Title IX Sexual Harassment: Decision-Maker and Appeals

2026 - 2027

Oregon Department of Education

Civil Rights Unit

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This training is not intended as legal advice and should not be taken as such; we advise you to consult with your legal counsel before making policy or process changes.

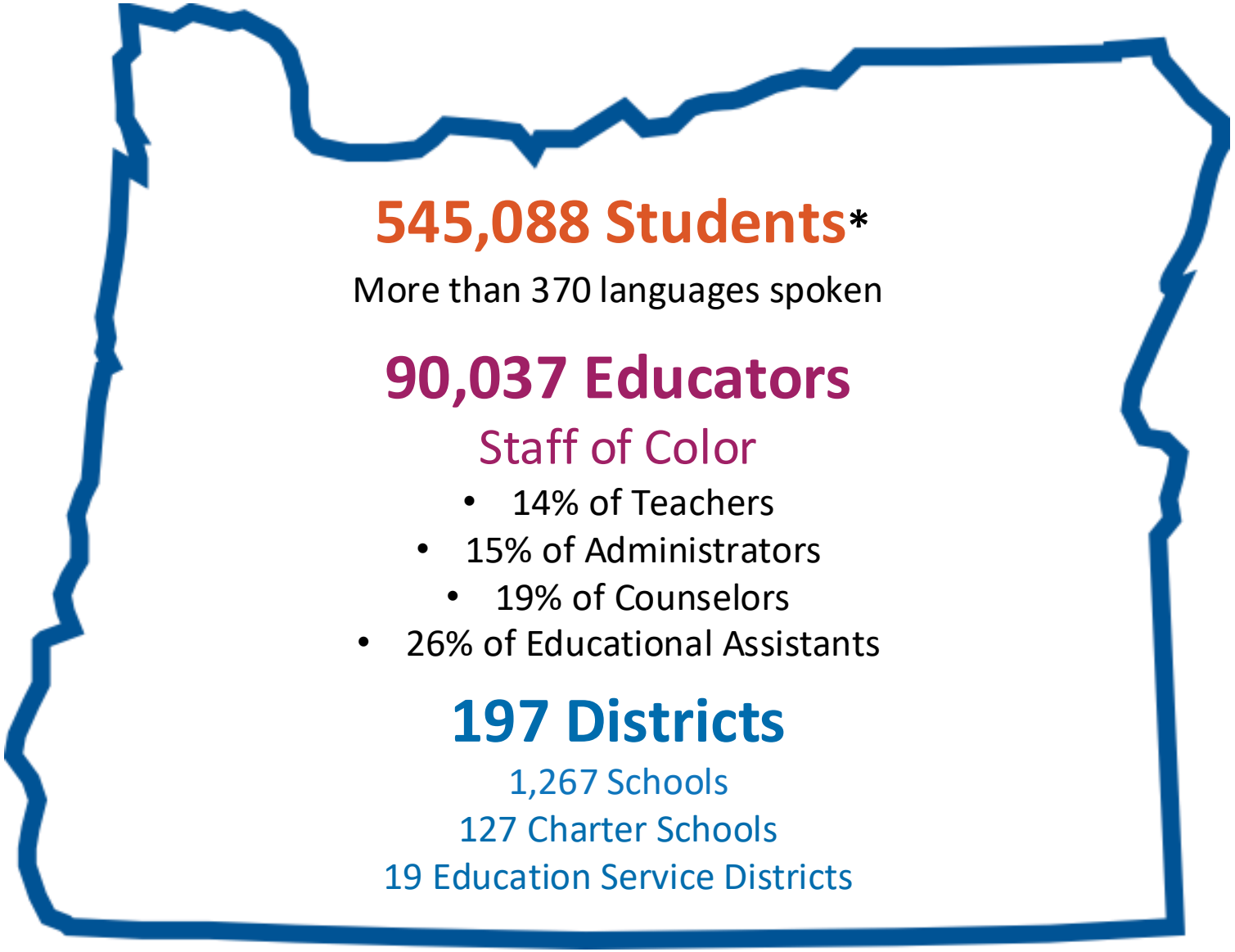
This training is being provided on or around August 1, 2026. Subsequent changes to law and policy may impact the accuracy of information in this slide deck.

ODE is available to support with individual technical assistance following this training.

Who We Serve

"My vision is to make sure every child in Oregon is successful and has a safe place to receive a high-quality public education. I've seen firsthand how a positive student-teacher relationship can set a child on a successful path for the rest of their life. When we collaborate and build partnerships with students, educators and families we can advance equity and lead all students toward success."

- Dr. Charlene Williams



545,088 Students*

More than 370 languages spoken

90,037 Educators

Staff of Color

- 14% of Teachers
- 15% of Administrators
- 19% of Counselors
- 26% of Educational Assistants

197 Districts

1,267 Schools

127 Charter Schools

19 Education Service Districts

*Numbers represent 2024-25

Session Agenda & Materials

- Sexual Harassment Recap
- Role of the Decision-Maker and Appeals Decision-Maker
- Decision-Making: Title IX Requirements
- "Modified Cross-Examination"
- Making Determinations
- Written Determination of Responsibility
- Appeals: Title IX-Requirements
- Appeal Process
- Written Appeal Decision

*This session, **when combined with ODE's Title IX Sexual Harassment: Deep Dive training**, is intended to fulfill 34 CFR 106.45(b)(1)(iii) of the 2020 Title IX regulations, specifically requiring "…that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in § 106.30, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias."*

Norms and Expectations

Participants

Ask relevant questions as they arise

Remain engaged: complete polls, participate in breakout discussions

Be open to learning

Understand the limited scope and time for this training

Break as needed

Presenters

Start and end on time

Answer questions as they arise

Keep to the content at a peppy-pace

Provide a copy of the slides and additional resources - Google Folder

Provide proof of attendance

Schedule technical assistance for individualized questions

Content Note:

This training discusses protected class discrimination. Explicit and discriminatory language is occasionally used. All examples are solely for educational purposes and are designed to contain elements of situations you may respond to in your school/district.

Sexual Harassment Recap

Title IX Sexual Harassment

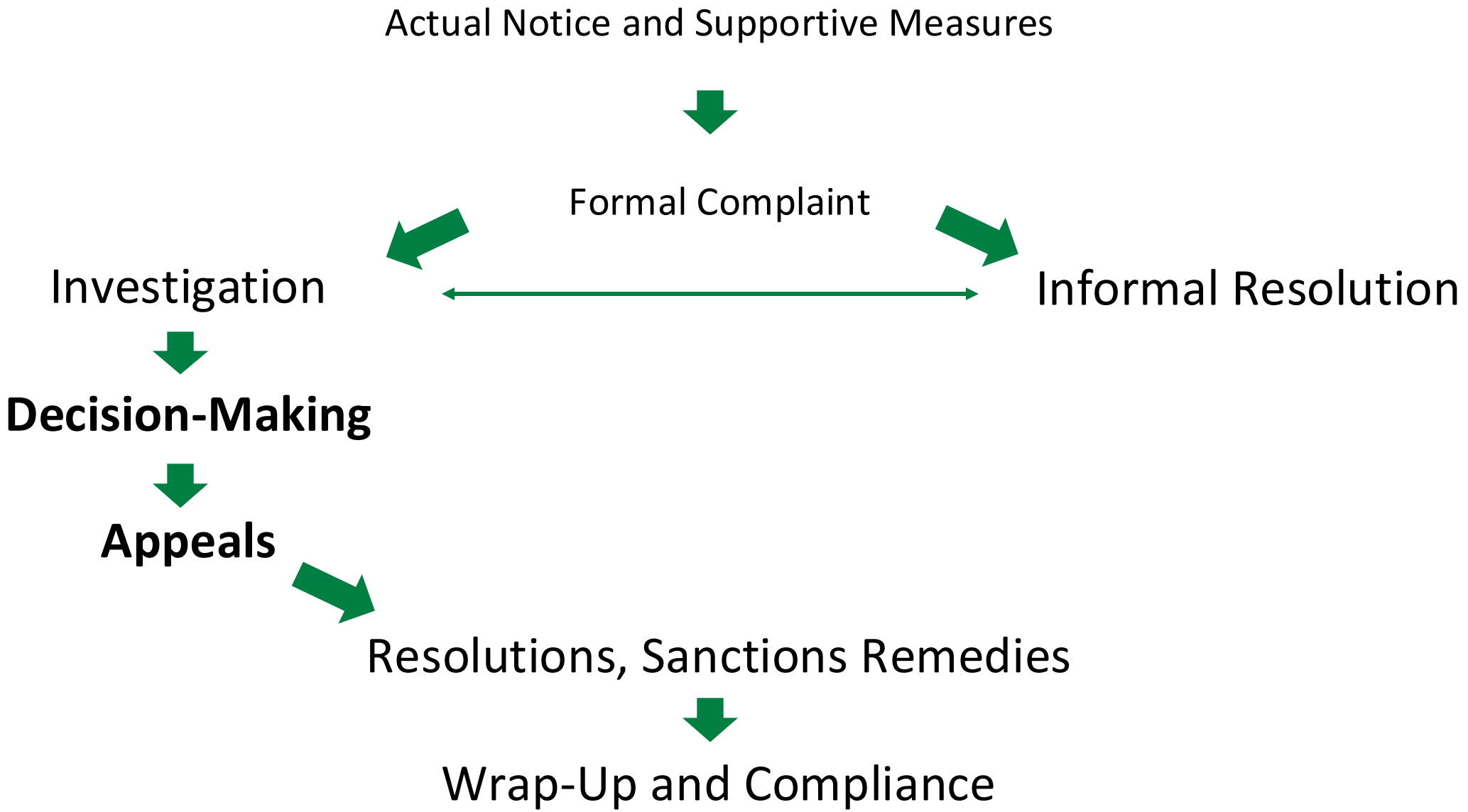
Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

(2) 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 recipient's education program or activity; or

(3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

34 CFR Part 106.30(a)


Actual Notice and Supportive Measures
Formal Complaint
Investigation
Informal Resolution
Decision-Making
Appeals
Resolutions, Sanctions Remedies
Wrap-Up and Compliance

Role of the Decision-Maker and Appeals Decision-Maker

Who's Involved?

	Notice and Triage	Formal Complaint	Informal Resolution	Investigation	Decision-Making	Appeals	Resolutions, Sanctions, and Remedies
Title IX Coordinator	X	X					X
Informal Resolution Facilitator			X				
Investigator				X			
Decision-Maker					X		X
Appeals Decision-Maker						X	X

Independent Designations

The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s)...

34 CFR 106.45(b)(7)(i)

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;

34 CFR 106.45(b)(8)(iii)(B)

- The Decision-Maker and Appeals Decision-Maker must be separate individuals
- Neither can have also served as the Investigator, and neither can be the Title IX Coordinator

Role of the Title IX SH Decision-Maker

- Neutral decision-making
  - Title IX specifically prohibits Decision-Makers from holding any bias or conflict of interest (34 CFR 106.45(b)(1)(iii))
- Review all evidence and written documentation
- Facilitate "modified cross-examination" process (if there is not a hearing)
- Determine results of allegations, and whether sexual harassment occurred
  - Investigators may provide recommendations of findings, but Decision-Maker must still come to independent conclusion
- Produce written determination of responsibility

Role of the Title IX SH Appeals Decision-Maker

- Neutral decision-making
  - Title IX specifically prohibits Appeals Decision-Makers from holding any bias or conflict of interest (34 CFR 106.45(b)(1)(iii))
- Re-review all previously submitted evidence and written documentation (notice of allegations, notice of dismissals, investigative report, written determination of responsibility...) and any newly submitted evidence and documentation
- Facilitate opportunity for parties to submit information in appeals process
- Produce written appeal determination

Decision-Making: Title IX Requirements

Hearings

For recipients that are elementary and secondary schools, and other recipients that are not postsecondary institutions, the recipient's grievance process may, but need not, provide for a hearing.

34 CFR 106.45(b)(6)(ii)

What this means:

- K-12 schools may offer a hearing, but are not required to
- A school may choose to offer a hearing in certain circumstances but not others
  - Example: a school may choose to utilize a hearing in circumstances where expulsion may be a potential outcome

"Modified Cross-Examination"

...after the recipient has sent the investigative report to the parties pursuant to paragraph (b)(5)(vii) of this section and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

34 CFR 106.45(b)(6)(ii)

What this means:

- The Decision-Maker must facilitate this process
- May be facilitated during the 10-day review period of the investigative report

Prohibited Questions

With or without a hearing, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

34 CFR 106.45(b)(6)(ii)

What this means:

- The Decision-Maker must screen the questions asked in the "modified cross-examination" process for relevance and allowability
- The decision to exclude any questions must be explained to the party submitting the question

Written Determination of Responsibility

The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility.

34 CFR 106.45(b)(7)(i)

The recipient must provide the written determination to the parties simultaneously.

34 CFR 106.45(b)(7)(iii)

What this means:

- The Decision-Maker is responsible for writing the determination of responsibility that meets specific criteria, taking everything gathered and drafted up to this point into consideration

Effective Date of Determination

The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the 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.

34 CFR 106.45(b)(7)(iii)

What this means:

- Sanctions should not be, and remedies need not be, implemented until the determination of responsibility becomes **final**.

Remedies and Sanctions

The Title IX Coordinator is responsible for effective implementation of any remedies

34 CFR 106.45(b)(7)(iv)

What this means:

- Remedies (and sanctions) will be determined through the decision-making and appeals process, but will be implemented by the Title IX Coordinator
- The Title IX Coordinator may delegate responsibility for implementation, but should oversee overall effectiveness

"Modified Cross-Examination"

What is the "modified cross-examination"

The 2020 Title IX regulations require higher education institutions to hold live in-person hearings and facilitate a live cross-examination process. ***K-12 schools are not required to hold hearings or live cross-examination***, but must still provide an opportunity to parties to ask questions akin to a cross-examination opportunity.

- Parties (complainants and respondents) must be provided the opportunity to submit "written, relevant" questions to be asked of other parties and witnesses.
- Parties should be provided with answers and allowed to submit "additional, limited" follow-up questions

Example "Modified Cross-Examination" Timeline

Day 1: Final investigative report sent to parties and advisors.* Parties are informed of their right to submit written questions; questions are due on Day 4.

Day 4: Decision-Maker screens the questions. Appropriate questions are forwarded; responses are due by Day 6.

Day 6: Answers are received by decision-maker, and shared with parties. Parties are informed of their right to ask follow-up questions (only those that pertain to clarifying or further elaborating on answers given); those questions are due on Day 8.

Day 8: Decision-maker screens follow-up questions. Appropriate questions are forwarded; responses are due by Day 10.

Day 10: Answers received, and shared with parties. Responses to investigative report received.*

*The regulations require that parties and advisors have 10 days to view the investigative report and submit a response.

Screening for Relevance

Questions are **not** relevant if they:

- Are unrelated to the allegations (34 CFR 106.45(b)(5)(vi)) -parties do not have a right to view evidence that is not "*directly related*" to the allegations
- Seek information protected by a recognized legal privilege (34 CFR 106.45(b)(5)(i))
- Are related to the complainant's "sexual predisposition or prior sexual behavior are not relevant, unless... offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent." (34 CFR 106.45(b)(6)(ii))

Screening Modified Cross-Examination Questions

Would you allow the question or exclude it as irrelevant?

Xavier has been accused of sexually assaulting Elliot on an overnight trip for an athletic away game. Xavier submits the following questions:

- Do you remember that three weeks before the trip, didn't you tell me you were gay and would be willing to hook up with anyone on the team?
- When we hooked up the night before the tournament, didn't you tell me you would bring a condom on the trip and leave it on the bathroom counter if you felt like hooking up?
- Didn't you tell your counselor that you were excited we had hooked up on the trip?

Making Determinations

Putting the Pieces Together

Prepare to make your determination:

- ❑ Gather all investigation materials
  - ❑ Evidence collected during the investigation
  - ❑ Investigative report, and any written responses to the report
  - ❑ Questions and answers obtained during the “modified cross-examination"
- ❑ Gather your policies, procedures, and any guiding documents (e.g. definitions, disciplinary matrix, etc.)
- ❑ Set aside appropriate time and space to make your decision

Policy Violation Determinations



Image by Glenn Carstens; Unsplash

You may be able to substantiate **all, none, or some** of the allegations.

Do the substantiated allegations lead to a policy violation?

More specifically: do the substantiated allegations meet one (or more) of the prongs of sexual harassment as defined by the Title IX regulations (and your policy?)

Allegation Determinations

For each allegation, you will utilize your evidentiary standard to determine whether the allegation is substantiated or unsubstantiated, based on the evidence gathered.

- Your evidentiary standard should be applied to the totality of the circumstances.

The 2020 Title IX regulations allow schools to use one of two evidentiary standards. The standard must be applied to all cases of Title IX sexual harassment, including both student and employee cases.

- Preponderance of the evidence; or
- Clear and convincing

34 CFR 106.45(b)(1)(vii)

Preponderance of the Evidence

"The burden of showing something by a 'preponderance of the evidence,' the most common standard in the civil law, 'simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence before [they] may find in favor of the party who has the burden to persuade the [judge] of the fact's existence.'"

-Footnote 1441, p 30381, Federal Register, Vol. 85, No. 97

- Also called the "more likely than not" standard
- Must show that the allegations are more than 50% likely to be true than untrue – 50% "plus a feather"

Clear and Convincing Evidence

"[c]lear and convincing evidence requires greater proof than preponderance of the evidence. To meet this higher standard, a party must present sufficient evidence to produce 'in the ultimate factfinder **an abiding conviction** that the truth of its factual contentions are [sic] **highly probable**.'"

-Footnote 1441, p 30381, Federal Register, Vol. 85, No. 97

- The evidence should leave "no *substantial* doubt" (but this is still a **lower** standard than "beyond a *reasonable* doubt")
- Allegations should be "substantially more likely" to be true than untrue

Reasonable Person Standard

Some elements of your investigation may ask you to apply a reasonable person standard:

Would a reasonable, ***similarly-situated*** person, respond in the same way?

With discrimination or harassment cases, we typically use the reasonable person standard to establish things like severity or offensiveness: would a reasonable person find this to be severe? Would a reasonable person find this to be offensive?



Image by Elena Mozvhilo; Unsplash

Similarly Situated Person

- Age
- Relationship between parties
- Race
- Other cultural or group identities

"The perspective of a person of the same race as the victim is necessary because race is the immutable characteristic upon which the harassment is based. The reasonable person standard as applied to a child must incorporate the age, intelligence and experience of a person under like circumstances to take into account the developmental differences in maturity and perception due to age."

- Racist Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance, 59 Fed. Reg. 11449 (Mar. 10, 1994)

Possible Outcomes

Responsible
or Discrimination Occurred, or Founded

Not Responsible
or Discrimination Did Not Occur, or Unfounded

Inconclusive
or, Not Enough Information to Determine an Outcome

What is the difference between "Not Responsible" and "Inconclusive"?

Remedies and Disciplinary Sanctions

If you determine that discrimination occurred, apply appropriate remedies and sanctions designed to end the discrimination, remedy the impact, and prevent recurrence.

Remember to consider:

- individual remedies
- community and structural remedies
- individual disciplinary sanctions

Scenario: Janet and Alex

As part complaints regarding harassment and bullying, Janet, an 8th grader, is being investigated for potential sexual harassment against Alex, also an 8th grader. The allegations of sexual harassment include:

- On at least two occasions during PE, Janet blocked the exit of the communal locker room, refusing to let Alex leave while making explicit, repeated demands to see the cup size of the bra Alex was wearing, touching her breasts on one occasion.
- Janet hung a bra up on the class bulletin board between classes with a note saying, "Love, Alex the big boobed slut." Alex and several students saw it before it was taken down. When Alex read the note, she immediately started crying, ran out of the room, and went home early that day.
- Janet spread a malicious rumor to a group of students that Alex was flashing boys behind the school gym to get answers for the upcoming Social Studies test. Alex was absent the day of the test.

Preponderance Practice

Using the preponderance of the evidence standard, determine whether the allegation can be substantiated.

Allegation: Janet hung a bra up on the class bulletin board between classes with a note saying, "Love, Alex the big boobed slut." Alex and several students saw it before it was taken down.

- The school has a policy that students are not allowed into empty classrooms without staff present; students monitor the halls between classes to make sure this policy is followed.
- Alex reported being bullied by Janet during PE the day before she found the note. Alex did not see Janet leave the note and bra on the bulletin board but did hear from a hall monitor that Janet is "always trying to go into classrooms" when staff is not present.
- Janet denies leaving the items on the board, and said other students leave notes on the board "all the time," but did not provide any names of those students.
- The day before Alex found the note, the PE teacher caught Janet and her friends looking at Carly's notebook and laughing during PE class. The teacher confiscated the notebook, which had anatomically explicit sketches in it, titled "Sluts," and wrote Janet up for being disruptive. continued next slide...

Preponderance Practice

Using the preponderance of the evidence standard, determine whether the allegation can be substantiated.

Allegation: Janet hung a bra up on the class bulletin board between classes with a note saying, "Love, Alex the big boobed slut." Alex and several students saw it before it was taken down.

- There has been a problem with students in Alex's class leaving inappropriate notes on the bulletin board all eighth-grade year. Three students have been accused of leaving notes: Janet, Adrian, and Charlotte.
- Adrian admitted that he has left notes on the board with jokes his older brother taught him, but said he never left any notes about Alex.
- Charlotte said she sometimes leaves notes on the board to be funny but cannot remember if she had ever left a note for Alex. She "thinks" Janet said she has left notes on the board before.
- Two hall monitors confirm they saw Janet, Adrian, and Charlotte alone in the classroom around the time the bra and note were posted. One hall monitor was not sure if it was before or after Alex found the note. The other saw Janet looking in multiple desks but is not sure if she was around the bulletin board.

Written Determination of Responsibility

Written Determination Requirements

The written determination must include—

(A) Identification of the **allegations** potentially constituting sexual harassment as defined in § 106.30;

(B) 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;

(C) **Findings of fact** supporting the determination;

(D) **Conclusions** regarding the application of the recipient's code of conduct to the facts;

(E) 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; and

(F) The recipient's **procedures and permissible bases** for the complainant and respondent to **appeal**.

34 CFR 106.45(b)(7)(ii)

Written determinations should be...

- **Clear.** The results and conclusions should be clear; parties should not be left wondering what the results were, or what your process was. Proactively anticipate questions as practicable.
- **Accessible.** Consider the reading and comprehension levels of your document. Consider the audience. Minimize "legalese" as much as you can.
- **Thorough.** Determinations should balance privacy and confidentiality (including legal limitations and requirements) with transparency and thoroughness.
- **Unbiased.** All evidence should be weighed appropriately. Be aware of how word choice, structure, or inclusions/exclusions appear.

Writing Best Practices

- Use formal writing
  - Avoid jargon and “writing how you speak”
  - Use medically accurate terminology
  - Avoid over-use of legalese - the report should be accessible
- Use neutral language
  - Word choice reflects the bias of the author
  - Don’t imply feelings or dispositions that weren’t explicitly stated
  - Avoid use of unnecessary adjectives or descriptors
- De-identify (use “Complainant, Respondent, Witness 1” instead of names)
- Define terms for readers; if a colloquial phrase is used in a quote, clarify what it means

Appeals: Title IX Requirements

Appeal Bases

A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases:

(A) **Procedural irregularity** that affected the outcome of the matter;

(B) **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

(C) 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.

34 CFR 106.45(b)(8)(i)

A recipient **may** offer an appeal equally to both parties on additional bases.

34 CFR 106.45(b)(8)(ii)

Appeal Bases, cont...

- Appeals must be allowed on **at least the three bases** listed for both parties.
  - This applies both to appeals of a **determination** of responsibility, and to appeals of a complaint **dismissal**.
- Schools may allow other reasons for appeals at their discretion, as long as those appeal options are applied equally.
- Appeals for Title IX sexual harassment cases are **one level**; schools cannot decline to receive or hear appeals that fall under one of the permissible bases.
- However, schools may place a **time frame** on submission of appeals.

Appeal Notification

Notify the other party in writing when an appeal is filed and implement appeal procedures **equally for both parties**

34 CFR 106.45(b)(8)(iii)(A)

What this means:

- Parties must be notified in writing when an appeal is filed
- The appeal process is less strictly prescribed, but must be implemented **equally**, providing equal rights and opportunities for complainants and respondents

Opportunity to Submit Statement

Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome

34 CFR 106.45(b)(8)(iii)(D)

What this means:

- Both parties must be allowed to submit a written statement.
- The opportunity to submit a statement must be equal, but schools may place restrictions on the time frame for submission.

Appeal Process

Notification of Appeal

- If an appeal is submitted, review to ensure the appeal is on a bases permitted by the regulations and your policies. Schools may allow broader, but not narrower, bases for appeals.
- The regulations require a written notification to the other party (the party that did not submit an appeal) that an appeal has been filed.
  - In practice, may want to provide written notice to both parties
  - Could also include description of appeal process, timeline, any party rights
- Both parties may submit an appeal!

Appeal Process: Statements and Evidence

- Both parties must be provided the opportunity to submit a written statement in support of or challenging the appeal.
- Review of new evidence?
  - The regulations don't specify review procedures, but will likely want to provide evidentiary review opportunity as specified in 34 CFR 106.45(b)(5)(vi)
- Any new statements and evidence should be reviewed alongside already collected evidence and statements from investigation and decision-making

Making an Appeal Determination

- Use the same standard of evidence used in your decision-making phase
- May uphold or change:
  - Findings of fact
  - Conclusions applying policy to findings
  - Remedies or sanctions

Written Appeal Decision

Appeal Determination Requirement

Issue a written decision describing the result of the appeal and the rationale for the result

34 CFR 106.45(b)(8)(iii)(E)

- Again, the Title IX regulations do not provide specific requirements for the appeal determination beyond that it must include the **results and rationale**
- The result of the appeal may:
  - Uphold or overturn the conclusions related to an allegation or the conclusions regarding a policy violation
  - Uphold or change the sanctions and remedies offered to parties

Potential Elements of an Appeal Determination

Your school/district should develop a template that works best for your community. Potential elements could include:

- Introductory information (complaint info, appeals decision-maker info, jurisdiction, policies)
- Background (could include references to Investigative Report or Determination of Responsibility; could attach those documents, timeline)
- Summary of new statements/evidence
- Results (uphold or change findings of fact? Uphold or change conclusions?)
- Rationale applying reasoning for results
- Sanctions and provision of remedies (upheld? Changed?)

Upcoming Title IX Sexual Harassment Trainings

Title IX Sexual Harassment: Deep Dive

- ☐Thurs, Aug 20, 9:00 am-12:00 pm
- ☐Tues, Sept 15, 12:30-3:30 pm
- ☐Fri, Oct 30, 9:00 am-12:00 pm
- ☐Wed, Jan 27, 12:00-3:00 pm
- ☐Thurs, Apr 15, 12:30-3:30 pm

Title IX Sexual Harassment: Investigator

Requires Deep Dive Training Prerequisite

- ☐Thurs, Aug 27, 9:00-10:30 am
- ☐Tues, Sept 22, 12:30-2:00 pm
- ☐Fri, Nov 6, 9:00-10:30 am
- ☐Wed, Feb 3, 1:30-3:00 pm
- ☐Thurs, Apr 22, 12:30-2:00 pm

Title IX Sexual Harassment: Decision-Maker and Appeals

Requires Deep Dive Training Prerequisite

- ☐Thurs, Aug 27, 1:00-2:30 pm
- ☐Tues, Sept 22, 3:00-4:30 pm
- ☐Fri, Nov 6, 1:00-2:30 pm
- ☐Wed, Feb 3, 3:30-5:00 pm
- ☐Fri, Apr 23, 1:00-2:30 pm

Scan and Join!

Need to fulfill your Coordinator training requirements?

Seeking more information?

We have the listservs for you!

Title IX Listserv

Section 504 Listserv

Title VI Listserv

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CONTACT US

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