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Arlington Classics Academy

Title IX Responsibilities for Schools

Allen Keller | February 2026

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Roadmap for Today

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- Title IX and the Final Rule
- Title IX Stakeholders
- Impartiality Requirements
- Responding to Reports
- Informal Resolution Process
- Investigating Formal Complaints
- Investigative Reports, Determinations Regarding Responsibility, and Appeals

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Title IX and the Final Rule

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Legal Framework

Prohibits sex discrimination in any education program or activity receiving federal financial assistance.

- "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 . . ."



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Key Terms

- **Complainant** – Individual alleged to be the victim of conduct that could constitute sexual harassment.
- **Respondent** – Individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.



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Title IX Sex Discrimination

- Sex discrimination under Title IX can take many forms:
  - Denying a person admission because of sex.
  - Declining to hire someone or firing someone because of their sex.
  - Providing “better” educational resources or opportunities to one sex over the other.
  - Unwelcome sexual comments, advances, name calling, etc.

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The "Final Rule"

- Regulations adopted by the United States Department of Education
  - Defines sexual harassment under Title IX and confirms that sexual harassment (including sexual assault) is a form of unlawful sex discrimination;
  - Holds schools accountable for failing to respond equitably and promptly to sexual misconduct incidents; and
  - Requires a reliable adjudication process that is fair to all parties involved.

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Sexual Harassment Defined

Conduct based on sex that satisfies one or more of the following:

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Quid Pro Quo Harassment

01

A school employee conditions the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct.

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Hostile Environment Harassment

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Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity.

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Sexual Offenses

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Sexual assault, dating violence, domestic violence, or stalking as those terms are defined in various federal laws (the Clery Act and Violence Against Women Act).

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Title IX Jurisdiction

K-12 schools have jurisdiction under Title IX when the reported sexual harassment occurs in the school's education program or activity.

- Includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred.

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Title IX Jurisdiction

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Title IX applies to ***all*** of the school's education programs or activities, whether they occur on-campus or off-campus.

- Extracurricular activities, field trips, study abroad programs, regular instructional activities, etc.
- *But*, a person must be participating in an education program or activity located ***within the United States*** to be covered under Title IX.

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Title IX Jurisdiction

If conduct does not meet Title IX's definition of sexual harassment or is not related to an education program or activity occurring in the United States, the Title IX formal complaint process does not apply.

- However, the school should still address the conduct under a non-Title IX policy.

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General Procedural Requirements

The Final Rule requires that all K-12 recipients of federal funds:

- Treat complainants and respondents equitably.
- Presume that a respondent is not responsible for the alleged harassment until a determination regarding responsibility is made.
- Evaluate all relevant evidence objectively.
- Ensure that Title IX stakeholders are impartial and free from a conflict of interest or bias and receive required trainings.

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General Procedural Requirements

- Conduct a grievance process in a "reasonably prompt" timeframe.
- Notify the parties of the range of potential disciplinary sanctions, supportive measures, and possible remedies if a respondent is found responsible.
- Identify a standard of evidence to be used for all formal complaints of sexual harassment.
  - *Options are preponderance of the evidence or clear and convincing evidence standard.*

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General Procedural Requirements

- Develop procedures for appeals.
- Recognize evidence protected under a recognized legal privilege (attorney-client privilege, medical privilege, etc.), unless a party waives the privilege.

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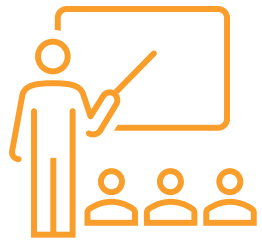
Title IX Stakeholders

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Coordinators

Title IX Coordinator(s) – The school must designate *at least one* Title IX Coordinator, who is responsible for overseeing the school's efforts to comply with Title IX.

- Also handles initial communications with parties involved in a Title IX proceeding.



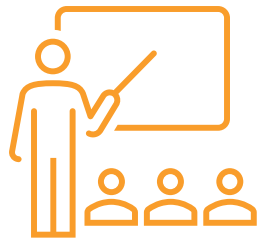
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Coordinators

Contact information for the Title IX Coordinator(s) must be provided to:

- Applicants for admission and employment;
- Employees;
- Parents and legal guardians of elementary and secondary students; and
- Unions or other collective bargaining entities who have a relationship with the school.



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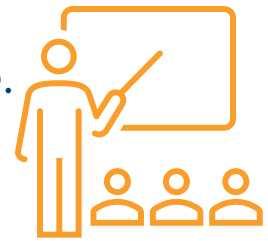
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Coordinators

Contact information to provide:

- Name or title
- Office address
- E-mail address
- Telephone number

Information must be disseminated in the employee and student handbooks and available on the school's website.



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Additional Stakeholders

- **Investigator(s)** – designated to investigate formal complaints of sexual harassment and prepare an investigative report.
- **Decision-maker(s)** – review investigative reports and issue determination on responsibility.
    - CANNOT be the Title IX Coordinator or investigator who conducted the investigation.
- **Appeal Officer** – reviews appeals of a determination on responsibility.
    - CANNOT be the Title IX Coordinator, investigator, or decision-maker with prior involvement in the complaint.



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Serving Impartially

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Importance of Impartiality

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Impartiality is a key component of the Title IX process.

- Title IX Stakeholders must avoid:
- Prejudging the facts at issue;
- Conflicts of interest; and
- Bias.

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Prejudgment of Evidence

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Prejudgment means passing judgment prematurely or without conducting a sufficient investigation or review of evidence.

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Avoiding Prejudgment

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Avoid misconceptions and stereotypes about sexual harassment.

- Keep an open mind.
- Gather the facts before reaching a conclusion.
- Get information from multiple sources / witnesses.

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Conflicts of Interest

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Be aware of actual, perceived, or potential conflicts of interest.

- Is there a family, social, professional, or other interest that could compromise your judgment, decisions, or steps taken during a Title IX investigation?

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Actual Conflict

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Direct conflict between official duties and responsibilities, or a competing personal interest.

- Investigator's daughter is the complainant in a formal complaint.
- Decision-maker's son is named as respondent in a formal complaint.

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Perceived Conflict

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Someone involved in the process could reasonably perceive that a competing interest may improperly influence conduct during investigation.

- Respondent plays on a youth soccer team, and the investigator coaches the team.
- Decision-maker has been close family friends with the complainant's parents for many years.
- Investigator's wife teaches piano lessons to the respondent.

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Potential Conflict

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Personal obligation or interest may conflict with duties and responsibilities in the future.

- Decision-maker supervises a group of teachers…potential conflict if one of those teachers is named as a respondent in a formal complaint?

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Recognizing Conflicts of Interest

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- Can I impartially participate in this complaint and the investigation process?
- What would others think if they learned of the conflict?
- Would the respondent or complainant have reasonable concerns that I could not conduct myself impartially?
- If someone else had the same potential conflict, would I feel that they should not participate in the investigation process?

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Recognizing Bias

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- Bias is an inclination, tendency, or possible prejudice toward / against someone.
- Stereotypes based on gender, race, etc.

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Avoiding Bias

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Important to guard against bias in the Title IX context.

- Most evidence will be circumstantial.
- Possible biases based on race, economic standing, academic history, social standing of complainant or respondent.

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Responding to Reports of Sexual Harassment

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Type of Reports

- The Final Rule recognizes two general types of reports – informal and formal complaints.
- Nature of the report will determine the school's process for responding.

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Type of Reports

- The Final Rule requires a K-12 school to respond whenever there is "actual knowledge" of possible sexual harassment.
- Actual knowledge threshold is met when a report of potential sexual harassment is provided to a Title IX Coordinator, a school official with authority to institute corrective measures, or any employee of an elementary or secondary school. If a school employee personally observes sexual harassment, the school must respond and address the sexual harassment as required under the Final Rule.
- Must respond in a manner that is not deliberately indifferent (response must be reasonable in light of the known circumstances).

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Informal Complaints

- Any person may report sex discrimination, including sexual harassment, regardless of whether the person making the report is the complainant (the potential victim).
- Reports may be made:
  - In person
  - By mail
  - By telephone
  - By e-mail
  - Any other means that result in the Title IX Coordinator receiving the person's written or verbal report
  - At any time, including non-business hours, by using the telephone number or e-mail address, or by mail to the office address, listed for a Title IX Coordinator

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Initial Assessment

- After receiving notice of a report of potential sex-based harassment, the Title IX Coordinator must perform an initial assessment.
- Determine whether the alleged conduct constitutes sexual harassment under the Final Rule.
  - Does the conduct meet Title IX's definition of sexual harassment?
  - Did the conduct occur in the school's education program or activities?
  - Did the conduct occur against a person in the United States?

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Initial Assessment

- If the conduct described in the report (1) does not meet Title IX's definition of sexual harassment, (2) did not occur in the school's education program or activities, or (3) the conduct occurred outside the United States, the school is not required to go through the "formal complaint" process outlined in the Final Rule.

- However, the school should still address such conduct in a report in a manner consistent with other applicable non-discrimination / harassment policies.

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Response by Title IX Coordinator

- If the school receives notice of an allegation that, if proved, would meet Title IX's definition of sexual harassment, the Title IX Coordinator must **promptly and confidentially** contact the complainant to:
  - Discuss the availability of supportive measures;
  - Consider the complainant's wishes with respect to supportive measures;
  - Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
  - Explain to the complainant the process for filing a formal complaint.
- Complainant's wishes should be respected, unless the Title IX Coordinator determines signing a formal complaint to initiate the formal grievance process is not clearly unreasonable in light of the known circumstances.

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Response by Title IX Coordinator

- The school must treat complainants and respondents equally by:
  - Complying with the school's formal Title IX grievance process before taking disciplinary action; and
  - As appropriate, offering supportive measures to both parties.

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What are Supportive Measures?

- Individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party, and further designed to ensure equal education access, protect safety, or deter sexual harassment.
  - Counseling
  - Extensions of deadlines or other course-related adjustments
  - Modifications of work or class schedules
  - Campus escort services
  - Mutual restrictions on contact between the parties
  - Leaves of absence
  - Increased security
  - Other similar measures

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Supportive Measures

- The school must treat complainants and respondents equitably when considering supportive measures.
  - No fees may be charged to complainant or respondent.
  - Supportive measures may be offered before or after a formal complaint is filed.
  - Supportive measures are generally confidential (need-to-know basis only).
  - Title IX Coordinator responsible for coordinating the effective implementation of supportive measures.
    - *e.g.*, informing teacher why a student is missing class, obtaining make-up work from teachers, re-arranging student or employee schedule.

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Formal Complaint / Grievances

- **Formal Complaint** – document filed by a complainant (or signed by the Title IX Coordinator) alleging sexual harassment against a respondent and requesting that the school investigate.
  - At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the school's education programs or activities.
  - Formal complaint may be filed with the Title IX Coordinator in person, by mail, or by-email, or any additional method designated by the school.

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Formal Complaints

- What if the complainant or respondent is a minor?
  - Final Rule expressly recognizes the legal rights of parents and guardians to act on behalf of a party, including by filing a formal complaint.
  - Parent or guardian does not become a “complainant” (or a “respondent”), but they can act on behalf of their child during the formal complaint process.

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Formal Complaints

- Title IX Coordinator may file a formal complaint.
  - Multiple reports against the same respondent.
  - Health or safety issue.
    - Example: Lydia talks to the Title IX Coordinator and reports that her lab partner, Claire, may be a victim of dating violence. Lydia has seen bruises on Claire's arms and has heard Claire's boyfriend yelling at Claire at school and pushing her in the hallway. Lydia asks if she can file a formal complaint; the Title IX Coordinator responds "no" because Lydia would not be a complainant (Lydia is not the potential victim). However, Lydia may file an informal complaint, and the Title IX Coordinator may decide to initiate a formal complaint for health and safety reasons (dating violence observed on campus).
- Title IX Coordinator is not considered a complainant by signing a formal complaint.

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Formal Complaint: Mandatory Dismissal

- The school **must** dismiss allegations of conduct that:
  - Does not meet Title IX's definition of sexual harassment;
  - Did not occur in the school's education program or activity; or
  - Did not occur against a person in the United States.
    - Notice of dismissal (for Title IX purposes) must be sent to complainant and respondent.
- The school should still address the conduct under other policies.

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Formal Complaint: Discretionary Dismissal

- The school **may** dismiss, at its discretion, a formal complaint or allegations if:
  - A complainant informs the Title IX Coordinator in writing that the complainant wants to withdraw the formal complaint or allegations therein;
  - The respondent is no longer enrolled with or employed by the school; or
  - Specific circumstances prevent the school from gathering sufficient evidence to reach a determination.
- Notice of dismissal must be sent to complainant and respondent.
- The dismissal is for Title IX purposes only; the school should address the conduct in other appropriate ways.

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Appealing Dismissals

- The complainant and respondent must each be notified in writing of their right to appeal dismissal of a formal complaint.

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Formal Complaint: Notice of Allegations

If a formal complaint is not dismissed, the Title IX Coordinator must provide written notice to the parties of:

- The school's Title IX formal complaint process, including potential informal resolution process.
- The allegations, including sufficient details known at the time to allow for sufficient time for a response.
- Identities of the parties involved in the incident, if known;
- Conduct allegedly constituting sexual harassment; and
- Date and location of the alleged incident, if known.

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Formal Complaint: Notice of Allegations

- Statement that the respondent is presumed not responsible, and that a determination regarding responsibility will be made at the conclusion of the formal complaint process.
- Inform parties that they may have an advisor of their choice (may or may not be an attorney), and that they may inspect and review evidence.
- Inform parties of any policies that prohibit knowingly making false statements or knowingly submitting false information during the formal complaint process.

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Emergency Removal

- The school may temporarily remove a respondent from an education program or activity if:
  - Individualized safety and risk analysis conducted;
  - Determination of an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment; and
  - Respondent provided with notice and an opportunity to challenge the decision.

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Emergency Removal

- Notice to respondent:
  - Written notice not required, but highly recommended.
  - Describe reasons for finding immediate threat.
  - Challenge must be filed without delay / as soon as possible after notice of removal is provided.
- Administrative leave for employees remains available.

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Informal Resolution Process

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Informal Resolution

- The school has discretion to offer and facilitate an informal resolution process.
    - Mediation, restorative justice, etc.
- Give parties option to try informal resolution rather than go through full formal complaint process.
- The Title IX Final Rule does not require schools to offer informal resolution.

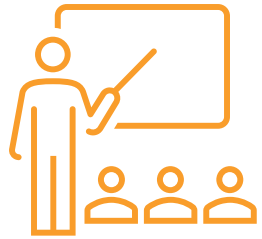


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Informal Resolution

- The Title IX informal resolution process may only be offered when a formal complaint of sexual harassment has been filed.
- The school **CANNOT** offer the Title IX informal resolution process to resolve allegations that an employee has sexually harassed a student.
- Both parties must provide informed, written, and voluntary consent to try informal resolution of a formal complaint.

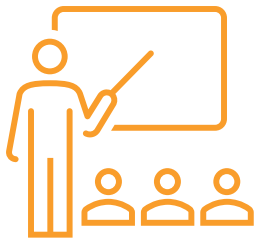


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Informal Resolution

- In order to obtain informed consent for informal resolution, the school must provide both parties with written notice of:
  - The allegations made in the formal complaint.
  - The requirements of the informal resolution process, including situations under which it precludes the parties from resuming a formal complaint arising from the same allegations.
    - Caveat that, at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process.
  - Consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

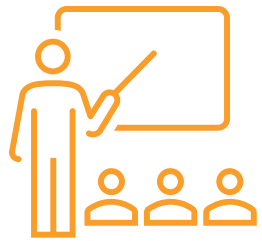


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Informal Resolution

- Either party can withdraw consent for participating in an informal/voluntary resolution at any time before process is completed.
- The school **cannot** require the parties to participate in informal resolution.
    - Cannot require informal resolution as a condition of enrollment or continuing enrollment, employment or continuing employment, enjoyment of any other right, or wavier of the right to an investigation and adjudication of formal complaints.

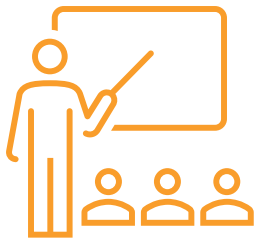


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Facilitator

- The person facilitating the informal resolution:
  - **Cannot** hold another role in the Title IX process (cannot be a Title IX Coordinator, or an investigator, decision-maker, appeal officer, etc. serving in the complaint at issue).
  - Must be trained on:
    - The definition of sexual harassment under Title IX;
    - The scope of the school's education program or activity;
    - How to conduct an investigation and the school's grievance process, including hearing (if applicable), appeals, and the informal resolution process; and
    - How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias.



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Investigating Formal Complaints

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Formal Complaint Process

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The school's formal complaint grievance process consists of the following:

- Complainants and respondents are treated equitably.
  - Remedies provided any time a respondent is found responsible.
  - Disciplinary consequences not implemented prior to completing the grievance process.
    - **Emergency removals are allowed in certain circumstances**
- Remedies designed to maintain a complainant's equal access to the school's educational programs and activities.

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Formal Complaint Process

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- Objective evaluation of all relevant evidence (exculpatory and inculpatory).
- Avoid creditability determinations based on a person's status as a complainant, respondent, or witness.
- Title IX stakeholders are free from conflicts of interest or bias for or against complainants or respondents.
- Presumption that a respondent is not responsible until a determination is made at the conclusion of the grievance process.

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Formal Complaint Process

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- Reasonable timeline for concluding the formal complaint process, including appeals and informal resolutions.
  - Goal is to resolve a grievance / formal complaint as quickly as possible to ensure fairness and accuracy.
  - Short-term delays and extensions for good cause.
    - Absence of a party, a party's advisor, or a witness.
    - Concurrent law enforcement activity.
    - Need for language assistance or accommodation of disabilities.

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Formal Complaint Process

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- Description of range of possible remedies if a respondent is determined to be responsible.
- Arlington Classics Academy has chosen the "preponderance of the evidence" standard for making determination regarding responsibility.
  - "More likely than not" standard.
  - This standard must be used for all formal complaint investigations, regardless of whether the respondent is a student or school employee.
- Description of appeal procedures.
- Description of possible supportive measures.

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Live Hearings?

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- The Final Rule requires **postsecondary institutions** to provide a "live hearing with cross-examination" as part of the investigation process.
- The Final Rule provides that live hearings are **optional** for K-12 schools.
  - The school has chosen not to use live hearings with an opportunity for cross-examination.

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Investigation Process

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- The school must investigate the allegations of any formal complaint (unless complaint has been dismissed / withdrawn).

- As noted earlier, the Title IX Coordinator must send formal notice to the complainant and respondent concerning the details of a formal complaint.

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Investigation Process

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- Burden of gathering evidence and burden of “proof” remains on the school, not the parties.
- Both parties must have equal opportunity to present facts and witnesses (including experts), as well as other exculpatory or inculpatory evidence.
- The school cannot restrict the ability of the parties to discuss the allegations or gather evidence (no ”gag orders”).
- Parties must have the same opportunity to select an advisor (can be, but is not required to be, an attorney).
- Provide appropriate written notice to the parties of investigative meetings, with sufficient time for the parties to prepare.

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Investigation Process

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- Investigators must:
  - Be impartial throughout the investigation process (free from prejudgment of the facts, conflicts of interest, and bias).
  - Be familiar with school policies related to non-discrimination in general, as well as Title IX requirements.
  - Not issue "gag orders" that improperly restrict a party's ability to discuss the issues being investigated.
  - Allow both parties equal chance to review relevant evidence related to a formal complaint's allegations.

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Why Do Investigations Matter?

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- Compliance with Title IX's requirements.
- Legal exposure.
  - Potential liability if the school knows or should have known about possible sexual harassment and does nothing about it.
  - If employees have notice of possible sexual harassment, must follow the Title IX process (informal or formal complaint process).
- Possible loss of federal funds if the school fails to comply with Title IX's requirements.

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Starting an Investigation

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- Investigator will be assigned by Title IX Coordinator.
- If an investigator is approached with an allegation of possible sexual harassment, the investigator **must** notify the Title IX Coordinator.

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Starting an Investigation

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- Investigator should review the school's Title IX policy and formal complaint process, noting the applicable timeline for completing an investigation.

- Review allegations in the formal complaint to determine scope of investigation.

  - Identify the parties.
  - Identify policies related to the complaint.

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Starting an Investigation

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- Begin identifying evidence to gather.
  - Written statements?
  - Video or audio recording?
  - Documentary evidence (letters, emails, pictures, or texts provided by the parties)?
- Begin preparing investigation plan (evidence list, witness list, interview order, etc.).

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Starting an Investigation

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- DO NOT promise that disciplinary consequences will be issued against a respondent.
- DO NOT promise to keep the complainant's identity confidential.
- Recall the investigator's role is to investigate, not to decide whether sexual harassment occurred.

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Evidence Collection

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- Collect and preserve:
  - Electronic communications
  - Security information (hallway cameras?)
  - Pictures, videos, audio
  - Personnel files
  - Student discipline records
  - Prior complaints
- Special considerations if a complainant also refers the matter to law enforcement; be careful not to interfere with law enforcement investigations.

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What is Evidence?

Facts available to the investigator

01 Information from complainants, respondents, and witnesses.

02 Information from documents, video / audio recordings, school files, etc.



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Commentary on Evidence

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- Title IX grievance process is not a court proceeding.
- Comprehensive rules of evidence do not apply.
- Goal of Final Rule is to "achieve a fair, reliable outcome in the context of sexual harassment" in an education program or activity.
    - Investigators and other Title IX stakeholders not expected to apply comprehensive, complicated rules of evidence.

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Types of Evidence

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- **Physical Evidence**: Tangible article, object, or similar item that is relevant to the investigation.
  - Weapon used in an assault.
  - Marks on clothing.
- **Verbal Evidence**: Oral report from a witness or party to the incident.

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Types of Evidence

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- **Demonstrative Evidence**: Something that preserves physical evidence.
  - Pictures of a physical injury.
  - Security footage.
- **Documentary Evidence**: written evidence (paper or electronic).
  - Emails.
  - Text messages or social media postings.
  - Attendance records (was the respondent at school or a school activity on the date in question?).
  - Medical records.

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Types of Evidence

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- **Direct**: No need to draw a conclusion to show something happened.
  - *I was in the restroom and saw Joseph touching Linda's chest while trying to kiss her. I heard Linda telling him to 'stop,' but he kept touching her and trying to kiss her.*
    - Witness provides direct evidence of what was seen.

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Types of Evidence

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- **Circumstantial**: Need to draw conclusion or inference to determine whether something happened.
    - *I was in the hallway and saw Joseph follow Linda into an empty room. Two minutes later, I saw Linda run out of the room with her shirt bunched up and she was crying. Joseph came out a few seconds later and kept his head down as he walked down the hallway.*
        - Witness did not see or hear what happened in the room; decision maker would need to infer what happened in the room.
- Only **reasonable** inferences are appropriate.

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Types of Evidence

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- **Inculpatory evidence**: Evidence that shows, or tends to show, a person's involvement in an act.
    - Example: security footage showing a respondent physically assaulting the complainant.
- **Exculpatory evidence**: Evidence that tends to excuse or justify an accused person's actions, or to show a person did not engage in the alleged behavior.
    - Example: Respondent provides travel records proving she was out of town on the date of an alleged assault.

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Relevance

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- Only **relevant** evidence should be considered when preparing an investigative report or determination regarding responsibility.
- Facts that could potentially explain or describe the incident under investigation.

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Determining Relevance

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1. Review the evidence.
2. Review allegations in the formal complaint.
3. Does this evidence have the potential to prove or disprove an allegation in the formal complaint?
4. Is the Title IX rape shield protection implicated by this evidence, or is there an exception to the rape shield protection?

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“Rape Shield” Protections

The Final Rule provides that questions / evidence about a complainant’s prior sexual history / behavior *is not relevant*, unless it is offered"

01 To prove that someone other than the respondent committed the alleged conduct; or

02 To provide details concerning the complainant’s prior sexual behavior ***with the respondent*** to prove consent.



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Privileged Records

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- Final Rule recognizes protections for certain privileged records.
  - Medical / treatment records.
  - Attorney-client communications.
  - Implicating yourself in a crime (5th Amendment)
  - Confessions to clergy members or other religious figures.
  - Spousal testimony in criminal matters.
- Investigator must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding the privilege has waived it.

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Investigation Process

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- Provide notice to the parties of meetings or interviews involving the other party.
    - If a party's attendance / participation is necessary, give written notice of the date, time, and location along with summary of who you anticipate being in attendance and basic summary of the meeting's purpose.
    - Attempt multiple interviews if a witness does not show for an interview.
- Interview all relevant (and available) witnesses.
    - Potential for follow-up interviews as investigation progresses.

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Conducting Interviews

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- Identify all relevant (and available) witnesses.
    - Generally, begin with complainant to obtain details about the complaint.
    - Decide when to interview the respondent and witnesses.
- If possible, conduct interviews in person.
- Interview witnesses separately.

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Conducting Interviews

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- What should you have with you during the interview? Recommended to have:
  - Copy of formal complaint
  - Investigation log
  - Sheet for taking notes
  - Outline of pre-prepared questions
  - Evidence you may need to reference / show to the witness
  - Copy of relevant policies or handbooks

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Conducting Interviews

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- Explain purpose of the interview, and your role in the investigation process.
  - Duty is to **gather** information.
- Do not guarantee confidentiality of information gathered during interview and explain that Title IX allows for limited disclosures of information to others involved in the formal complaint process.
- Discuss the school's anti-retaliation policies, and requirement under Title IX that the school will not retaliate against those participating in the formal complaint process.
- Emphasize the need for accurate and truthful information.

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Conducting Interviews

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- Remember the investigator's role:
  - **Do not** share personal thoughts about the complaint or what the outcome may be.
  - **Do not** agree (or disagree) with the witness. Duty is to gather information.
  - **Do** allow each witness to suggest other people who may have knowledge about the complaint.

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Conducting Interviews

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- Gather details.
  - What happened before the incident?
  - What happened during the incident?
  - What happened after the incident?
- Focus or “freeze frame” on moments to describe details.
  - What could you see? Hear?
  - How were you positioned? Where was the other person in relation to you?
  - Elicit details about tone, demeanor, body language, etc.

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Conducting Interviews

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- Allow witnesses to speak for themselves; don't ask "leading" questions or put words into their mouth.
- Review your notes and ask follow-up questions.
    - Focus on details in the formal complaint, and review if you have elicited all the information the witness may have about the complaint.
    - Check for understanding and ask any clarifying questions you may have.
- Review your notes to determine if the witness may have inculpatory or exculpatory evidence related to the complaint.

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Conducting Interviews

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Considerations when interviewing a respondent:

- Emphasize that the school has not made a determination regarding responsibility.
- Emphasize presumption of innocence and the evidentiary standard that will be used (preponderance of the evidence).

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Documenting Interviews

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- Document the interview (questions asked, responses, etc.).
  - Note time, date, location of meeting, individuals present, etc.
  - Document facts and observations provided by the interviewee.
    - Implausible or impossible statements?
    - Inconsistencies in responses?
  - **Do not** make conclusions or document your opinions.
- Consider that your notes may be considered by a decision-maker or an appeal officer, as well as by a court in a legal proceeding.

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After the Interview

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- Update investigation log.
- Update witness list.
- Update list of evidence.
- Formulate questions to ask of other witnesses.
- Follow up on issues / questions raised during the interview.
- Is law enforcement involved? Should they be?
- Ensure physical evidence is stored and documented.

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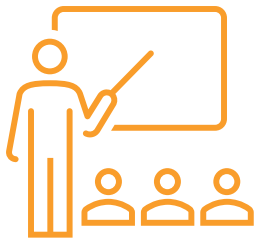
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Reports, Determinations, and Appeals

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Evidence Inspection

- When the investigation is completed, but **before the investigative report is completed**, the investigator must send the parties (and their advisors, if any) evidence directly related to the allegations, in electronic format or hard copy, with **at least 10 calendar days** for the parties to inspect, review, and respond to the evidence.
    - Include evidence you may not rely on, but that is relevant to the claims in the formal complaint.
    - Include inculpatory and exculpatory evidence, whether obtained from a party or another source.
- Investigator must consider a party's response, if any, and begin the process of preparing an investigative report.

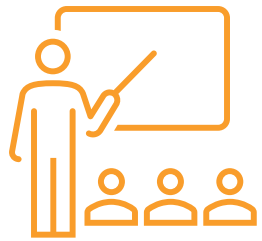


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Investigative Report

- After the parties have had an opportunity to review and respond to the relevant evidence, the investigator must prepare an investigative report that includes:
  - Procedural history of the formal complaint and the investigative process.
  - Summary of the allegations that could constitute sexual harassment.
  - Summary of relevant policies and the evidentiary standard (preponderance of the evidence standard).

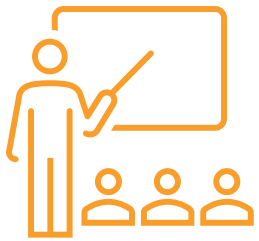


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Investigative Report, cont.

- Information about witness interviews (date of interviews, attendees, summary of interview).
- Summary of all relevant evidence, inculpatory and exculpatory.
- Investigation timeline.
- Identify any irregularities in the timeline for completing the investigation.
- Appendices with relevant physical or documentary evidence.

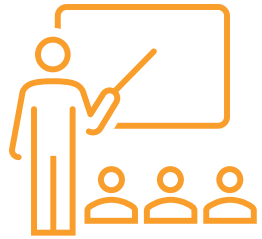


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Investigative Report

- Investigative report **does not** include a conclusion or a recommendation concerning responsibility.
    - Report is to **summarize the facts** for the decision-maker.
- Road map for the decision-maker to reach a determination regarding responsibility.



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Sending the Investigative Report

- Investigative report must be sent to the parties (and advisors, if any), in electronic format or hard copy, with **at least 10 calendar days** for the parties to review and respond before a determination regarding responsibility is made.
    - Incorporate relevant portions of a party's response to the final investigative report and document the rationale for any changes to the report after the parties have an opportunity to review and respond.
- Investigator sends copy of the final investigative report to the Title IX Coordinator.
    - Title IX Coordinator then assigns decision-maker.

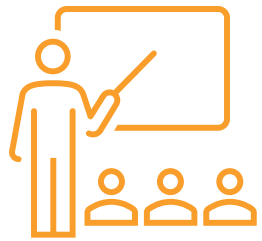


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Decision-Makers

- Role is to **objectively evaluate** the evidence and reach a determination regarding responsibility.
    - Did the respondent engage in conduct prohibited by Title IX as alleged in the formal complaint?
- Properly apply:
    - Presumption of innocence.
    - Burden of proof (remains on the school throughout the process).
    - Relevancy and credibility determinations.
    - Privilege / medical record protections.



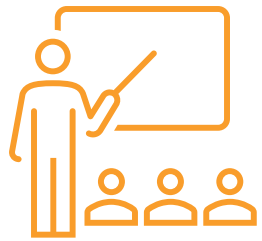
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Written Determination

Decision-maker must review relevant evidence and issue a written determination regarding responsibility, which must include:

- Identification of the allegations that could constitute prohibited conduct under Title IX.
- Description of procedural steps taken from receipt of formal complaint through the determination:
- Notices provided to parties
- Interviews with parties and witnesses
- Methods used to gather other evidence



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Written Determination

- Findings of fact supporting the determination.
- Application of the school's code of conduct to the facts.
- Statement / rationale for the results as to each allegation, including a determination regarding responsibility.
- Disciplinary sanctions and remedies to implement.
- Procedures and permissible bases for either party to appeal.



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Written Determination

- Procedural anomalies to explain?
- Are all elements of the allegations accounted for?
- Are all relevant disputed facts resolved in the final analysis?
- Is there a clear connection between the charges, the investigation, the evidence, and the conclusions?
- Would an unfamiliar reader be able to connect the dots?

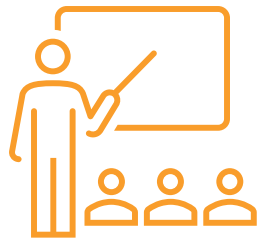


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Written Determination

- Determination must be sent simultaneously to both parties (and their advisors, if any), along with information on the process to appeal.
- Determination becomes final:
  - If no appeal filed, the date on which an appeal would no longer be timely.
  - If appeal filed, the date on which a written appeal decision is provided to the parties.

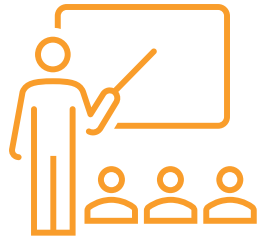


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Implementation

Title IX Coordinator is responsible for effectively implementing remedies provided through the determination regarding responsibility.



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Reminders for Decision-Makers

- Render a sound and reasoned decision on every charge.
- Identify actual or perceived conflict of evidence.
- Determine which evidence to believe, the importance of the evidence, and conclusions to draw from the evidence.
- Determination based solely on relevant evidence.
- Do not be swayed by prejudice, sympathy, or a personal view that you may have of the claim or any party.

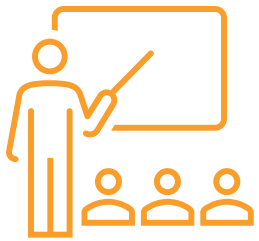


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Reminders for Decision-Makers

- Give information provided by the parties and witnesses appropriate weight.
- Evaluate witness credibility.
    - Consider reasonableness or unreasonableness of the testimony.
    - Does a witness have an improper / ulterior motive?
    - Is there a bias?
    - Consistency, memory, accuracy?
- Rely on the preponderance of the evidence standard.



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Appeals

- The school must offer both parties an appeal from:
  - Determination regarding responsibility; or
  - Dismissal of a formal complaint or allegations in a formal complaint.
- Grounds for appeal:
  - Procedural irregularity that affected the outcome of the matter.
  - New evidence not reasonably available at the time the determination of responsibility was made and that could affect the outcome of the matter.
  - Any of the Title IX team members had a bias for or against one of the parties that affected the outcome.
  - Any other bases for appeal allowed by the school, so long as they apply equally to both parties.

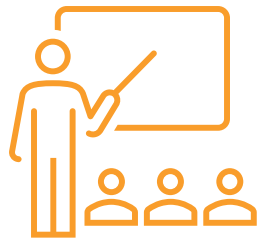


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Appeals

- When appeal is filed, must notify the non-appealing party.
- Appeal officer cannot have been previously involved in the determination being appealed.
- Appeal officer must be free from bias and conflict of interest.
- Provide both parties a reasonable, equal opportunity to submit a written statement in support of or challenging the appeal.



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Appeals

For all appeals, the school must:

- Issue a written decision describing the result of the appeal and the rationale for the result.
- Provide the written decision simultaneously to both parties.



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Retaliation Prohibited

- Final Rule prohibits retaliation.
  - Retaliation includes actions related to a report or investigation of sexual harassment for the purpose of interfering with any right or privilege secured by Title IX.
- Complaints of retaliation may be submitted through the school's standard procedures for reporting retaliation.
- Referring a person for code of conduct violations related to making materially false statements during a Title IX grievance process does not constitute retaliation.
  - However, the fact that a respondent is found not responsible does not automatically mean that a complainant acted in bad faith or made a materially false statement.

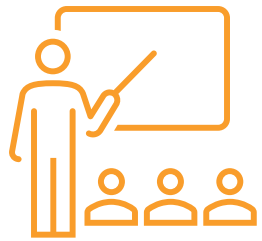


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Recordkeeping

- The school must maintain for a period of seven years records of:
  - Each sexual harassment investigation, including any determination regarding responsibility, disciplinary sanctions imposed on the respondent, remedies provided to the complainant.
  - Any appeal and the result therefrom.
  - Any informal resolution and the result therefrom.
  - All materials used to train Title IX Coordinators, investigators, decision-makers, and persons who facilitate an information resolution process.

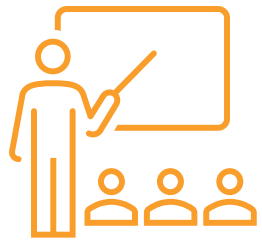


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Recordkeeping

- Any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment.
  - Basis for the conclusion that a response was not deliberately indifferent.
  - Document measures taken to restore or preserve equal access to the school's education program or activity.
  - If supportive measures are not provided to a complainant, document the reasons why.



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Thank You!!



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