




**2020 Title IX Regulations:
Decision-Maker Training**

District 99
September 8, 2020
Presented by Jackie Wernz

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Decision-Maker – Complaint

- Review evidence collected during the investigation
- Oversee hearing and live cross
- Make relevancy determinations
- Make independent judgment on responsibility and sanctions

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Decision-Maker – Appeal

- Review investigative report and responses
- Grant parties opportunity to respond
- Review party responses
- Make independent judgment on appeal questions

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Decision-Making Process The Complaint

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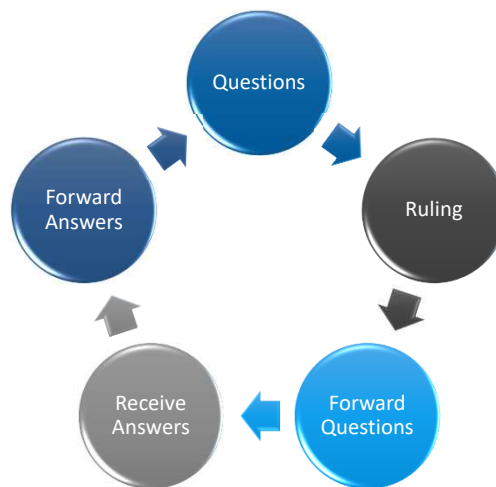
What You'll Receive

- Formal complaint
- All relevant evidence gathered during the investigation
- Investigative report
- Written responses submitted by parties

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The Process



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Issues of Relevance and Evidence

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Issues of Relevance

- Must objectively evaluate questions and make determinations on relevancy
- Includes inculpatory and exculpatory evidence
 - Inculpatory: tends to prove policy violation
 - Exculpatory: tends to exonerate the accused

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Rulings on Relevance

- Provide reasoning for irrelevance
- Admit and consider all relevant questions
- Exceptions
 - Sexual behavior (except in limited situations)
 - Legal privilege
 - Treatment records

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Rape Shield Law

- Exclude questions related to Complainant's sexual behavior or predisposition
- Two narrow exceptions
- Does not apply to Respondent

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Rape Shield Law - Exceptions

- Used to prove that someone other than the respondent committed the conduct; or
- Concerns specific incidents of the complainant's sexual behavior with respect to respondent and is offered to prove consent.

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Treatment Records

- Do not allow questions that would lead to access, considering, disclosing, or using information from medical records made by a physician, psychologist, or other recognized professional made and maintained in connection with the provision of treatment
- Unless the party gives voluntary, written consent

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Legally Privileged Information

- Do not allow questions that seek disclosure of legally privileged information, unless waived
- Consider:
 - Attorney-client communication
 - Privilege against self-incrimination
 - Confessions to a clergy member or religious figure
 - Spousal privilege
 - Confidentiality and trade secrets

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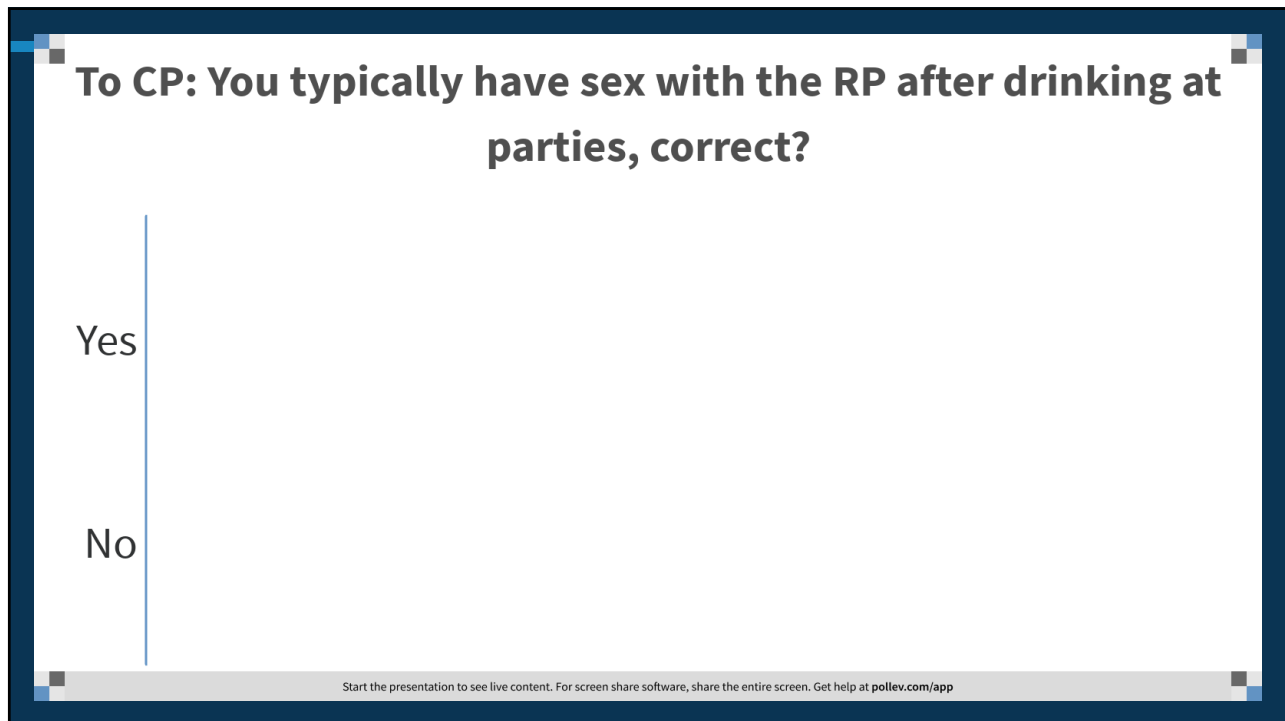
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To RP: You typically have sex after drinking at parties, correct?

Yes

No

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What date did you begin receiving treatment for depression?

Yes

No

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You told a friend that the only reason you made a complaint was because your mom made you do so, correct? What did you say?

Yes

No

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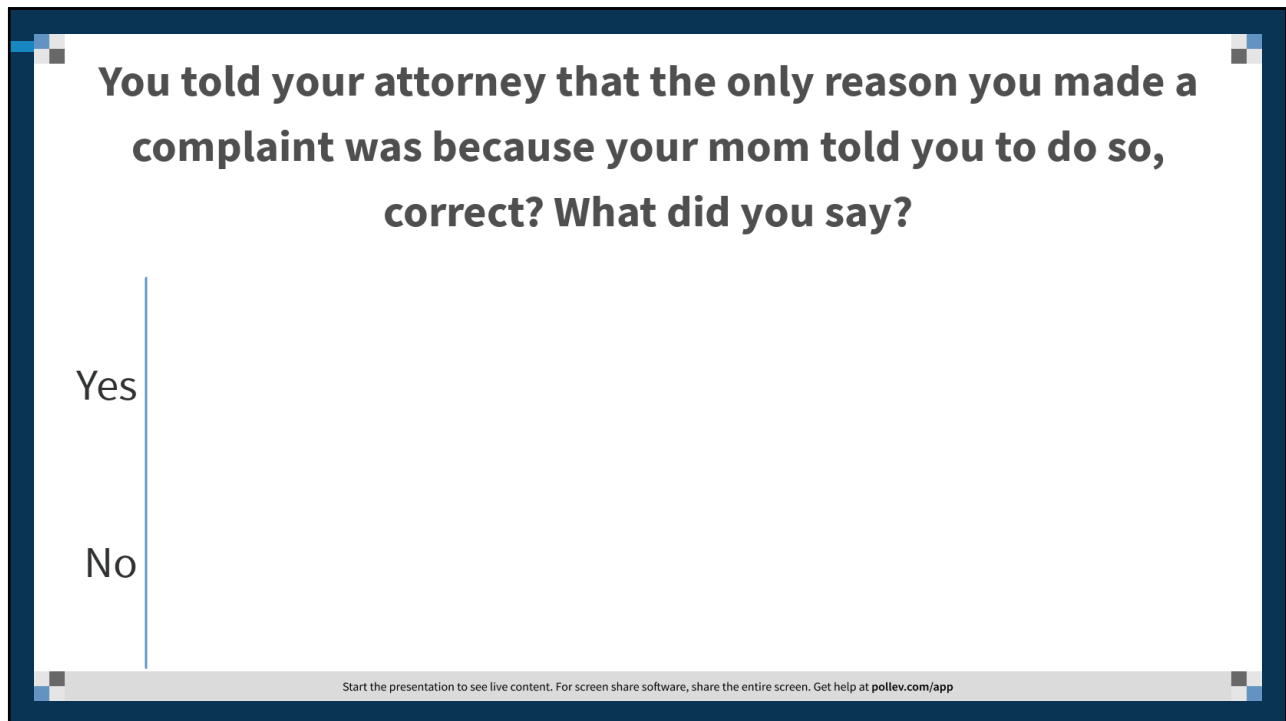
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You told your attorney that the only reason you made a complaint was because your mom told you to do so, correct? What did you say?

Yes

No

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You were so drunk that you do not know who sexually assaulted you, correct?

Yes

No

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To CP: You and the RP had sex again the week after the alleged incident correct?

Yes **A**

No **B**

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Written Determination Regarding Responsibility

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Making a Determination

- Remain unbiased and impartial
- Render a reasoned decision based on evidence
- Base decisions on relevant evidence alone
- Evaluate witness credibility
- Consider weight of evidence (remember standard: preponderance of the evidence)

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Forms/Notices

Determination

Written
Determination
Template
(Franczek Form C)

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Written Determination

Identify	Identify the allegations
Describe	Describe procedural steps taken
Cite	Cite potential policy violations
Summarize	Fairly summarize all relevant evidence
Provide	Provide statement of result, with rationale, for each allegation
Appeal	Appeal procedures

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Factual Findings

Separate findings for each alleged policy violation

For any facts in dispute, show your work and reasoning

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Factual Findings

Consider	Consider both supporting/corroborating and conflicting/inconsistent information for each disputed fact
Make	Make credibility determinations by considering corroborating evidence, inconsistencies, logic of explanation/narrative, impact of trauma
Use	Use words of parties/witnesses
Be	Be detailed and precise

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Opportunity to Review

Document opportunities given to parties to provide information, review evidence, and provide rebuttal

Explain if anything offered/mentioned was not considered/obtained and why.

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Cameron's Report

- Lacrosse orientation week
- Park across street from the school
- Two upperclassmen lacrosse players (Parker and Robin) vs. Cameron

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Cameron's Report

- Verbal harassment
 - Going to violate your mother
 - Want to "smoke" (understood to mean sexual assault), will give starting position on team if do
- Grabbed Cameron by the neck and bent Cameron over; poked Cameron's anus over the clothes

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Cameron's Report

- Coaches saw the incident
 - Laughed at first
 - Noticed Cameron looked shaken
 - Sternly reprimanded upperclassmen in front of Cameron
 - Told Cameron if it happened again to report it
- Nonetheless, physical incidents kept occurring

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Cameron's Report

- One (same) coach observed later incident; shook her head and walked away
- Last day of orientation
 - Hazing ritual
 - Multiple upperclassmen grabbed Cameron and two other rookies
 - Pulled down pants, poked anus with broomstick

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Relevant Evidence

- Cameron (CP) and Robin both report that the incident occurred as reported
- Parker and Robin (RPs) deny that they engaged in the alleged conduct
- Other classmates, Ali and Jamison report that they did not see anything happen, but they were not close by
- Other classmate, Devon, reports not seeing anything, and says was close by

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Relevant Evidence

- Coaches acknowledge that on first day, saw conduct, reprimanded; deny laughing
- Text messages from Coach Smith to Coach Brown on day of first incident said "These kids are crazy! I can't believe they're at it again!" Coaches said talking about something unrelated.

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Discussion

What is your finding?

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Credibility

- Cameron recently lost a chess tournament against Parker
- Devon grew up on same street as Robin and Parker
- Coaches did not have a good explanation for the text

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Decision-Making Process

The Appeal

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Appeal Process

- Available to both parties
- Three bases for appeal
- Notify party of appeal in writing
- Apply procedures equally for both parties
- Opportunity to submit written statement
- Issue written decision to both parties

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Appeal Process

- Procedural issue affecting the outcome
- New evidence that wasn't reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome
- TIXC, investigator, or decision-maker had 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

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Procedural Issue

- Failure to follow the rules in policy/procedure
- Can be intentional or inadvertent
- Resulted in inappropriate decision; not always the case

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The Title IX Coordinator failed to meet with the CP to offer supportive measures

Affected the
outcome

Did not
affect the
outcome

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The Investigator fails to provide both parties all directly related evidence before issuing the report?

Impacts the outcome

Does not impact the outcome

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New Information

- New Information
- Not known at the time
- Would change the opinion of the decisionmaker if known at the time
- Not a review of information known at the time

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The RP was not aware at the time of the investigation that the CP previously made a false report by another student the year before

New evidence

Not new evidence

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Bias/Conflict of Interest

- Bias toward one party or one type of party – personal or institutional
- Conflict of interest – personal or institutional
- Prejudgment of facts (avoid by “showing your work”)

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Recordkeeping/File Maintenance

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Recordkeeping Essentials

- Overview of Required Recordkeeping
- File Checklist

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Questions?



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