

Title IX Training and Overview

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Title IX Basic Concepts

Title IX

- Title IX prohibits discrimination in federally funded educational programs on the basis of sex.
- Title IX was enacted in 1972 as part of amendments to the Higher Education Act of 1965.
- Any school district receiving any Federal funds must comply with Title IX.
 - Regulations provide details for compliance
 - Regulations were updated in 2020 and again in 2024*
- The US Department of Education's Office for Civil Rights (OCR) enforces Title IX.

Title IX prohibits sex discrimination in federally funded educational programs.

“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.”

Responsibility of School Districts

- Districts are responsible for appropriately responding to discriminatory and harassing conduct.
- The actions of an individual can create liability when a district has actual knowledge of sexual harassment and fails to respond promptly in a manner that is deliberately indifferent.

What is Prohibited?

Students may not be **discriminated against** on the basis of sex.

Students may not be **retaliated against** for making complaints regarding sexual harassment or discrimination.

School Districts cannot be **deliberately indifferent** to complaints of sexual harassment by students.

(NOTE! Employees are protected under Title VII)

Types of Prohibited Discrimination Include:

- Sex stereotypes
- Sexual harassment
- Failure to provide equal opportunity in athletics
- Discrimination based on pregnancy or parental status
- Sexual violence
- Scheduling and other things such as equipment and access to facilities
- Discipline
- Retaliation

Sexual Harassment

2020 Sex-Based Harassment

Quid pro quo harassment- Conditions the provision of an aid, benefit or service on an individual's participation in unwelcome sexual conduct

Specific offenses: sexual assault, dating violence, stalking, domestic violence

Hostile environment harassment- Conduct that is determined by a reasonable person to be:

1. Unwelcome
2. Severe,
3. Pervasive
4. Objectively offensive
5. That it **effectively denies** a person's ability to participate in or benefit from the educational program or activity.

Consideration of Hostile Environment

- 2020 – ongoing pending court action:
 - Unwelcome sex-based conduct must be “so severe, pervasive and objectively offensive” that it effectively denies access to or participation in education programs or activities.

Must the Conduct Occur at School?

- The 2020 regulations only apply to sex discrimination occurring against a person in the United States and when that discrimination is a part of the educational program or activity.
 - On school grounds or situations over which the school exercises “substantial control.”
 - Fact specific analysis to review the allegations and whether the discrimination is on school property, during a school activity, has a nexus to school, etc.
- The 2024 regulations expanded the universe – but they are no longer the law!

Precautions

- These claims are not only about actions taken against the opposite sex.
- Bullying may also be sexual harassment. Sexual harassment must be processed in accordance with Title IX.
- While the context of the school setting can be considered in determining whether conduct is inappropriate, beware of generalizations (e.g. “boys will be boys”).
- Be mindful of application outside of the school building (field trips, athletic events, banquets, class trips, school concerts, etc.)

School Employee and District Response

“Actual Knowledge” Defined

- When any school employee has notice of sexual harassment
 - A report to any school employee
 - A report from any individual
 - Personal observation by any school employee
 - “various other means”
- When notice is received, this starts the clock on responding to the complaint promptly.
 - This means notice must very quickly result in a report to a Title IX coordinator!

“Actual Knowledge” of What?

- **Err on the side of caution!** There are many examples in which notice of sexual harassment may be obtained other than by direct complaint:
- Examples:
 - Teacher hears a rumor about a sexual relationship between another teacher and a student;
 - A staff member watching a student speak in a sexually inappropriate way to another student;
 - The school receiving notice that that an off-campus sexual violence event is creating retaliation at school.
 - Incident on the bus where a student grabs another student.
- Although the law is still not quite settled on what constitutes notice, it is recommended these types of instances be reported to the district’s Title IX coordinator for follow-up.



General Response to Sexual Harassment

Districts must respond **promptly** and in a way that is not intentionally indifferent, when it has **actual knowledge** of sexual harassment.

Districts must treat complainants and respondents equally in offering supportive measures to the complainant and by following a compliant grievance process **before** issuing disciplinary sanctions on the respondent.

A school district is deliberately indifferent if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

What are These “Supportive Measures”?

- Defined as:
 - “Individualized services reasonably available that are nonpunitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.”
 - Examples: changing classes, stay away orders, different schedules, assigning buses, guidance counselor access, checking in regularly, etc.

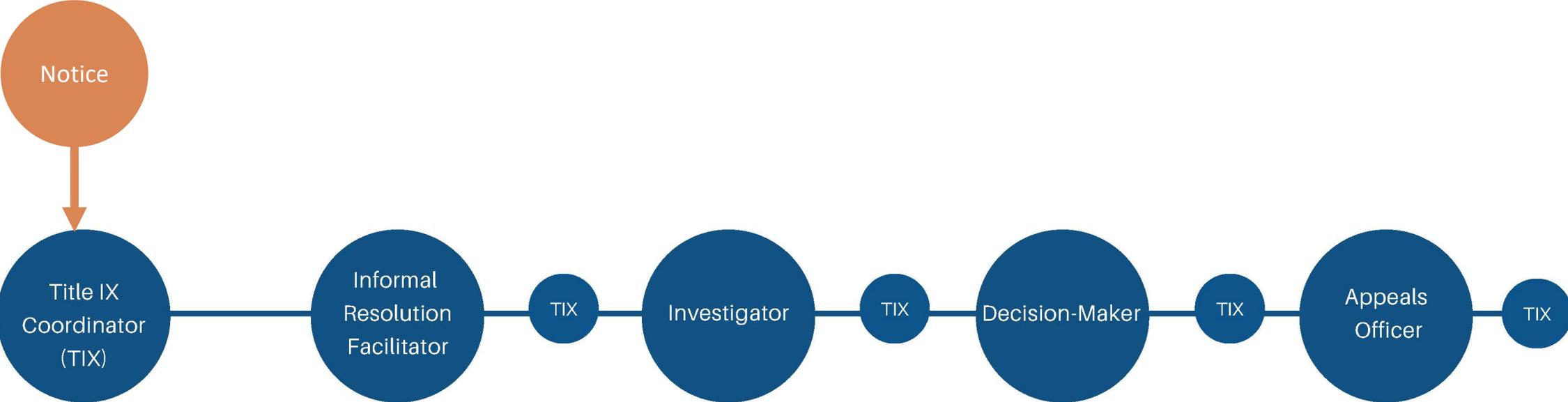
When Must a Complaint be Submitted?

- There are **no timelines** to initiate a complaint.
 - Statutes of limitations don't really confine board's duty to investigate.
 - Policy may recommend that individuals make every effort to report within a certain number of days. However, from an investigation standpoint...the sooner the better.
 - Failure to adhere to this deadline **is not** sufficient reason to ignore the investigation process.

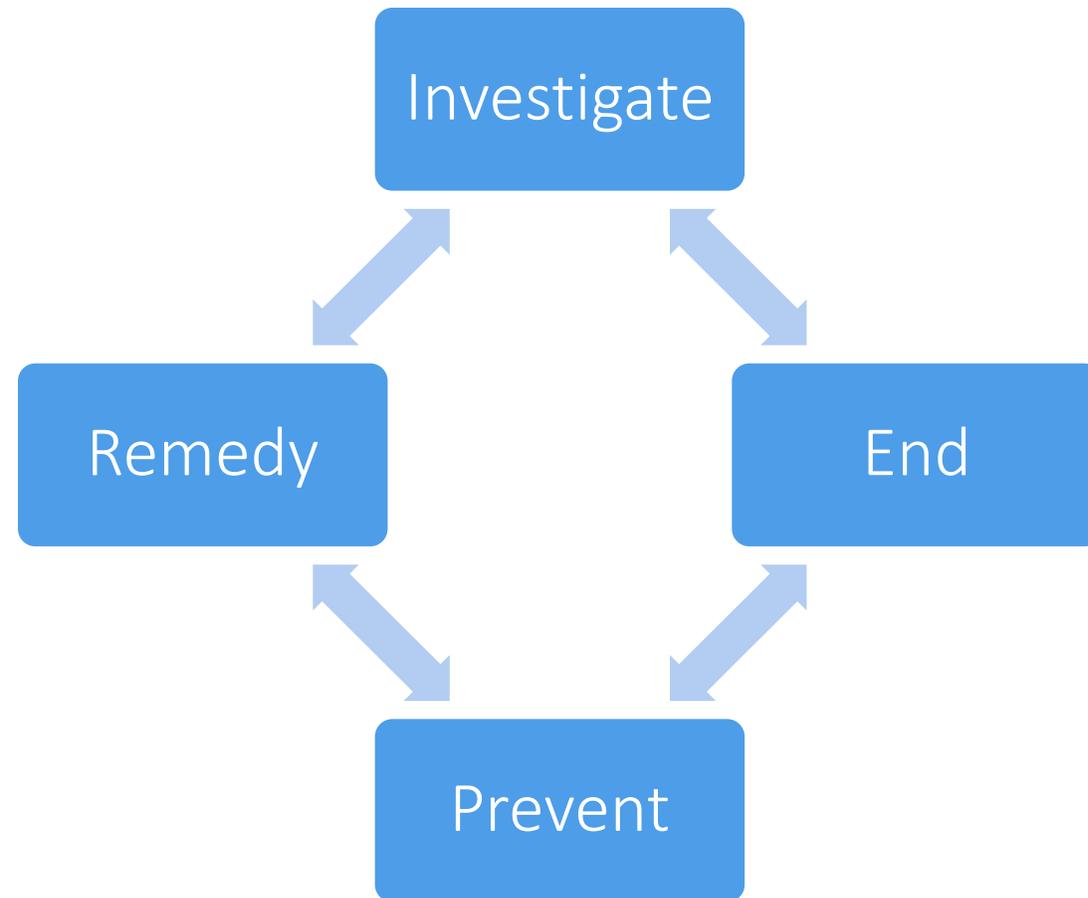
I Have Become Aware of Potential Sexual Harassment! What Do I Do?

- **Promptly report** to the District's Title IX Coordinator for investigation.
 - If you don't know who the coordinator is, the name and contact information should be displayed on the District's website. You can also ask a principal or supervisor to whom reports should be directed.
- Maintain the confidentiality of the situation outside of discussing with the coordinator or investigator.
- Participate in interviews as requested.
- Review your district's Title IX policy.

The Line-Up



District's Title IX Obligations with Respect to Sexual Misconduct



Scenarios

Scenario

You overhear two male students talking about a text they received from a school district employee. In the text, the staff member allegedly states the students are “hot” and “it is too bad they don’t date older women.” What do you do?

Scenario

A high school experiences a lot of teen pregnancies in the school year. In response, it decides to isolate the students and place them in separate classes. The students receive the same curriculum. Is this a Title IX violation?

Scenario

The cheerleading coach is concerned that it is not safe for the student to participate in FFA while she is pregnant. May she be prohibited from participating for medical reasons? May the district require her to submit a medical certification?

Scenario

- A student reports to you that a male student was exposing himself to her about once a week on the school bus for the last few weeks. You are aware that the male student is on an IEP and has some similar behavior reports at school in his resource classroom. Can you remove the student from the school bus? Is this Title IX? Does the IEP matter in a Title IX investigation?

Scenario

The baseball booster club donates \$25,000 to a school district to update the baseball field bleachers after the boy's baseball team wins the state championship. The money is raised by the boosters, and parent volunteers agree to install the bleachers. No updates are scheduled for the adjacent girls softball field, which is old and run down. Could this be a Title IX violation?

Scenario

A teacher overhears two students talking about another student who punched her boyfriend in the mouth at a party over the weekend, making him bleed. The boyfriend is also a student at the school.

Scenario

High School tennis coach is complaining that the girls on the team won't follow team expectations for dress code. The girls keep insisting they wear their sports bras and shorts to practice because it is 90+ degrees outside. The coach insists it is inappropriate. Girls are frustrated because they see the cross-country team running near the courts and the boys on the cross-country team are allowed to run without their shirts on.

Title IX Coordinator: Designation and Notice



Title IX Coordinator: Designation and Notice

- Every school receiving federal funds must designate at least one Title IX coordinator who must be referred to as the “Title IX Coordinator.”
- Specific contact information for the Title IX Coordinator must be communicated to:
 - All applicants for admission
 - All applicants for employment
 - Current students and their parents/guardians
 - Current employees
 - All unions or employee organizations with collective bargaining agreements with the school

Title IX Coordinator: Designation and Notice

- Specific contact information of the Title IX Coordinator listed must include:
 - Name or title*
 - Office address
 - Electronic mail address
 - Telephone number

Title IX Coordinator: Designation and Notice

- The Title IX Coordinator contact information must be “prominently displayed’ on the school’s website and in each handbook or catalog made available to the individuals listed on the previous slide.
 - Student codes of conduct
 - Employee handbooks
 - Prospective student catalogs.
 - Each of these items must include how to report or file a complaint.

Title IX Coordinator: Training Requirements



Title IX Coordinator: Training Requirements

- Statutory definition of sexual harassment
- Scope of Educational program or activity
- How to serve impartially – avoiding prejudgment of the facts, conflicts of interest, bias
- Conducting an investigation and grievance process, including hearings, appeals, and information resolution processes

Sex-Based Harassment

Quid pro quo harassment- Conditions the provision of an aid, benefit or service on an individual's participation in unwelcome sexual conduct

Specific offenses: sexual assault, dating violence, stalking, domestic violence

Hostile environment harassment- Conduct that is determined by a reasonable person to be:

1. Unwelcome
2. Severe,
3. Pervasive
4. Objectively offensive
5. That it **effectively denies** a person's ability to participate in or benefit from the educational program or activity.

Being Impartial and Unbiased

- Serving impartially means avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- **Key:**
 - Presumption that the respondent is not responsible for the alleged conduct and that a determination will be made on responsibility at the conclusion of the grievance process.
- Prohibited prejudgment would include:
 - Assuming what happened if there are 'signs' suggesting truth or falsity.
 - Assumptions based on sex or other stereotypes.
- Being unbiased requires an objective approach that does not prejudge or have a preference for the complainant or the respondent, or the characteristics of the parties.

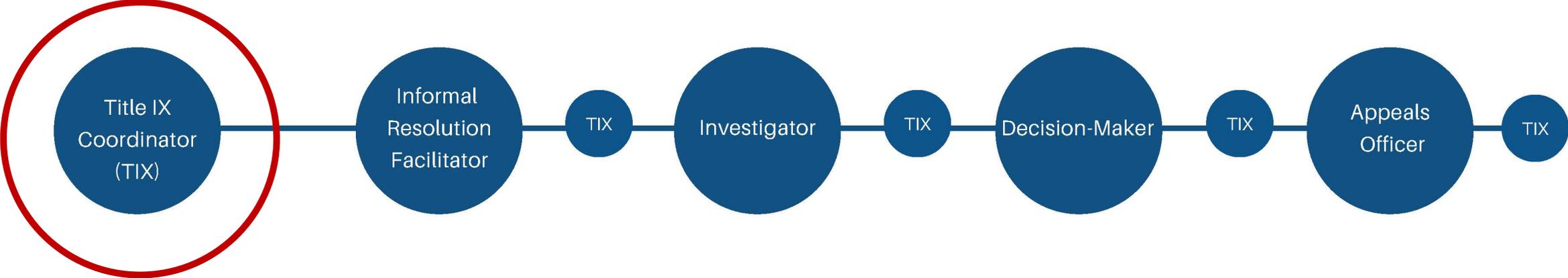
Conflict of Interest

- There are no specific examples of a conflict of interest in the regulations; this is left to the discretion of the school district.
- Conflict of interest:
 - When a personal interest or relationships might interfere with a school employee's ability to act neutrally on a complaint regarding a staff member, student or other person.
 - When a person working on a particular matter may not be impartial due to the circumstances or persons involved. Conflicts may be:
 - » **Direct** (actual issue between personal interests/relationships and official responsibilities),
 - » **Perceived** (someone might believe there is a conflict) or
 - » **Potential** (conflict could develop).
 - Disclose potential conflicts before serving on the matter. District can always get someone else to avoid a claim of conflict or bias.

Conflict of Interest

- A conflict of interest could be present if:
 - The Title IX staff demonstrates preference for or against complainants or respondents generally, or
 - Title IX staff has a conflict with a particular complainant or respondent.
 - Examples: assuming everything a complainant says is true, or scrutinizing factual inconsistencies or errors of respondents more closely as this would be inconsistent with prohibition on prejudging the facts, conflict of interest, or bias.
- One of the bases for an appeal of a decision-maker's decision is that a conflict of interest or bias affected the decision.

The Line-Up



Conducting the Investigation and Grievance Process

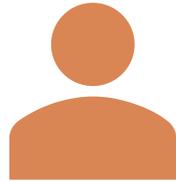
- Title IX Coordinator is responsible for receiving:
 - Reports of conduct that could meet the definition of sex discrimination or harassment
 - Formal complaints of sex discrimination or harassment
- Remember – Actual knowledge occurs when notice is received by an official of the school who has the authority to institute corrective measures or an employee of the school.
 - It is not only when the Title IX Coordinator receives notice.



Conducting the Investigation and Grievance Process

- Actual knowledge means that the school is now required to:
 - Respond promptly in a manner that is not deliberately indifferent.
 - Treat complainant and respondent equitably by offering supporting measures.
 - Following the grievance process before disciplinary sanctions are imposed.

Conducting the Investigation and Grievance Process



Actual knowledge is communicated to the Title IX Coordinator resulting in the following required actions:

Title IX Coordinator promptly contacts the complainant with information regarding supportive measures.

Discusses the options of supportive measures with the complainant, including they are available with or without a formal complaint.

Explains the formal complaint process to the complainant.



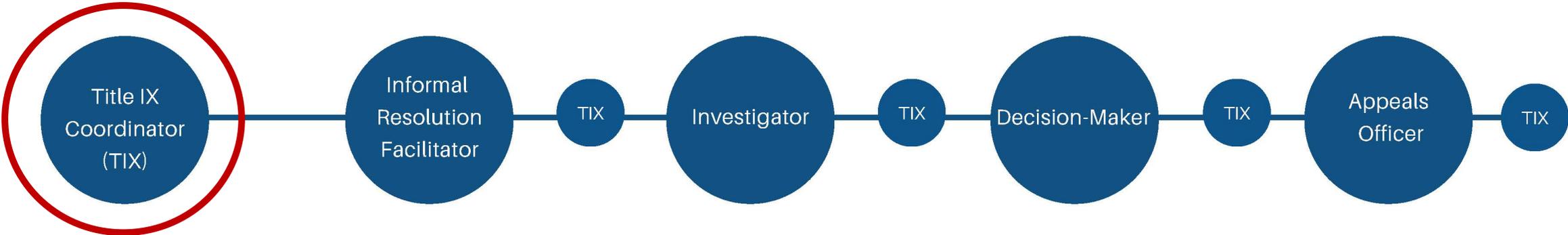
Best Practice: memorialize this conversation in writing, email, etc. and include a copy of the school's policy

Supportive Measures Defined:

- “Individualized services reasonably available that are:”
 - nonpunitive,
 - non-disciplinary, and
 - not unreasonably burdensome to the other party
 - while designed to ensure equal educational access, protect safety, or deter sexual harassment.”
- Examples: changing classes, stay away orders, different schedules, assigning buses, guidance counselor access, checking in regularly, etc., etc.



The Line-Up



Conducting the Investigation and Grievance Process

- Formal complaint is filed. This is permitted to be verbal or written at any time.
- Consider informal resolution, if appropriate, but be aware that this cannot be required.
 - Never appropriate when a staff member is the respondent.
- Title IX Coordinator can offer informal resolution to the complainant provided the parties involved receive written notice of the allegations, the requirements of the informal resolution, and the ability for either party to withdraw from the informal resolution process at any time.
 - Must have voluntary written consent.

Complaints – Ability to Dismiss

- If moving forward with a formal complaint, check for ability to dismiss:
 - Outside of scope of educational program or activity, or
 - Even if true the allegations would not constitute sexual harassment as defined in statute and school policy; or
 - Respondent is no longer enrolled or employed; or
 - Circumstances prevent recipient from gathering evidence sufficient to reach a determination.*
- Document any decision if able to dismiss at this stage.

The Line-Up



Conducting the Investigation and Grievance Process

- If still moving forward with formal complaint, the Title IX Coordinator is the coordinator of the process.
- Title IX Coordinator
 - Serves as or assigns an investigator.
 - Sends Notice of Allegations

Conducting the Investigation and Grievance Process

- Notice of Allegations must include:
 - Sufficient details known at the time and with sufficient time to prepare a response before meeting with the investigator (e.g. identities of parties, details on conduct, date/location, etc.).
 - Presumption that the respondent is not responsible for the alleged conduct and that a determination will be made on responsibility at the conclusion of the grievance process.
 - Right to have an advisor of their choice - can be an attorney, not required to be!
 - Right to inspect and review evidence
 - Prohibition on making false statements or knowingly submitting false information
 - Prohibition on retaliation.

The Line-Up



Conducting the Investigation and Grievance Process

- If not acting as the investigator, Title IX Coordinator allows the Investigator to do their role and facilitates the process, as needed.
 - May be necessary for the Title IX Coordinator to assist in party inspection of the evidence obtained as part of the investigation.
- Consider Title IX Coordinator the manager of the investigation process.
 - Once investigator is done with initial, draft report, the draft report is sent to each party for at least 10 days review and ability to submit a written response. Investigator must consider any written response before making report final.
 - This can often be run by the Title IX Coordinator.

Conducting the Investigation and Grievance Process

- The Title IX Coordinator is not decision-maker for the investigation.
- Consider Title IX Coordinator as manager of the decision-making process.
 - Once investigation report is made final, Title IX Coordinator provides the final report to the parties at least ten days in advance of a final decision (determination of responsibility) and assigns a decision-maker who is also provide written determination.
 - Title IX Coordinator can assist in facilitating exchange of written questions or any hearing process as required and set by policy.

The Line-Up



Conducting the Investigation and Grievance Process

- Final decision provided by decision-maker or Title IX Coordinator simultaneously to both parties.
- Title IX Coordinator is responsible for implementing any action provided by decision-maker.
- Title IX Coordinator also offers both parties opportunity to appeal determination of responsibility based on one of the following:
 - Procedural irregularity
 - New evidence not available at the time dismissal or determination was made; or
 - Conflict of interest for investigator, decision-maker or Title IX Coordinator.

The Line-Up



Title IX Coordinator: Responsibilities and Checklist



Title IX Coordinator: Responsibilities & Checklist

Confirm training obtained for:

- Title IX Coordinator (See prior slides)

Decision-Makers:

- Technology for live hearings
- Issues of relevance of questions and evidence
- Relevance of sexual predisposition or prior sexual behavior
- Same as Title IX Coordinator

Investigators:

- Issues of relevance for reporting
- Same as Title IX Coordinator

Informal Resolution Mediator

- Same as Title IX Coordinator

All Employees:

- Title IX definitions and duty to report
- Grievance process and investigation outlined in policy

Title IX Coordinator: Responsibilities & Checklist

- Recording keeping for 7 years
 - Training materials to be collected and posted on school's website
 - Investigatory and appeal records
 - Including recording or transcript
 - Disciplinary sanctions and remedies provided
 - Informal resolution and results
 - Supportive measures documentation
 - Denial of supportive measures documentation

Title IX Coordinator: Responsibilities & Checklist

- Verify grievance procedure is adopted and published.
- Verify handbooks and codes of conduct include appropriate contact information and how to file a complaint.
- Verify policy outlines:
 - School does not discriminate on the basis of sex in the education program or activity that it operates. It is required by Title IX not to discriminate in such a manner which extends to admission and employment. Any questions may be referred to the Title IX Coordinator.

Title IX Coordinator: Responsibilities & Checklist

- ❑ Oversee complaints and possible service as investigator
- ❑ Follow law and policy on grievance procedures
 - ❑ Disseminate policy
- ❑ Ensure supportive measures are offered and followed up on
 - ❑ Coordinate the effective implementation of the supportive measures.
- ❑ Ensure remediation measures are implemented if Title IX complaint is substantiated.

Title IX Coordinator: Responsibilities & Checklist

- ❑ Oversee / provide training in compliance with Title IX
- ❑ Identify and address patterns and/or systemic problems
- ❑ Monitor students' participation in athletics & extra-curricular activities (disproportionality)
- ❑ Monitor students' participation in academic programs (disproportionality)

Investigator: Duties During the Investigation



Your Mission

- Investigate allegations in the formal complaint.
- Title IX Coordinator will draft a notice of allegations informing the parties about the allegations.
- Then, you will send a notice of to the parties and witnesses for investigative interviews (date, time place, participations, and purpose).
 - Complainant(s)
 - Witnesses
 - Respondent(s)
 - Give sufficient time to prepare and arrange representative
- Discuss the allegations under investigation.



Duties of the Investigator

- The burden is on the investigator, not either of the parties, to gather sufficient evidence to allow the decision-maker to determine whether sex discrimination occurred.
- Investigator is charged with collecting information and evidence and evaluating whether that evidence is relevant and permissible consistent with Title IX.
- Investigators must provide each party with an equal opportunity to:
 - Present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible, and
 - Access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible.

Investigation of Complaints



Districts must provide for adequate, reliable, and impartial investigation of complaints.



To accomplish this, the investigator must gather and review the **relevant** evidence while providing each party with an equal opportunity to present and review evidence throughout the investigation while remaining impartial and without bias.



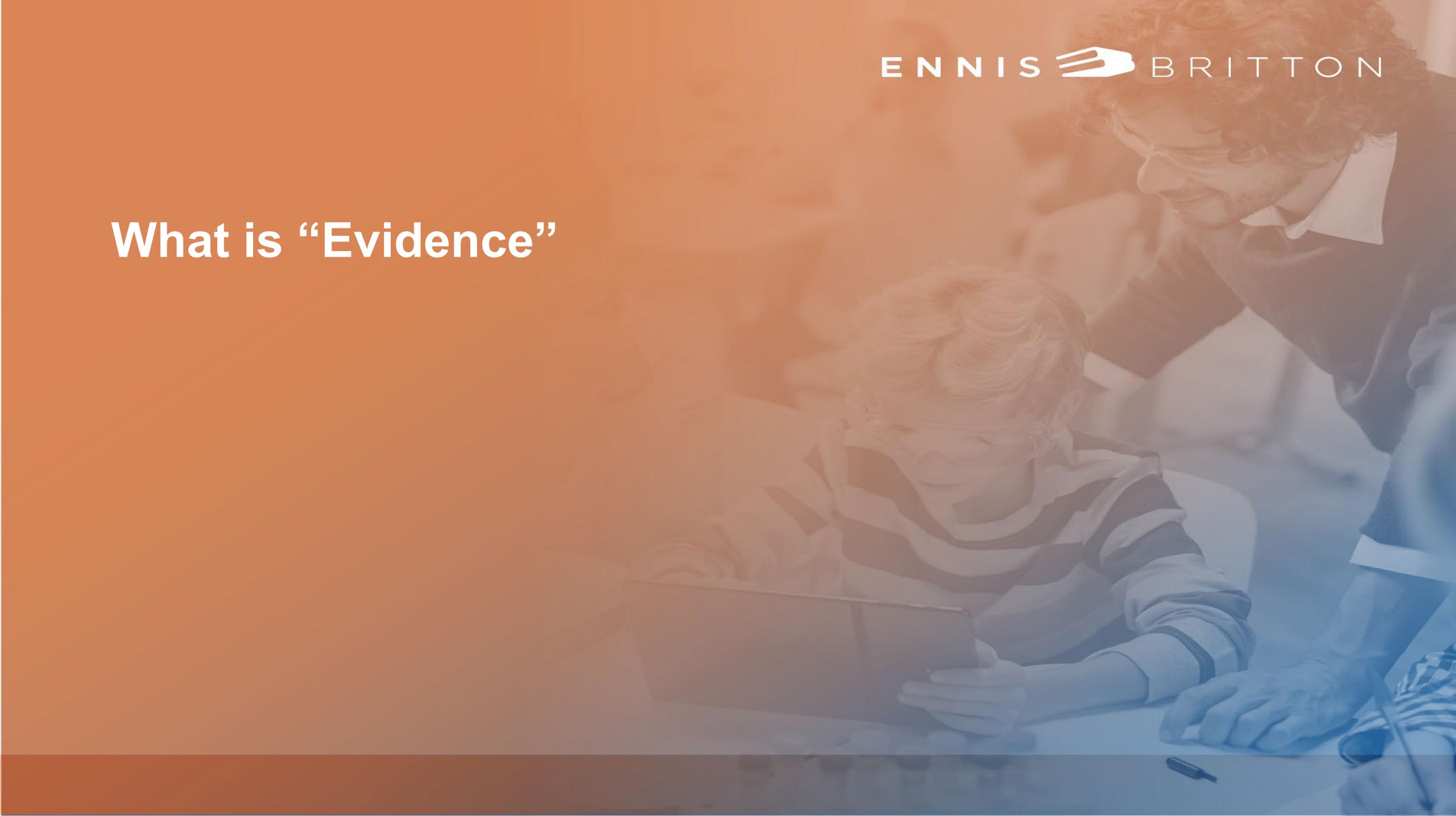
Make a thorough search for relevant facts and evidence.

Additional Allegations During Investigation: Action item

- During the investigation, additional allegations may arise.
- If this occurs, give additional notice to the parties of the additional allegations, including the time, date, place, identity of parties, etc. of the new allegation(s).



What is “Evidence”



Evidence Basics

- Investigators have the burden to evaluate evidence to determine if it is relevant to the alleged discrimination at issue in the complaint.
 - Certain types of evidence are presumed to be impermissible, regardless of how relevant it may be to the investigation.
 - But there are exceptions that allow otherwise impermissible evidence to be admitted in specific circumstances.

What is “Relevant”?

- “Relevant” means it is related to the allegations of sex discrimination under investigation as part of the District’s grievance procedures.
 - **Questions** are relevant when they seek evidence that *may* aid in showing whether the alleged sex discrimination occurred.
 - **Evidence** is relevant when it *may* aid a decision-maker in determining whether the alleged sex discrimination occurred.
 - Dictionary says: “relevant” means: having a significant and demonstrable bearing on the matter at hand; affording evidence tending to prove or disprove the matter at issue or under discussion.

Impermissible Evidence

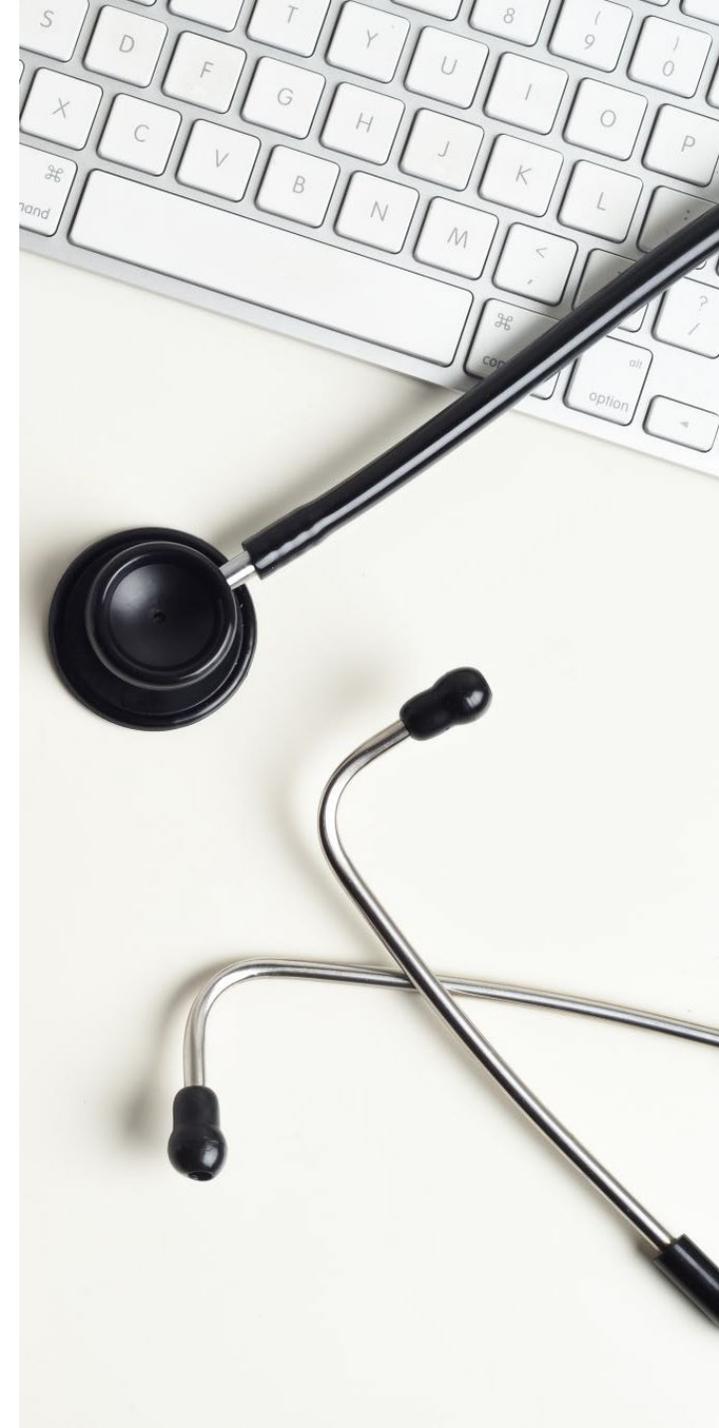
- The following types of evidence or questions are impermissible regardless of their relevance (unless an applicable exception applies):
 - Privileged evidence
 - Medical records
 - Evidence of the complainant's prior sexual interests or conduct.

Privileged Evidence

- Evidence that is protected under a privilege recognized by Federal or State law (or evidence that is provided to a confidential employee per the 2024 regulations).
 - Unless the person to whom the privilege or confidentiality is owed has **voluntarily waived** the privilege or confidentiality.
- Examples of federally recognized privileges:
 - Attorney-client privilege
 - Marital privilege
 - Psychotherapist-patient privilege

Medical Records

- 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.



Complainant's Prior Sexual Conduct

- Evidence that relates to the complainant's sexual predisposition is not relevant evidence and should not appear in the report.
- Evidence of prior sexual conduct is deemed not relevant by the regulations, *unless*:
 - The evidence 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 parties 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.

Parties' Rights to Access Evidence

- Equal opportunity to access the evidence must be provided in the following manner:
 - Provide a reasonable opportunity to respond to the evidence or to the accurate description of the evidence; and
 - 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.

Investigation

- The burden of collecting evidence sufficient to make a determination of responsibility is on the school district, not the parties.
- Provide an equal opportunity for complainant and respondent to offer evidence (inculpatory or exculpatory), including fact and expert witnesses.
- On the same basis, allow parties to have a representative at meetings, but district may regulate the participation of those representatives.
- Give the parties or witnesses notice of time, date, place, participants and purpose of interviews with sufficient time to prepare.

Investigator: Conducting the Investigation



Time Frames for Investigations

- Districts are required to establish *reasonably prompt* timeframes for the major stages of the grievance procedures, including for investigations (34 CFR 106.45).
- Must have a process that allows for the reasonable extension of time frames on a case-by-case basis for good cause.
 - Required to provide notice to the parties in the event of an extension that includes the reason for the delay.
 - Provide this notice in writing to the parties.

The Investigation Process and Timeline

- “Reasonable” time to conduct investigation.
- Provide an opportunity to review relevant evidence gathered with evidence to parties and allow 10 days for written responses, including any questions they would like the other party/parties to answer.
- Coordinate with the Title IX Coordinator to:
 - Provide the investigation report to the parties at the same time.
 - Provide electronic/hard copies of the evidence.

The Investigation Process and Timeline



Allow time for parties to answer.



Provide investigation report and any parties' responses to the evidence and questions/answers submitted to the decision-maker. Check your policy for a specific time requirement.



Relevance of questions submitted by parties will be determined by decision-maker. Decision-maker may exclude irrelevant questions.

The Investigation Process and Timeline

Confirm Title IX Coordinator has discussed supportive measures and coordinate regarding same.

Title IX Coordinator will notify parent/guardian of complainant and respondent of allegations (including basic details), assumption of respondent is not responsible, applicable policy/procedures.

1. Review the complaint.
2. Identify sources of evidence and investigate – plan to allow parties sufficient time to prepare. Send notice of investigative interview and allow time to prepare/get representative.
3. Present parties all evidence directly related to allegations **at least 10 days** before finalizing report. Allow a written response. (Work with Title IX Coordinator.)

The Investigation Process and Timeline

6. Consider written responses before finalizing report.
7. Draft final report summarizing relevant evidence. Present to parties **at least 10 days** before sending to decision-maker. Allow a written response.
8. Allow for written questions submitted by either party and directed at witnesses or parties. Provide answers. Allow for follow-up questions. Provide answers. (Offer a hearing if provided in your policy)
9. Send notice, written responses, evidence, Q&A and final report to decision-maker.
10. Decision-maker or Title IX Coordinator will notify parties of determination of responsibility and discuss the right to appeal.

Do all of this in a “reasonably prompt” time frame.

Gathering Evidence

- Have a list of questions for each
 - It helps to ask witnesses essentially the same questions but may clarify or expand if additional topics come up.
 - Use the pause
 - Who else should I talk to?
- Order of interviews
 - Complainant(s)
 - Witnesses, if any
 - Respondent(s)



Getting the Information

- Use open-ended questions (who, what, when, how)
- Try to avoid close-ended questions (Did you..., were you...)
- Avoid suggesting an answer in your question or phrasing a question to get a specific answer.
- Work from a prepared outline/list, but stay flexible.
- Listen carefully and seek to clarify terms that can have multiple meanings or a spectrum of meanings such as “acted creepy” “sketchy” or “bad vibes.”
- Be aware of distinctions like someone “heard” (hearsay), what a person assumed (circumstantial), and what was actually “witnessed” (facts).
- Be aware of your own body language. Stay neutral, even if you hear something you distrust or dislike. You are a neutral party, not a detective seeking to build a case.
- Restate or summarize what the person is saying for clarity. “What I hear you saying is....” or “Tell me more about...”
- Take your time, take good notes.

Factors to Consider with a Hostile Environment Claim

- The degree conduct affected the complainant's ability to access education programs and services.
- The type, frequency, and duration of conduct.
- The parties' ages, roles, previous interactions, and other relevant factors to evaluate the effects of the conduct.
- The location and context of conduct.
- Other sex-based harassment in programs or activities of the school district.

Investigator: Writing the Report



The Report

- The investigation report must contain a summary of the relevant evidence collected.
- Refer to the policy and procedural steps
- Refer to the dates and times of actions
- Summarize evidence reviewed, including witness interviews
- Review efforts to interview or collect evidence that were unsuccessful
- Refer to your review of the parties' responses, if any, in the final report

May the Investigation Report Contain Recommendations?

- The investigator's report is not required to make a recommendation on determination of responsibility....but it may.
 - Investigators may include recommended findings or conclusions.
 - The decision-maker has to independently review the evidence and may not simply defer to recommendations, if included.

Decision-Maker: Training Requirements



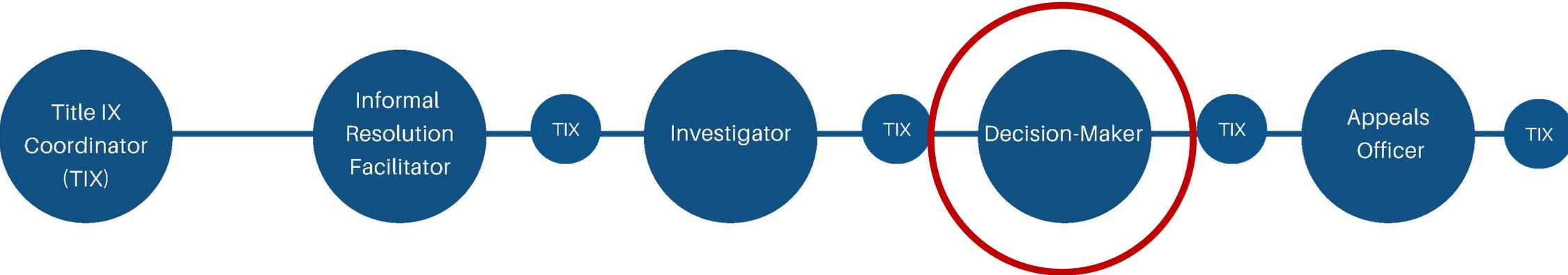
Decision-Maker Training Requirements

- ❑ Technology for live hearings (if applicable)
- ❑ Relevance of questions and evidence
- ❑ Relevance of sexual predisposition or prior sexual behavior
- ❑ Same as Title IX Coordinator:
 - ❑ Statutory definition of sexual harassment
 - ❑ Scope of educational program or activity
 - ❑ How to serve impartially – avoiding prejudgment of facts, conflicts of interest, bias
 - ❑ Conducting an investigation and grievance process

Decision-Maker: Responsibilities



The Title IX Line-Up



Your Role: Determination of Responsibility

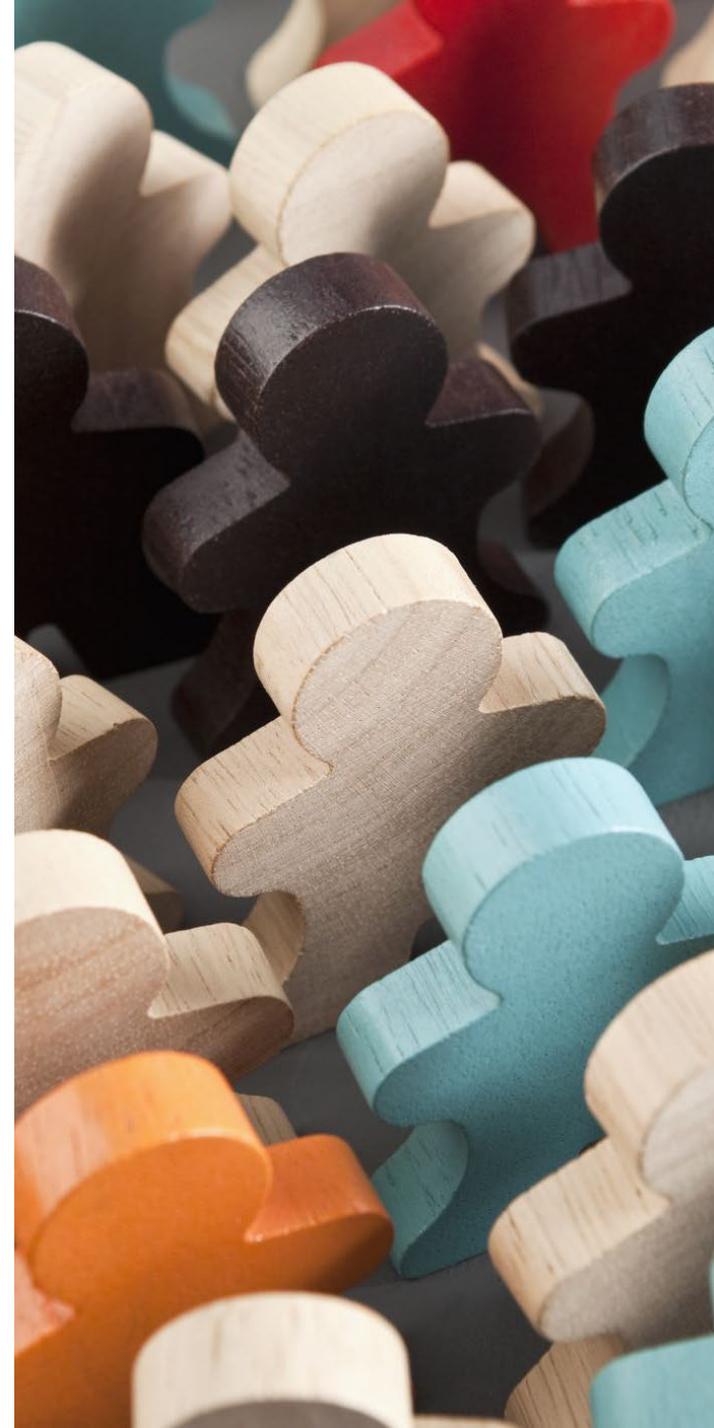
- The investigator may not be the decision-maker or part of a decision-making committee.
- The decision-maker must review the report and apply the board-adopted standard of evidence (likely preponderance of the evidence) to determine responsibility.
 - Preponderance of the evidence: Is it more likely than not that the alleged facts occurred.
 - Clear and convincing: Highly probably that the facts alleged are true. Not as high a standard as beyond a reasonable doubt.
- The same standard will apply in all Title IX cases you decide.

Your Role: Determination of Responsibility

- The decision-maker must dismiss any complaint that does not meet the regulation's definition of "sexual harassment" or that does not occur in a school's education program or activity and within the US.
 - Such a dismissal does not prohibit application of other school rules and discipline, but brings to an end any Title IX proceedings (except for an appeal of the dismissal)
- Unless a complaint is dismissed, there must be a determination of responsibility.

Your Role: Providing Due Process

- Substantive due process:
 - Decision is impartial and made in good faith, free of conflict or bias.
 - The decision is based on the policy and is not arbitrary or capricious.
 - The decision is rationally related to the evidence and based on it.
- Procedural due process:
 - You complied with the policy and grievance process.
 - You thoroughly reviewed the allegations, documents and evidence.



Determination of Responsibility

- Review the investigation report, written statements, evidence collected and any questions and answers.
- You decide what evidence is credible and its relevance in determining whether the allegations are more likely than not to be true.
- Remember to treat the parties equally. The complainant is not given an extra weight.
- Weigh both inculpatory and exculpatory evidence that is relevant, not on the skill in presenting it of the complainant or respondent or their advisors.
- Not all evidence should be weighed equally.



Relevance

- Evidence is generally considered relevant if it has value in proving or disproving a fact at issue.
 - Regarding the allegation(s) and/or–
 - Regarding the credibility of parties or witnesses.
- Investigator may have included evidence in the investigation report they considered relevant, but the decision-maker is *not bound* by these determinations.
 - Examples: If investigator's report contains credibility determinations, recommends an outcome, whether policy was violated, how evidence should be interpreted, etc.
- The decision-maker is free to accept or reject any recommendation of the investigator. May ask investigator for clarity.

Writing the Determination of Responsibility

- Include the allegations (and be specific).
- Describe the timeline of events and procedural steps of the grievance process that were followed.
- Make a finding of fact for each allegation.
- Explain the rationale for the determination of responsibility on each allegation, referencing evidence/witness interviews.
- Note that all evidence and submissions of parties were reviewed.
- Include disciplinary actions as applicable and any remedies provided to the complainant.
- Add information regarding appeal rights and timeline.

Privacy and Personally Identifiable Information

- School districts must not disclose PII obtained through this process except when:
 - Written consent given, or
 - When disclosed to a parent, guardian or other authorized legal representative with the right to receive disclosures, or
 - To carry out its duty to address conduct that reasonably may constitute sex discrimination, or
 - As required by federal law, regulations, federal grants, or
 - When required by state or local law and not in conflict with the regulations or when permitted by FERPA.

Making the Call

- Coordinate the sending of the decision with the Title IX Coordinator.
- The decision is in writing, sent simultaneously to both parties and includes:
 - Findings of fact
 - Conclusions about whether the alleged conduct occurred
 - Rationale for findings as relates to each allegation
 - Disciplinary sanctions to be imposed on respondent (if any)
 - Remedies provided to the complainant (if any), and
 - Offer of an appeal process to either party.



Characteristics of an Effective Response to Confirmed Harassment

Must be tailored to the situation

Must be reasonably calculated to address behavior

Must set good precedent for issues down the road

Consistent application

Must be ongoing

Must be reevaluated in the future – Title IX Coordinator's Role

Appeals Officer: Training Requirements

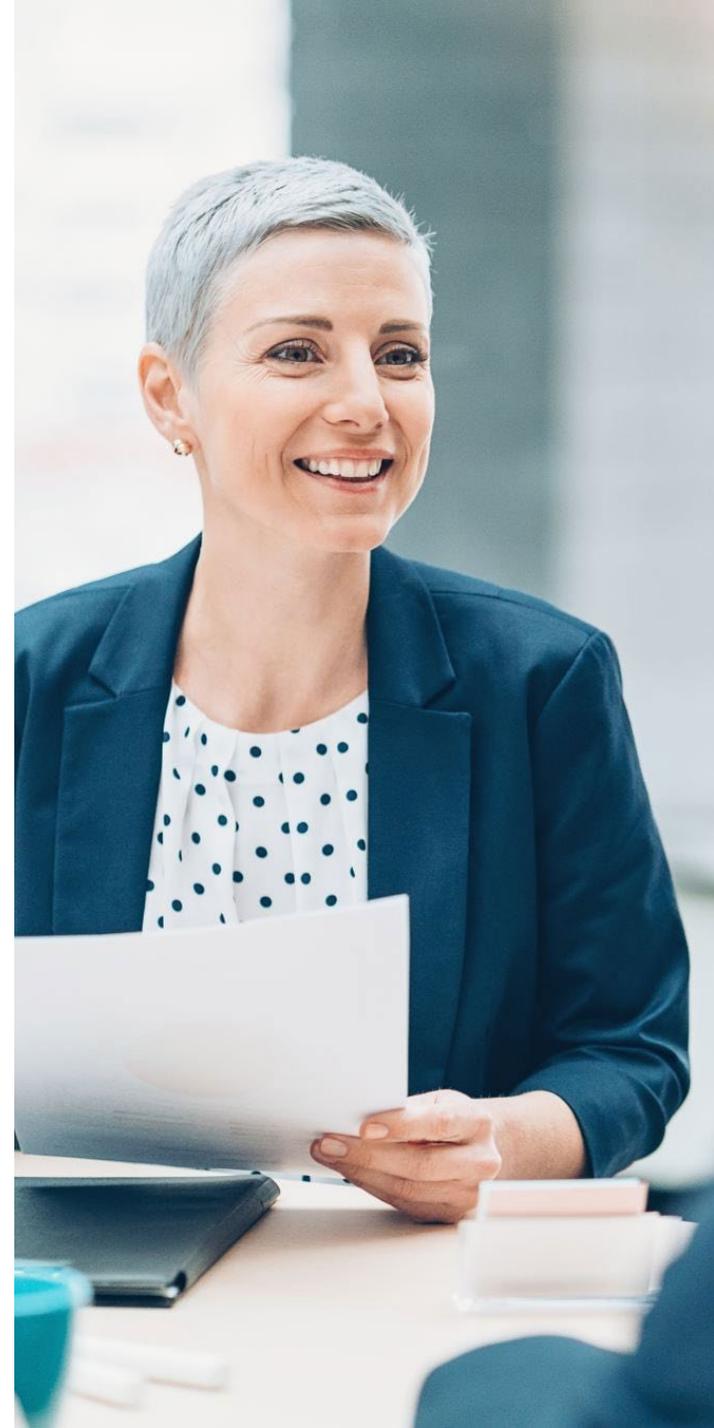


Appeals Officer Training Requirements

- ❑ Relevance of questions and evidence
- ❑ Relevance of sexual predisposition or prior sexual behavior
- ❑ Same as Title IX Coordinator:
 - ❑ Statutory definition of sexual harassment
 - ❑ Scope of educational program or activity
 - ❑ How to serve impartially – avoiding prejudgment of facts, conflicts of interest, bias
 - ❑ Conducting an investigation and grievance process

Appeals Officer Essentials

- **Appeals officer must not** be the Title IX Coordinator, Investigator, or Decision-maker



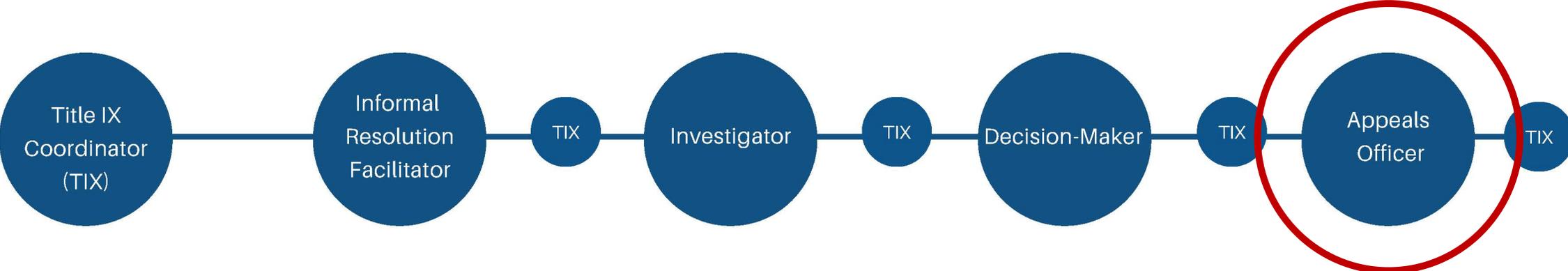
DoR and Right to Appeal

- **Determination of Responsibility** becomes final either:
 - On the date that the recipient provides the parties with written determination of any appeal (if one is filed), OR
 - The date when an appeal is no longer timely.
- Must provide **both parties** with an **equal opportunity** to appeal
- Appeal occurs **either** after determination of responsibility **or** dismissal of formal complaint
- **Role is not to second guess the decision-maker**
 - Not a de novo appeal
 - Bases for appeal are limited

Appeals Officer: Appeals Process and Responsibilities



The Title IX Line-Up



Appeals Process Requirements

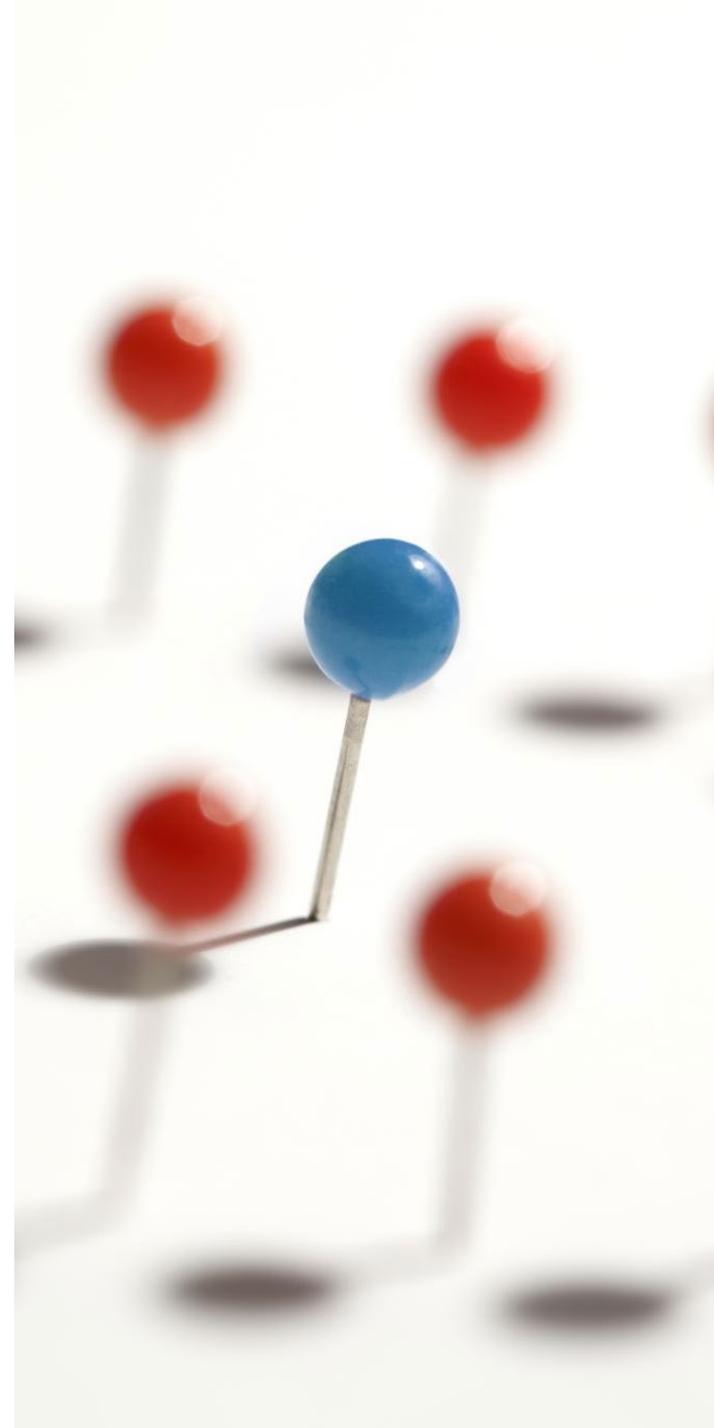
- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- 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.

Appeals Officer

- If the decision is appealed, the Appeals Officer reviews that determination.
- Mandatory bases for appeal:
 - **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; and
 - 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.
- Recipients may offer an appeal on additional bases (but must still be equal for both parties)
 - Example: someone was issued a disproportionate sanction

What are Procedural Irregularities?

- Failure to follow the grievance process
- Erroneous relevance determination



Appeals Regarding Complaint Dismissals

- An example might include complaints that were dismissed because it was determined that the alleged action did not meet the definition of sexual harassment.
- This dismissal may be appealed by the Complainant:
 - Asserting newly-discovered evidence that demonstrates the alleged action does meet the definition of sexual harassment.
 - Asserting a procedural irregularity on the basis that the conduct does in fact meet the definition and thus mandatory dismissal was not appropriate.

Analyzing Appeals Through Three Simple Questions

- **Question 1:** Do sufficient grounds exist for at least one basis of appeal (procedural violation, new evidence, bias/conflict, etc.)?
- **Question 2:** is there any merit to the appeal (evidence of procedural violation, bias, etc.)?
- **Question 3:** IF there is merit, did it affect the outcome (or if there is new evidence, would it have affected the outcome)?



Appeals Officer Written Decision Components

- Names of Complainant(s) and Respondent(s)
 - Date of Appeal
 - Issues on Appeal
 - Decision with Rationale for the Result
 - » Regulations require “reasoned written decisions describing the appeal results.”
 - Signature of Appeals Officer
- Again, written decision must be provided simultaneously to parties
- Document this if you can!

Questions?



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