

Title IX Personnel Team Training

Presented To:
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What is Title IX?

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.

20 U.S.C 1681(a) Title IX Education Amendments of 1972



Major Provisions

- ✓ Define Title IX sex harassment
- ✓ Specify when schools are obligated to respond to sex harassment allegations
- ✓ Impose general standard for sufficiency of response & requirements for response (ex. supportive measures)
- ✓ Establish procedural due process protections that must be in grievance process
- ✓ Affirm OCR's role in monitoring Title IX compliance
- ✓ Clarify that recipients are not required to deprive individuals of rights guaranteed under U.S. Constitution when responding to sexual harassment claim under Title IX
- ✓ Acknowledge intersection of Title IX, Title VII, and FERPA and legal rights of parents to act
- ✓ Update Title IX Coordinator designations, notice requirements, and policy distribution
- ✓ Prohibit retaliation

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Website and Handbook Notice Requirements

Publish Notice of Title IX Non-discrimination on website (link to policy) and in supplement to handbooks

State how to file or report sexual harassment and how District/LEA will respond to students and parent/legal guardians

List Title IX Coordinator's name, title, email, office address and telephone number



Who are the Parties?

Complainant



The individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent



The individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment.

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What you will learn today:

- ✓ How to recognize and eliminate bias for or against a complainant or respondent
- ✓ How to recognize and eliminate conflicts of interest
- ✓ The definition of sexual harassment under Title IX
- ✓ The "scope of the School's program or activity"
- ✓ How to conduct an investigation and grievance process
- ✓ How to prepare an investigation report
- ✓ How to be a decision maker – both initial and appeal

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Bias

state mind where the person has a predisposition in favor of or against someone or something.

must be conscious of bias and keep an open mind toward both parties

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Bias

Example: Can't assume all complainants are victims or all respondents are wrongly accused. Must listen to all facts presented.

Avoiding Bias

How do I know if someone is biased?

- Requires examination of the particular facts of a situation
 - Apply an objective, "common sense" approach to evaluating whether a particular person serving in a Title IX role is biased.
 - Exercise caution not to apply generalizations that might unreasonably conclude that bias exists
- *whether a reasonable person would believe bias exists

This training provides you with the tools needed to serve impartially and without bias- must not let your prior assumptions shade your judgment.

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Conflicts of Interest

a conflict between the private interests and the official responsibilities of a person in a position of trust

Does the person handling the job have a financial interest in the outcome?

Is the person handling the job related to a party?

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Why is this important?

The grievance process provides that the decision may be overturned on appeal by the appeal decision maker if 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

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Training - Impartiality

A training approach that encourages Title IX personnel to "believe" one party or the other would fail to comply with the requirement that Title IX personnel be trained to serve impartially, and violate the regulations precluding credibility determinations based on a party's status as a complainant or respondent.

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Today's Theme – Fair Process

- parties should be treated with equal dignity and respect by Title IX personnel
- the credibility of any party, as well as ultimate conclusions about responsibility for sexual harassment, must not be prejudged and must be based on objective evaluation of the relevant evidence in a particular case
- In summary, training materials that promote the application of "profiles" or "predictive behaviors" to particular cases would likely run contrary to the regulatory requirements of fairness.



Recap:



Strive to serve impartially

AVOID:

- prejudgment of the facts at issue,
- conflict of interest and bias, and
- sex stereotypes



- ## Members of the Title IX Team
- ▶ Title IX Coordinator
 - ▶ Dismissals
 - ▶ Facilitator
 - ▶ Investigator
 - ▶ Initial Decision Maker (separate person(s))
 - ▶ Appeal Decision Maker (separate person(s))

But who can handle what?

- ✓ Must have a Title IX Coordinator.
- ✓ Can outsource one or more of the other jobs.
- ✓ Only overlap in duties can occur in Title IX coordinator, dismissals, facilitator, and investigator roles. (Best practice to separate some of these jobs.)



What is Title IX Sexual Harassment?

Title IX has more than one definition of sexual harassment. ***Under the law, it is conduct on the basis of sex that meets one or more of the following:***



Definition 1: Quid Pro Quo Harassment

- An employee of the recipient (i.e. educational institution such as a school district/LEA that receives federal funds) conditioning the provision of an aid, benefit or service of the educational institution on an individual's participation in unwelcome sexual conduct;

Also known as "this for that"



Definition 2: Hostile Environment

- 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 educational institution's education program or activity;

Most Common



Definition 3: Statutory

- "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), "stalking" as defined in 34 U.S.C. 12291(a)(30), or
- "domestic violence" as defined in 34 U.S.C. 12291(a)(8)

Definition 2: Hostile Environment

Severe, pervasive AND objectively offensive

Evaluated under a reasonable person standard

Effectively denies equal access to the school's program or activity

Requires the most analysis, generally, to determine if the allegations "meet" the segments of each description

What is an "Education Program or Activity"?

Any location, event or circumstance over which the School exercised substantial control over both the respondent and the context in which the harassment occurs. This is a fact-specific inquiry.

What about online?

Note: Teachers or Staff

What is "Actual Knowledge"?

"Actual knowledge" of sexual harassment is notice of sexual harassment or allegations of sexual harassment to ANY EMPLOYEE

Easy on... Complaints reports, if verbal or in writing

Includes third parties (parent, friend or community member) verbally or in writing

Anonymous reporting? Yes also included

"Actual Knowledge" is Important!

Not within some reports - conforms with mandatory reporting obligations

Includes EVERY employee position in the district/LEA

MUST train all employees to recognize Title IX sexual harassment

Actual Knowledge activates District's/LEA's Title IX response requirements

#triggered

Which are Examples of Actual Knowledge?

Employee overhears students discussing another student having a sexual relationship with an employee

A community member tells an employee about a student having a sexual relationship with an employee

Employees see sexualized graffiti scrawled across school lockers

Employees overhear students using offensive slurs to an LGBTQ+ student



Job Duties

Title IX Coordinator

1. Has capacity to coordinate School's Title IX program and ensures compliance;
2. Receive and coordinate prompt and equitable responses to both reports and formal complaints of sexual harassment;
3. Meet with complainants and inform the parent/guardian once you become aware of allegations of conduct that could constitute sexual harassment as defined in Title IX;
4. Identify and implement supportive measures;
5. In certain cases, sign formal complaints;
6. Engage with the parents/guardians of parties to any formal complaint of sexual harassment;
7. Coordinate with Title IX team to ensure that the School otherwise meets its obligations associated with reports and complaints of sexual harassment;



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Job Duties

Title IX Coordinator, cont.

9. Monitor formal complaint process to ensure proper notices are provided and steps are taken in proper order;
10. Determine, in emergency situations, whether an individualized safety and risk analysis is required with regard to a respondent;
11. Inform school leaders of any reported employee respondents so that any required reports to Louisiana Dept. of Education may be made;
12. Work with School to ensure appropriate training of all employees and students in accordance with the training requirements under Title IX;
13. Develop and implement systems to maintain Title IX records and data for a period of seven years;



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The Title IX Process

A Complete Walk Through

What to do, when to do it, and who is responsible for it

Reports of Sexual Harassment

Can be verbally or in writing

By the complainant or unrelated parties

Can also be anonymous!

Reports are just that – reports of harassment or suspected harassment, which are received by the Title IX Coordinator.

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So you've received a report... now what?

- The Coordinator must meet with complainant, offer supportive measures (available whether or not files a formal complaint) and consider wishes of complainant as to supportive measures, explain how to file a formal complaint

Note!

A "report" of sexual harassment is different from a "formal complaint" and each requires different actions on the part of the School.

What are "supportive measures"?

Supportive measures are non-disciplinary, non-punitive, individualized services offered as appropriate and without charge to a complainant or a respondent before or after the filing of a formal complaint or where a complaint has not been filed

counseling, course modifications, schedule changes, increased monitoring or supervision, etc.

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What are "supportive measures"?

(Continued)

Supportive measures should be designed to restore or preserve equal access to the educational program or activity without unreasonably burdening the other party

For example, a supportive measure that completely removes the respondent from an activity could be considered punitive.

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Responding to Reports

Must respond promptly to actual knowledge of sexual harassment in an education program or activity in a manner that is not deliberately indifferent
School is deliberately indifferent if its response is clearly unreasonable in light of known circumstances

MUST AVOID DELIBERATE INDIFFERENCE

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Responding to Reports

(continued)

School must treat complainants and respondents equitably by:

1. Offering supportive measures to a complainant and respondent, and
2. Following a grievance process BEFORE imposing any disciplinary sanctions on a respondent, and
3. Provide remedies to complainant AFTER determination of responsibility of respondent

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Immediate removal of student?

1. School conducts an individualized safety and risk analysis, and
2. Determines that an emergency removal is necessary to protect a student or other individual from an immediate threat to physical health or safety
3. Must provide respondent with notice and an opportunity to challenge the decision immediately after removal
4. Can implement immediate removal with regard to both student and employee respondents

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Immediate removal of staff?

School may place employee respondents on Title IX administrative leave – only available AFTER a formal complaint is filed.

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Formal Complaints

Must be in writing

ONLY signed by the complainant, parent/guardian, or Coordinator

Initiates the grievance procedure now required to investigate

A Formal Complaint is a document filed by a complainant, the complainant's parent/guardian, or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the School investigate the allegations.

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So you've received a formal complaint... now what?

The Coordinator must promptly send **written notice** to all parties at the same time. The formal **grievance procedure** must now be followed.

Note!

This notice **must** be provided to parties prior to initial interview by the Investigator so the parties can prepare and/or have a parent/guardian and/or advisor present.

Written Notice must contain:

1. notice of the **grievance procedure**, including informal resolution process;
2. notice of the allegations potentially constituting sexual harassment, including:
 - o identity of the parties (if known);
 - o conduct allegedly constituting sexual harassment under Title IX
 - o date and location of incident (if known);
3. a statement that the respondent is presumed not responsible for the alleged conduct and that a determination of responsibility is made at the conclusion of the grievance process;
4. notice that the parties may have an advisor of their choice (may or may not be an attorney) and may inspect and review evidence;
5. identify provisions of code of conduct that prohibit knowingly providing false statements/information.

What is a formal grievance procedure?

The following provisions govern the School's Title IX Grievance Process:

1. The School treats complainants and respondents equitably by
 - o providing **remedies** to a complainant **after** a determination of responsibility for sexual harassment has been made against a respondent, and
 - o by **following** this grievance process **before** imposing any disciplinary **sanctions** or other actions that are not supportive measures against a respondent.

Remedies must be designed to restore or preserve equal access to the district's/LEA's education program or activity. Remedies may include supportive measures, but may also include punishing respondent.

Hint: this will be in your policy!

What is a formal grievance procedure?

(continued)

2. The School provides an objective evaluation of all available evidence without making credibility determinations based on a party's status as complainant, respondent, or witness.
3. The School ensures that no member of the Title IX Personnel Team has a conflict of interest or bias for or against either the complainant or the respondent. The School further ensures that training has been provided individuals holding Title IX jobs re: definition of Title IX sexual harassment, scope of the district's/LEA's program or activity, how to conduct an investigation and grievance process, hearings (hearings not required in K12 under Title IX process), appeals and informal processes.

Hint: this will be in your policy!

What is a formal grievance procedure?

(continued)

4. there is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility has been made at the conclusion of the grievance process
5. The School provides reasonably prompt time frames for completing the grievance process, including a process to accommodate permissible delays.
6. The School identifies disciplinary sanctions and remedies that may be implemented. Employee sanctions - action up to and including suspension or termination. Student sanctions - student code of conduct consequences, up to and including suspension or expulsion.

Hint: this will be in your policy!

What is a formal grievance procedure?

(continued)

7. The School adopts an allowable standard to determine responsibility. [Either the **preponderance of the evidence standard OR the clear and convincing standard**].
8. The School provides an appeal option. Either party may appeal.
9. The School identifies a range of supportive measures.
10. The School disallows evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.

Hint: this will be in your policy!

Which standard of evidence?

Preponderance of the evidence requires that the evidence be "more likely than not" to prove the matter at hand. The party with the burden [School] must prove that there is a greater than 50% chance that the claim is true or is not true.

Clear and convincing evidence requires that the School must prove that there is a substantially greater than a 50% likelihood of the claim being true or not being true. The evidence is highly and substantially more likely to be true than untrue.

Job Duties

Dismissal of Formal Complaints

The person who handles this job evaluates the allegations to determine whether the formal complaint **Must** be dismissed or **May** be dismissed. The job could be held by a separate person or by the Title IX coordinator or the investigator.

Two types of dismissals:
mandatory and discretionary



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When is dismissal of a formal complaint discretionary?

A Formal Complaint **may** be dismissed if:

- ✓ complainant notifies the Title IX Coordinator at any time that he/she wishes to withdraw the complaint or an allegation,
- ✓ if the respondent's enrollment or employment ends, or
- ✓ if specific circumstances prevent the educational institution from gathering evidence (e.g. passage of several years between complaint and alleged conduct, non-cooperation of complainant, etc.)

Note!

Notice of dismissal must be provided to both parties, including the reasons for dismissal and chance to appeal.

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When is dismissal of a formal complaint mandatory?

A Formal Complaint **must** be dismissed if

- ✓ the allegations do not constitute sexual harassment as defined,
- ✓ did not occur in the School's program or activity or
- ✓ did not occur against a person in the United States

* The same Notice of dismissal must be provided to both parties, as with discretionary dismissal

Note!

Dismissal for Title IX purposes doesn't preclude possible action under another provision of the School's code of conduct.

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Job Duties

Informal Resolution Facilitator

The person who conducts the informal resolution process. Also referred to as a mediator. This job could be handled by a separate person, by the Title IX coordinator or by the investigator. If the investigator handles the informal resolution, remember that either party can withdraw from informal resolution and resume the grievance process wherever it was left, which could be in the investigation stage.

What is "informal resolution"?

K-12 NOT required to offer informal resolution

- School may offer to facilitate an informal mediation that does not require a full investigation. This can be offered at any point after a formal complaint has been filed.
- Both parties receive written notice of their rights and provide written, voluntary consent.
- Cannot require the waiver of the right to formal process as a condition of employment, continuing employment, enrollment or continuing enrollment.
- Cannot be offered if allegations are made against an employee by a student.
- Right to withdraw from the informal resolution process and resume the grievance process at any time.



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The Formal Complaint does not get dismissed... now what?

- ▶ The Title IX Investigator must now investigate the Formal Complaint in accordance with the Title IX regulations and the School's grievance procedures.

Job Duties

Title IX Investigator

1. Ensuring that the burden of proof and gathering evidence rest on the School (i.e. you) rather than the parties;
2. Providing an equal opportunity for both parties to present witnesses and evidence;
3. Making sure that both parties have the ability to discuss the allegations or gather and present evidence - for example, can't prohibit the parties from talking to witnesses to obtain evidence in support of their position
4. Ensuring that the parties have the same opportunity to have an advisor (who may be an attorney) present during all interviews and proceedings. A student may have both a parent and advisor present;
5. Providing written notice to a party who is invited or expected to attend any interview or meeting, including the date, time, participants, purpose, and location, with enough time to allow the party and advisor (if obtained) to prepare to participate;

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What is a "burden of proof"?

- ▶ As the person with the "burden of proof," the investigator has a duty to prove or disprove a disputed fact. Neither of the parties has to prove anything in the Title IX process – this is your duty.

Notel

The standard of evidence (whether "preponderance" or "clear and convincing") established by School policy is what you are required to prove meet the burden of proof.

What do you mean "both parties have the ability to discuss the allegations or gather and present evidence"?

- ▶ You cannot tell parties not to discuss the Title IX investigation, allegations, or evidence.
- ▶ The parties must be able to discuss the investigation, allegations, or evidence for the purpose of gathering additional evidence.
- ▶ You can still warn parties not to discuss or disseminate the allegations in a manner that constitutes retaliation or unlawful tortious conduct (ex. defamation, libel, slander).

No gag orders!

Job Duties

Title IX Investigator, cont.

6. Providing both parties and their advisors, if any, an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint, including evidence on which the School does not intend to rely and any exculpatory or inculpatory evidence from any source; must be provided prior to the completion of the final investigative report and in time to give the parties at least 10 days to submit a written response, which investigator must consider before completing the investigation report; and
7. Preparing a written investigation report that fairly summarizes the relevant evidence and providing the report to the parties and their advisors of least 10 days before a determination of responsibility for review and written response.

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You think you've completed your investigation... now what?

- ▶ You must categorize the evidence as "relevant" or "irrelevant," and "inculpatory" and "exculpatory."
- ▶ At least 10 days before finalizing the investigation report, you must provide all of this evidence – anything that is directly related to the allegations – to both parties and their advisors.
- ▶ Parties are given 10 days to provide written responses to this evidence, which must be incorporated into the final investigation report

Title IX requires transparency and must be balanced with FERPA concerns. Establish best practices!

Irrelevant Evidence

("Evidence on which the school does not intend to rely")

Evidence is "directly related to the allegations" if it involves in some way any part of the allegation. Certain portions of a student record may relate to the allegations, while others do not!

You cannot leave out any information related to the allegations, even if you do not think it is important or probative. This is irrelevant evidence. You can leave out evidence that does not relate to the allegations.

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Inculpatory & Exculpatory Evidence

Inculpatory evidence tends to prove the respondent is responsible for conduct alleged - can be as to some or all of the allegations.

Exculpatory evidence tends to exonerate the respondent as to an allegation - can be as to some or all of the allegations

Investigation Best Practices

- ▶ Follow up on witness statements that don't contain information initially stated in the interview
- ▶ Follow up with parties/witnesses if you learn information from a later witness about which you need to ask someone you've already interviewed
- ▶ Notify parents/guardians - parents/guardians have the "right to act" on behalf of all students who are parties

Investigation Best Practices

(Continued)

- ▶ Detailed notes of all interviews
- ▶ All investigation notes should include correct dates, times, locations, page numbers
- ▶ Pretend that someone who does not know anything about the matter can read your notes and be able to understand all the information obtained
- ▶ Immediately save any potentially applicable video footage
- ▶ Be prepared to handle issues related to evidence on phones and legally securing phone evidence

10 days have passed since submitting the evidence... now what?

- ▶ The Investigator finalizes the formal investigation report.
- ▶ The investigation report should fairly summarize all relevant evidence.
- ▶ Evidence is relevant if:
 - ▶ It has any tendency to make a fact more or less probable than it would be without the evidence, and
 - ▶ The fact is of consequence in determining the action.

Ideal Investigation Report

Summarizes the steps you took in the investigation;
Summarizes what you determine to be relevant evidence;
Includes relevant inculpatory and exculpatory evidence;
Shows that you considered parties' written response re evidence and covers whether report comport with/contradict other evidence;
Does not make finding of responsible/not responsible;
Can make credibility assessments by evaluation of evidence, though the decision-maker is not bound by assessment

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Job Duties

Title IX Initial Decision Maker

The Initial Decision-Maker receives the final written investigation report from the Investigator, and makes a decision regarding the determination of responsibility. Before the Initial Decision-Maker determines whether the respondent is responsible, the parties have ten days to review the investigation report and prepare a written response to be provided to the Initial decision-maker. The parties are also permitted to submit written questions.

The Investigator's Job is Done!



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Hearings

▶ Title IX compliant hearings are not required in K-12 educational institutions for Title IX formal complaints.



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Written Questions

- ▶ After the School has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker must provide each party the opportunity to submit written, relevant questions that the party wants asked of another party or witness, provide each party with the answers, and provide for limited follow-up questions.
- ▶ You may place reasonable limits of written questions, as long as limitations are applied equitably.



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Job Duties

Initial Decision Maker, Cont.

After the exchange of written questions and receiving written responses from the parties, the Initial Decision Maker issues a final determination of responsibility.

This process must take a minimum of 10 days to complete from receipt of the investigation report.

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Written Determination of Responsibility

The written Determination of Responsibility must:

1. Identify the allegations that potentially constitute sexual harassment as defined in the amendments;
2. Describe the School's procedural steps taken from the receipt of the complaint to the determination;
3. Include findings of fact supporting the determination;
4. Include conclusions regarding application of the code of conduct to the facts;
5. Include a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions imposed upon the respondent, and whether remedies to restore or preserve equal access to the School's education program or activity will be provided to the complainant; and
6. Includes procedures for appeals.

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Job Duties

Decision Maker Reminders!

Show Your Work!

The decision-maker has to:

- ▶ Make an independent decision.
- ▶ Address the things that come AFTER the investigation report
- ▶ Written responses of the Parties come after the investigation report
- ▶ Written questions come after the investigation report

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Appeals

Both parties have the right to appeal

- 1) a determination of responsibility and
 - 2) the School's dismissal of a formal complaint
- for the following reasons:

A procedural irregularity that affected the outcome.

How evidence that was not reasonably available at the time of the determination regarding responsibility could affect the outcome.

Conflict of interest or bias on the part of the Title IX Coordinator, investigator, or decision maker that affected the outcome.

Job Duties

Appeal Decision Makers

- The Appeal Decision Maker:
- ▶ Reviews the determination of responsibility and receives the notice of appeal.
 - ▶ Provides both parties written notice of the appeal.
 - ▶ Provides both parties an equal opportunity to submit a written statement in support of, or challenging, the determination of responsibility.
 - ▶ Provides a written determination on appeal simultaneously to both parties.
 - ▶ The Appeal Decision Maker can overturn, affirm, or modify the final written determination.

Retaliation

Retaliation is prohibited against any person for the purpose of interfering with Title IX rights or because the person participated, or refused to participate, in any manner in a proceeding under Title IX regulations.

Complaints of retaliation may be reported and filed under the Title IX grievance process.

Confidentiality

The School must keep confidential the identity of a person who complains of or reports sexual harassment, including parties and witnesses, except as permitted by law to carry out the purpose of the regulations with regard to conducting an investigation into the complaint.

Record Keeping

The School must keep records related to reports of sexual harassment for a minimum of seven years, including investigation records, disciplinary sanctions, remedies, appeals and records of any action taken, including supportive measures.

Job Duties

Title IX Coordinator Record Keeping

- The Coordinator is responsible for record keeping:
- ▶ Records should reflect that the School's response was not deliberately indifferent and that measures were taken to restore or preserve equal access to the education program or activity.
 - ▶ If the School does not provide a complainant with supportive measures, the School must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.
 - ▶ The School must also retain for seven years any materials used to train Title IX Coordinators, investigators, decision-makers and any employee designated to facilitate an informal process.
 - ▶ The School must post training materials on the School's website.

OCR's Role?

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Final Takeaways

Complainants and respondents have different interests in the outcome of a sexual harassment complaint. Complainants "have a right, and are entitled to expect, that they may attend [school] without fear of sexual assault or harassment!" and to expect recipients to respond promptly to complaints

For respondents, a "finding of responsibility for a sexual offense can have a 'lasting impact' on a student's personal life, in addition to [the student's] 'educational and employment opportunities' [.]" Although these interests may differ, each represents high-stakes, potentially life-altering consequences deserving of an accurate outcome

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Thank You!



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