision-maker - has the responsibility of making initial determinations of responsibility in formal complaints of sexual harassment in the Title IX grievance process; or

Appeal Decision-maker - has the responsibility to decide any appeal in formal complaints of sexual harassment in the Title IX grievance process.

*The Initial
Decision-
Maker Phase*

Hearings

Title IX compliant hearings are not required in K-12 educational institutions for Title IX formal complaints.



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Written questions



After the District has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker must provide each party the opportunity to submit written, relevant questions that the party wants asked of another party or witness, provide each party with the answers, and provide for limited follow-up questions.



*The Initial
Decision-
Maker Phase*

Determination of Responsibility

The decision-maker issues a written determination of responsibility that:

1. Identifies the allegations that potentially constitute sexual harassment as defined in the amendments;
2. Describes the District's procedural steps taken from the receipt of the complaint to the determination;
3. Includes findings of fact supporting the determination;

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4. Includes conclusions regarding application of the code of conduct to the facts;
5. Includes a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions imposed upon the respondent, and whether remedies to restore or preserve equal access to the District's education program or activity will be provided to the complainant; and
6. Includes procedures for appeals.



*The Initial
Decision-
Maker Phase*

Show Your Work

The decision-maker has to:

- Make an independent decision.
- Address the things that come AFTER the investigation report
 - Written responses of the Parties come after the investigation report
 - Written questions come after the investigation report

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Decision-Maker!!



“Inculpatory Evidence”

tends to prove the respondent is responsible for conduct alleged – can be as to some or all of the allegations

“Exculpatory Evidence”

tends to exonerate the respondent as to an allegation – can be as to some or all of the allegations

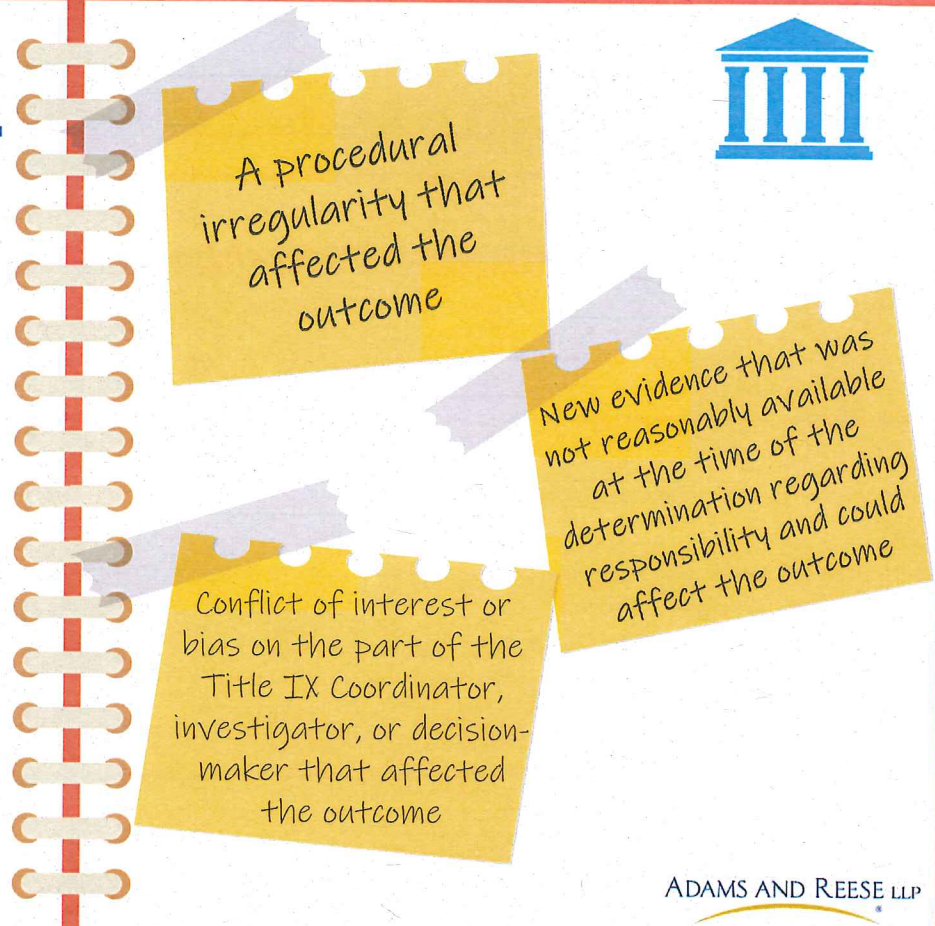
“Fairly Summarizes the Relevant Evidence” - evidence is relevant if

- it has any tendency to make a fact more or less probable than it would be without the evidence; and
- the fact is of consequence in determining the action.
- Does it matter or is it important with regard to the facts

The Appeal Decision-Maker Phase

Both parties have the right to appeal

- 1) a determination of responsibility and
 - 2) the District's dismissal of a formal complaint
- for the following reasons:



Steps in the appeal process

Provide both parties..



A written notice of
the appeal

A written decision
simultaneously.

An equal opportunity to
submit a written
statement in support
of, or challenging, the
determination.



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Avoiding Bias

How do I know if someone is biased?

- Requires examination of the particular facts of a situation
- Apply an objective,* common sense approach to evaluating whether a particular person serving in a Title IX role is biased.
- Exercise caution not to apply generalizations that might unreasonably conclude that bias exists.

*whether a reasonable person would believe bias exists

This training provides you with the tools needed to serve impartially and without bias - must not let your prior assumptions shade your judgment.

Training - Impartiality

A training approach that encourages Title IX personnel to “believe” one party or the other would fail to comply with the requirement that Title IX personnel be trained to serve impartially, and violate the regulations precluding credibility determinations based on a party’s status as a complainant or respondent.

Training –Fair Process

- parties should be treated with equal dignity and respect by Title IX personnel

- the credibility of any party, as well as ultimate conclusions about responsibility for sexual harassment, must not be prejudged and must be based on objective evaluation of the relevant evidence in a particular case

- in summary, training materials that promote the application of “profiles” or “predictive behaviors” to particular cases would likely run contrary to the regulatory requirements of fairness.

Record Keeping

The District must keep records related to reports of sexual harassment for a minimum of seven years, including investigation records, disciplinary sanctions, remedies, appeals and records of any action taken, including supportive measures.

A. Records should reflect that the District's response was not deliberately indifferent and that measures were taken to restore or preserve equal access to the education program or activity.

B. If the District does not provide a complainant with supportive measures, the District must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

C. The District must also retain for seven years any materials used to train Title IX Coordinators, investigators, decision-makers and any employee designated to facilitate an informal process.

D. The District must post training materials on the District website.

Retaliation



Retaliation is prohibited against any person for the purpose of interfering with Title IX rights or because the person participated, or refused to participate, in any manner in a proceeding under Title IX regulations.

Complaints of retaliation may be reported and filed under the Title IX grievance process.

Confidentiality

The District must keep confidential the identity of a person who complains of or reports sexual harassment, including parties and witnesses, except as permitted by law to carry out the purpose of the regulations with regard to conducting an investigation into the complaint.



OCR's Role?

*Final
Thoughts*

Takeaway Message from Title IX Amendments

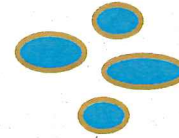
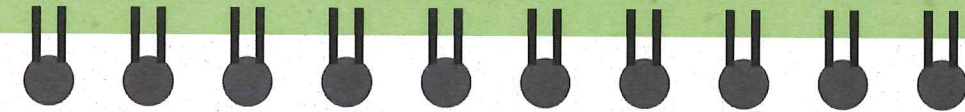
Complainants and respondents have different interests in the outcome of a sexual harassment complaint.

Complainants “have a right, and are entitled to expect, that they may attend [school] without fear of sexual assault or harassment” and to expect recipients to respond promptly to complaints.

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For respondents, a “finding of responsibility for a sexual offense can have a ‘lasting impact’ on a student’s personal life, in addition to [the student’s] ‘educational and employment opportunities’[.]” Although these interests may differ, each represents high-stakes, potentially life-altering consequences deserving of an accurate outcome. Preamble p. 914.



For training materials for this session or
district-specific training, please email:

Elizabeth.Maron@arlaw.com

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Elizabeth Lee Maron

Direct: (601) 292-0719
1018 Highland Colony Parkway
Suite 800
Ridgeland, MS 39157
Elizabeth.Maron@arlaw.com

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