

Title IX Decision Maker Training – K-12 Public Schools (2020 Regulations)

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EICHELBAUM WARDELL
HANSEN POWELL & MUÑOZ, P.C.

AUSTIN
4201 W. Parmer Ln, Ste A-100
Austin, TX 78727
(512) 476-9944

D/FW METROPLEX
5801 Tennyson Pkwy, Ste 360
Plano, TX 75024
(972) 377-7900

WEST TEXAS
156 East 2nd Street
Colorado City, TX 79512
(325) 728-9025

www.edlaw.com | (800) 488-9045 | information@edlaw.com

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The decision maker serves as the institution's neutral adjudicator in the **formal** Title IX grievance process. The decision maker must be separate from the Title IX Coordinator and investigator,[1] apply the standard of evidence used by the district (e.g., preponderance-of-the-evidence - whether it is more likely than not that the alleged conduct occurred), evaluate the allegations and evidence, and issue a written determination addressing each allegation. The written determination must identify the allegations, describe the procedural history, state findings of fact and conclusions under the institution's code of conduct, explain the result and rationale for each allegation, address sanctions and remedies in the manner prescribed by the regulation, and identify the procedures and permissible bases for appeal. The determination must be provided simultaneously to both parties. 34 CFR 106.45.

I. Legal Standards

A. Applicable Regulatory Framework

A recipient of federal financial assistance must designate and authorize at least one employee to coordinate its Title IX compliance efforts. The recipient must publish the Title IX Coordinator's contact information and permit any person to report sex discrimination, including sexual harassment, through the identified reporting channels. 34 CFR 106.8.

[1] Under the 2020 Title IX regulations, the decision maker in the grievance process cannot serve as the Title IX Coordinator, even if that individual is not also the investigator. The federal regulations mandate a strict separation of these specific roles during the formal complaint and adjudication process. The implementing regulations of Title IX explicitly forbid the integration of the decision maker and Title IX Coordinator roles. Specifically, § 106.45 Grievance process for formal complaints of sexual harassment. dictates that the decision maker(s) responsible for issuing a written determination regarding responsibility "cannot be the same person(s) as the Title IX Coordinator or the investigator(s)" § 106.45 Grievance process for formal complaints of sexual harassment. Furthermore, this prohibition on dual roles extends to the appellate stage of the grievance process. If an appeal is filed, the educational institution must ensure that the decision maker for the appeal is not the same person as the original decision maker, the investigator, or the Title IX Coordinator § 106.45 Grievance process for formal complaints of sexual harassment.

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The recipient must also adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging prohibited conduct. For formal complaints of sexual harassment, those procedures must include a grievance process complying with the governing Title IX regulation. 34 CFR 106.8. When responding to a formal complaint, the recipient must follow that compliant grievance process. 34 CFR 106.44.

As of the date of this memorandum, the supplied codified regulatory materials reflect the 2020 grievance framework. The 2024 Title IX rule was enjoined as to Texas before its scheduled effective date. Texas v. United States, 740 F. Supp. 3d 537, 541 (2024). The Supreme Court subsequently declined to stay injunctions entered in related challenges, explaining that the challenged definition was intertwined with other provisions of the 2024 rule. *Dep't of Educ. v. Louisiana*, 603 U.S. 866, 866 (2024). A Texas federal district court also described the 2024 rule and related federal guidance as subject to injunction in Texas. *Carroll Indep. Sch. Dist. v. United States Dep't of Educ*., 741 F. Supp. 3d 515, 519 (2024).

B. General Grievance-Process Requirements Affecting the Decision Maker

The institution's grievance process must presume that the respondent is not responsible until a determination regarding responsibility is made at the conclusion of the process. It must establish reasonably prompt time frames, allow temporary delays or limited extensions only for good cause with written notice to both parties, identify the possible sanctions and remedies, and state the standard of evidence and appeal procedures. 34 CFR 106.45.

Most K-12 public schools use the preponderance-of-the-evidence standard, which means the decision maker determines whether it is more likely than not that the alleged conduct occurred. The district must apply that standard consistently to formal complaints against students and employees, including faculty, and to all formal complaints of sexual harassment. 34 CFR 106.45. The decision maker may not alter the standard based on the identities of the parties, the nature of the allegation, the respondent's institutional status, or anticipated consequences.

The regulation does not treat disagreement with the outcome as proof of institutional noncompliance. OCR may not treat a recipient's "responsibility determination" as evidence of deliberate indifference or discrimination solely because OCR would have reached a different result after independently weighing the evidence. 34 CFR 106.44. OCR may nevertheless examine whether the institution followed its published procedure and whether the determination resulted from a properly structured, impartial process.

C. Independence, Impartiality, and Training

The person deciding responsibility cannot be the same person or persons who served as the Title IX Coordinator or investigator in the matter. 34 CFR 106.45. This separation is functional, not merely nominal. The decision maker should not direct the investigation, decide what

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evidence the investigator will gather, formulate the investigator's conclusions, or otherwise combine investigative and adjudicative responsibilities.

Materials used to train Title IX Coordinators, investigators, decision makers, and informal-resolution facilitators must not rely on sex stereotypes and must promote impartial investigations and adjudications. 34 CFR 106.45. The institution should therefore be prepared to produce both the decision maker's training history and the actual training materials used.

D. Written Determination

The decision maker must issue a written determination (decision) regarding responsibility and apply the institution's standard of evidence (e.g., preponderance of the evidence under which the decision maker determines whether it is more likely than not that the alleged conduct occurred). 34 CFR 106.45. The determination must include:

1. Identification of the allegations potentially constituting sexual harassment;
2. A description of the procedural steps taken from receipt of the formal complaint through the determination, including party notifications, interviews, site visits, and methods used to gather evidence;
3. Findings of fact supporting the determination;
4. Conclusions concerning application of the district's code of conduct to the facts;
5. The result and rationale for each allegation, including the responsibility determination, any disciplinary sanctions imposed on the respondent, and whether remedies designed to restore or preserve the complainant's equal access will be provided; and
6. The district's appeal procedures and the permissible bases for appeal. 34 CFR 106.45.

The institution must provide the determination to the parties simultaneously. 34 CFR 106.45.

II. Authority, Impartiality, Training, Review of Evidence, and Determination

A. Scope of the Decision maker's Authority

The decision maker's authority begins after the investigative function has produced the materials designated for adjudication under the district's applicable grievance procedure. The role is to adjudicate, not to advocate for either party, cure an incomplete investigation informally, or act as an extension of the Title IX Coordinator.

B. Impartiality, Bias, and Conflicts of Interest

A reliable process requires impartial adjudication. The institution's training must affirmatively promote impartiality and avoid sex stereotypes. 34 CFR 106.45. The practical inquiry is whether the record shows that the decision maker approached the matter without prejudgment, treated the parties comparably, applied the same procedural rules to each, and based the result on the evidence evaluated under the district's standard of evidence.

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Relevant screening for impartiality may include prior involvement in the allegations, prior advisory relationships with a party or witness, supervisory responsibility for a party, participation in the investigation, public statements about the case, and circumstances suggesting prejudgment. Mere institutional employment should not automatically be treated as disqualifying.

If a party alleges bias or conflict, the district should request a specific written objection, permit an appropriate response, and issue a written resolution. The person resolving the objection should not be the challenged decision maker. If substitution occurs, the file should identify the substitute, confirm the substitute's qualifications, and state whether any procedural step must be repeated.

C. Training and Qualification

The district should maintain a role-specific training program rather than relying solely on general Title IX awareness training. At minimum, the decision maker's training should address:

1. Title IX definitions and grievance procedure;
2. The presumption that the respondent is not responsible until the conclusion of the grievance process;
3. The preponderance-of-the-evidence standard, meaning the decision maker must determine whether it is more likely than not that the alleged conduct occurred, and its consistent application to every formal complaint;
4. Impartial evaluation of testimonial, documentary, physical, and electronic evidence;
5. Avoidance of sex stereotypes and prejudgment;
6. Evaluation of the investigative report, evidence, and party submissions;
7. Relevance determinations applied to the investigative materials and party submissions under the district's grievance procedure, rather than to questioning at a live hearing;
8. Treatment of privileged or otherwise restricted information, because the grievance process may not require, permit, rely on, or otherwise use privileged information unless the privilege holder has waived the privilege;
9. Preparation of findings of fact, policy conclusions, rationales, and allegation-specific outcomes;
10. The distinction among responsibility determinations, sanctions, and remedies; and
11. Appeal procedures and preservation of the administrative record.

The privilege limitation and the requirement that training promote impartial adjudication are express components of the grievance-process framework. 34 CFR 106.45.

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D. Review of the Record and Relevance of Questions

Most K-12 public school districts operating under the 2020 Title IX regulations do not conduct a live hearing or cross-examination. The decision maker reaches a determination by reviewing the investigative record and the parties' submissions rather than by presiding over a hearing. The written determination must still describe the procedural steps taken. 34 CFR 106.45. When districts do not use a live hearing, the decision maker does not preside over witness examination or cross-examination; the decision maker instead evaluates the completed investigative report, the evidence directly related to the allegations, and each party's written response and written, relevant questions, if any.

The district should ensure that it incorporates the applicable requirements into a written record-review protocol, policy, or procedure that addresses:

1. Confirmation that the district does not conduct a live hearing or cross-examination under the 2020 K-12 grievance process;
2. The materials the decision maker reviews, including the investigative report and the evidence directly related to the allegations;
3. The opportunity for each party to submit written, relevant questions to be asked of any party or witness, and to receive the answers before the determination;
4. The opportunity for limited follow-up written questions from each party;
5. Disability accommodations and language assistance available to the parties during the written process;
6. How the decision maker determines the relevance of each written question before it is answered;
7. How questions excluded as not relevant are identified and explained to the party who proposed them;
8. How duplicative, abusive, privileged, or otherwise impermissible questions are handled;
9. The treatment of a party or witness who does not participate or answer questions;
10. The creation and preservation of the written record of the questions, answers, and relevance determinations.

The decision maker should apply the protocol evenly. Every relevance ruling should be sufficiently documented to show the question presented, the ruling, and the reason. The decision maker should not use relevance rulings to favor a party, rehabilitate the investigation, or exclude unfavorable evidence merely because it complicates the analysis.

E. Evaluation of Evidence and Standard of Proof

The decision maker must apply the evidentiary standard published in the district's grievance procedure. The same standard must govern complaints against students and employees and all **formal** sexual-harassment complaints. 34 CFR 106.45. For most public school districts, that

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standard is the preponderance of the evidence. Under that standard, the decision maker determines whether it is more likely than not that the alleged conduct occurred.

Findings should avoid credibility conclusions based on sex stereotypes or assumptions about how a complainant or respondent would ordinarily behave.

The presumption of non-responsibility remains in effect until the process concludes with a responsibility determination. 34 CFR 106.45. It does not replace the evidentiary standard or require the decision maker to disregard probative evidence. It does require the district to avoid treating the allegation, the filing of a formal complaint, or an interim administrative measure as proof of responsibility.

F. Written Determination and Rationale

For each allegation, the determination should contain:

1. The conduct alleged and the policy provision at issue;
2. The material evidence considered;
3. Findings resolving disputed facts;
4. The conclusion reached under the applicable code provision;
5. Application of the standard of evidence;
6. A determination of responsible or not responsible; and
7. The rationale connecting the factual findings to the result.

The procedural-history section should be accurate enough to permit reconstruction of the process. It should identify notices, interviews, evidence-gathering methods, any meetings with the parties, extensions, and other material steps. 34 CFR 106.45. If the process was delayed or extended, the file should contain the contemporaneous good-cause notice sent to both parties and the reasons for the action. 34 CFR 106.45.

The determination must state any disciplinary sanctions imposed on the respondent and whether remedies designed to restore or preserve the complainant's equal access will be provided. 34 CFR 106.45. The document should not disclose confidential operational details of remedies beyond what the governing procedure requires. It should, however, clearly state the existence or nonexistence of remedies in the manner required by the regulation.

The determination must also state the appeal procedures and permissible appeal bases and must be transmitted simultaneously to both parties. 34 CFR 106.45. The file should preserve the final determination and objective proof of simultaneous transmission.

G. Appeals

The district's published grievance procedure must include reasonably prompt time frames for filing and resolving appeals and identify the procedures and permissible appeal bases. 34 CFR 106.45. The initial determination must repeat that information. 34 CFR 106.45.

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The appeal decision maker should be different from the initial decision maker. The appeal file should include the appeal, notice to the other party, any permitted response, the materials reviewed, the written outcome, and proof of simultaneous delivery.

The appellate role should be limited to the permissible grounds stated in the policy governing the complaint. An appeal should not become an undocumented rehearing or an opportunity to substitute personal judgment without addressing the asserted ground. The appeal outcome should resolve each ground raised and explain the rationale.

H. Sanctions, Remedies, and Role Separation

The district's policy or student code of conduct should describe or list the range of possible sanctions and remedies that may follow a responsibility determination. 34 CFR 106.45. The written determination must state any sanction imposed and whether restorative or access-preserving remedies will be provided to the complainant. 34 CFR 106.45.

If the decision maker determines sanctions, the decision should explain how the sanction falls within the published range. If another official determines sanctions, the policy and appointment materials should identify that official's role, the information considered, and how the sanction is incorporated into the written determination without surrendering the decision maker's responsibility for the adjudicative result.

The Title IX Coordinator may coordinate implementation of remedies without becoming the decision maker. The case file should distinguish disciplinary sanctions imposed on the respondent from remedies directed toward restoring or preserving the complainant's equal access.

I. Recordkeeping and OCR Review Readiness

The district should maintain files containing:

1. The initial report and formal complaint;
2. Documentation establishing the applicable regulatory and policy version;
3. Notices to the parties;
4. Supportive-measure records;
5. Appointment and qualification records for the investigator and decision makers;
6. Training records and the training materials used;
7. Investigation materials and evidence provided to the parties;
8. Party submissions and objections;
9. The investigative report and underlying investigative record, the parties' written questions and responses, and the decision maker's written relevance determinations and rulings, if any;
10. Extension notices and good-cause explanations;
11. The final written determination and transmission records;
12. Sanction and remedy implementation records maintained with appropriate access controls;

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13. Appeal materials and the appeal determination; and
14. A procedural chronology sufficient to reconcile all material dates.

III. Conclusion

Under the 2020 Title IX framework reflected, the decision maker is the independent institutional adjudicator of a formal complaint. The decision maker cannot also serve as the Title IX Coordinator or investigator and must apply the institution's standard of evidence. 34 CFR 106.45, 34 CFR 106.45. The decision maker must produce an allegation-specific written determination containing the required procedural history, factual findings, policy conclusions, results, rationales, sanctions and remedies information, and appeal provisions, and the institution must transmit that determination to both parties simultaneously. 34 CFR 106.45.

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