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Title IX Decision-Maker Training



SESSION TWO

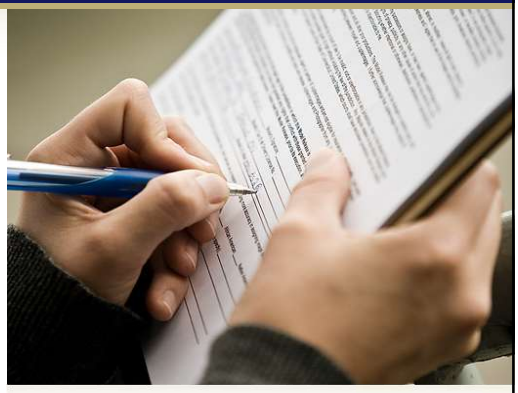
PRESENTED BY:
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Agenda

- Discuss Preponderance of the Evidence Standard
- Determination of Responsibility
- Written Determination
- Table of Contents for Written Determination
- Review Homework: Factual Findings & Rationale



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Preponderance of the Evidence Standard

Evidentiary Standard

- The evidence is reviewed, compared and analyzed under a "preponderance of the evidence" standard to determine whether the allegations were with or without merit.
  - "Preponderance of the evidence" means that evidence on one side outweighs, or is more than, the evidence on the other side.
  - More likely than not; over 50%; more than 50%
  - There is a greater than 50% chance that the allegations are accurate
  - This is a qualitative, not quantitative, standard
    - Qualitative evidence includes interviews with Complainant, Respondent, or witnesses; data or information that is expressed in terms of the meaning of acts or events

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Determination of Responsibility

Decision-Maker Determines Responsibility per §106.45(b)(7)

- Decision-maker must issue a written determination regarding responsibility
- Decision-maker must understand the ***"preponderance of the evidence"*** or "clear and convincing evidence" standard
  - Most K-12 & COE's use the "preponderance" standard
- *Reminder*: The Title IX Coordinator or investigator cannot determine responsibility

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Determination of Responsibility

Written Determination must include:

- Identification of the allegations potentially constituting sexual harassment as defined under Title IX
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held, (if any)
- Findings of fact supporting the determination
- Conclusions regarding whether the evidence indicates a violation of the District's Title IX policy and/or code of conduct

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Determination of Responsibility

Written Determination must include, continued:

- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the Complainant
- The recipient's procedures and permissible bases for the Complainant and Respondent to appeal

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Determination of Responsibility

Written Determination must include, continued:

- The written determination must be provided to the parties simultaneously
- The determination regarding responsibility becomes final either on the date the recipient provides the parties with the written determination of the result of an appeal, (if an appeal is filed), or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

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Table of Contents for Written Determination

- Brief Introduction
- Investigative and Decision-Making Background
- Factual Findings
  - **Nature of Parties' Relationship Prior to October 1, 2026**
    - Factual Finding: I find by a preponderance of the evidence that, between August 15 and October 1, 2026, Complainant and Respondent interacted with each other in a [friendly/flirty] way when [describe actions]. These actions were [welcome/unwelcome] to Complainant.
    - Rationale for factual findings: I made these findings because I found [Complainant/Respondent] version of events to be more credible based on [explain your objective reasons why you believed one person over the other]

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Table of Contents for Written Determination

- Factual Findings, Continued
  - **Lunch Period on September 26, 2026**
    - Factual Finding: I find by a preponderance of the evidence that on September 26, 2026, the parties sat at the same lunch table. Respondent was sitting at the lunch table before Complainant. Complainant sat in the seat next to Respondent.
    - Rationale for factual findings: I made these findings because the parties did not dispute that they sat next to each other during lunch on September 26, 2026.

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Table of Contents for Written Determination

- Factual Findings, Continued
  - **September 26, 2026 Incident**

    Factual Findings. I find by a preponderance of the evidence that, on September 26, 2026, during English class, Respondent touched Complainant's leg in a [sexual/non-sexual manner]. Respondent touched Complaint's leg [accidentally/purposefully] and [with/without] Complainant's permission. While touching Complainant, Respondent [did/did not] lick their lips or stick out their tongue. I find that Respondent [did/did not] touch Complainant's private genital area during lunch. Respondent touched Complainant's genital private area based on [non-sexual reasons/sexual gratification].

    Rationale for factual findings: I made these findings because….

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Table of Contents for Written Determination

- Conclusions about Sexual Fondling
  - Conclusion: I find by a preponderance of the evidence that Respondent's actions [do/do not] rise to the level of sexual fondling as defined by [code of conduct/policy].
  - Rationale: I reach this conclusion because Respondent [touched/did not touch] a private area of Complainant's body when placing a hand on Complainant's genital area [with/without] permission. The facts further demonstrated that Respondent touched Complainant [accidentally/for the purposes of sexual gratification].

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Table of Contents for Written Determination

- Conclusions about Sexual Harassment
  - Conclusion: I find by a preponderance of the evidence that Respondent's actions [do/do not] rise to the level of sexual harassment as defined by [code of conduct/policy].
  - Rationale: I reach this conclusion because Respondent [did/did not] engage in unwelcome physical and verbal conduct based on sex towards Complainant, which determined by a reasonable person would be regarded as severe, pervasive, and objectively offensive.
- Responsibility
  - Based on a thorough review of the evidence, I find by a preponderance of the evidence that Respondent [is/is not] responsible for [sexual fondling and/or sexual harassment].

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Table of Contents for Written Determination

- Sanctions (if responsibility)
  - I recommend the following sanctions for Respondent [List all that apply to the specific findings and conclusions]
- Remedies (if responsibility)
  - I recommend the following remedies for Complainant [List all that apply to the specific findings and conclusions]
- Appeal Rights Available for Both Parties
- Closing Statement

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Discussion of Homework

Hypothetical Investigative Report

- Weigh the evidence and determine by a preponderance of the evidence whether Respondent was flirty or friendly with Complainant before the October 1 incident.
- If you find that Respondent was flirty, write factual findings to demonstrate the flirting.
- If you find the Respondent was friendly in a non-sexual way, write factual findings to demonstrate the non-sexual friendliness.
- Your factual findings should include who, what, where, when, why & how of what happened that was flirty and/or friendly.
- Explain why you made that finding; what was your rationale.
- **GOAL:** We may disagree, but did you adequately explain your rationale?

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Discussion of Homework

Hypothetical Investigative Report

- Review the evidence surrounding the touching of Complainant's leg and determine if the touch was based on "sex."
- Review the evidence related to Respondent touching the Complainant's groin area and determine whether that touching occurred.
- If you find that Respondent touched Complainant's groin, determine if the touch was sexual in nature ***and*** if Complainant permitted the touch ***and*** if the touch was for the purpose of sexual gratification.
- Write factual findings about the touching of the knee and whether or not the Respondent touched the Complainant's groin for sexual gratification, sexual degradation, or sexual humiliation.
- Explain why you made that finding; what was your rationale.
- **GOAL:** We may disagree, but did you adequately explain your rationale?

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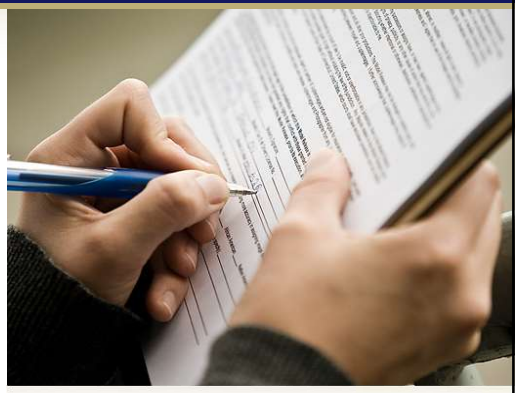
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Thank You

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