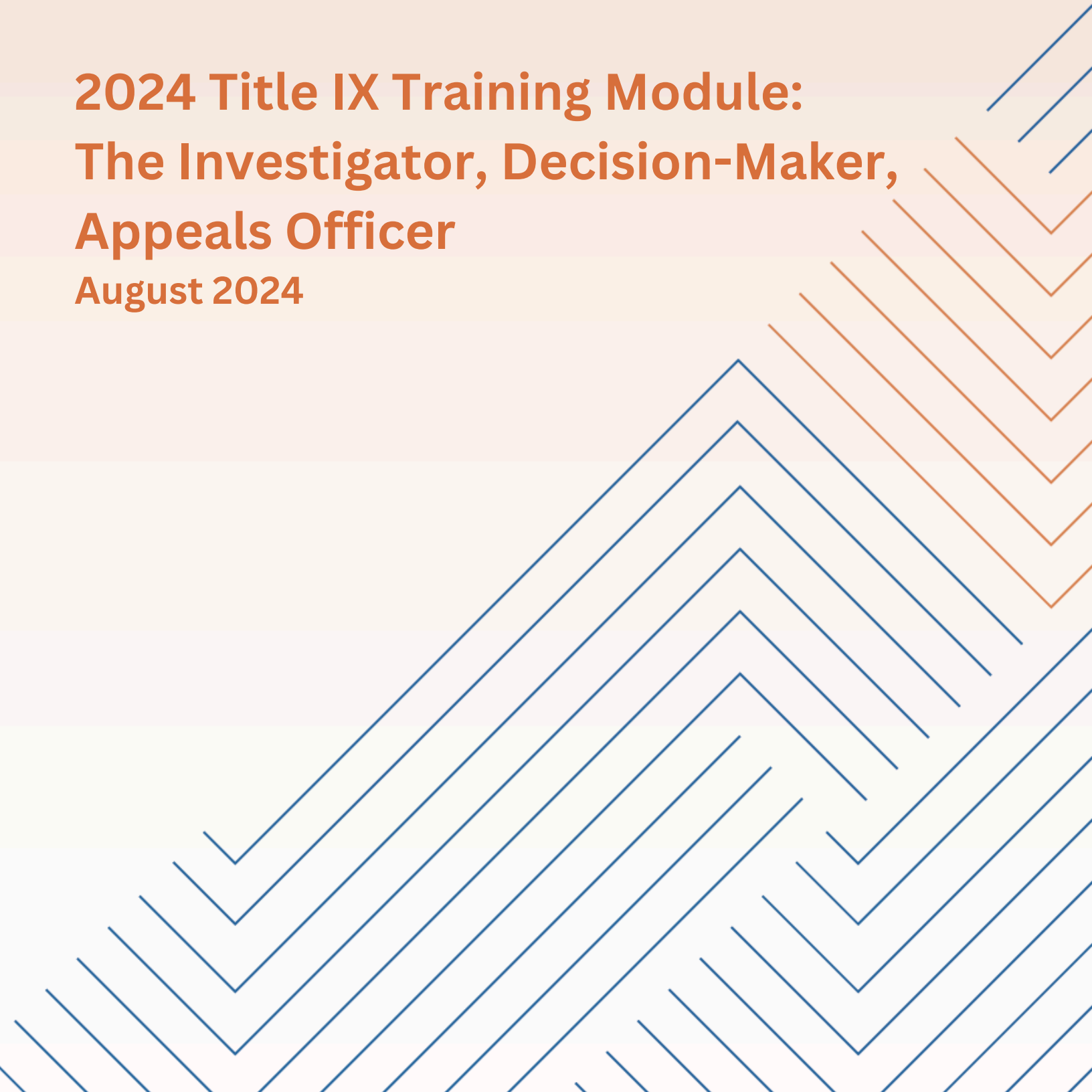


# **2024 Title IX Training Module: The Investigator, Decision-Maker, Appeals Officer**

**August 2024**



# The Investigator, The Decision-Maker, and the Appeals Officer

August 2024

Pamela A. Leist  
pleist@ennisbritton.com

Robert J. McBride Sr.  
rmcbride@ennisbritton.com

C. Bronston McCord III  
cbmccord@ennisbritton.com

Hollie F. Reedy  
hreed@ennisbritton.com

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## Introductory Thoughts for Investigators, Decision-Makers and Appeals Officers

These are three BIG roles in the scheme of Title IX

There are similarities among the roles, which is why we are discussing them together!

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## Title IX: The Basics

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### Title IX

- Title IX prohibits discrimination in federally funded educational programs on the basis of sex.
- Title IX was enacted in 1972 as part of amendments to the Higher Education Act of 1965.
- Any school district receiving any Federal funds must comply with Title IX.
  - Regulations provide details for compliance
  - Regulations were updated in 2020 and again in 2024\*
- The US Department of Education's Office for Civil Rights (OCR) enforces Title IX.

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## Common Ground: What is Sexual Harassment Anyway?



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## 2020 Sex-Based Harassment

Quid pro quo harassment- Conditions the provision of an aid, benefit or service on an individual's participation in unwelcome sexual conduct

Specific offenses: sexual assault, dating violence, stalking, domestic violence

Hostile environment harassment- Conduct that is determined by a reasonable person to be:

1. Unwelcome
2. Severe,
3. Pervasive, **and**
4. Objectively offensive
5. That it **effectively denies** a person's ability to participate in or benefit from the educational program or activity.

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## 2024 Sex-Based Harassment:

Quid pro quo harassment- Unwelcome conduct by an employee, agent, or other person offering aid, benefit, or service under the educational programs or activities of the entity while explicitly or implicitly conditioning the same on participation in unwelcome sexual conduct

Specific offenses: sexual assault, dating violence, stalking, domestic violence

Hostile environment harassment- Conduct that is:

1. Unwelcome
2. Sex-based
3. Subjectively **and** objectively offensive
4. So severe **or** pervasive
5. That it **limits or denies** a person's ability to participate in or benefit from the educational program or activity.

## Comparing the Changes on Hostile Environment

- On hold - 2024:
  - Unwelcome sex-based conduct that based on totality of circumstances is subjectively **and** objectively offensive **and** is so severe **or** pervasive it **limits or denies** a person's ability to participate in or benefit from the educational program or activity.
- 2020 – Ongoing pending court action:
  - Unwelcome sex-based conduct must be “so severe, pervasive **and** objectively offensive” that it **effectively denies** access to or participation in education programs or activities.

## Common Ground: Scope of Title IX

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### Scope of Educational Program or Activity

- The 2020 regulations apply only to sex discrimination occurring against a person **in the United States and** that discrimination is a **part of the educational program or activity**.
  - On school grounds or situations/events over which the school exercises “substantial control.”
  - Fact-specific analysis to review the allegations and whether the discrimination is on school property, during a school activity, has a nexus to school, etc.
- Note: the 2024 regulations (not currently in effect in Ohio) amended the scope to administer Title IX in educational programs and activities and now includes conduct that occurs off campus and even outside the U.S. Under the 2024 regulations, the question as to whether Title IX applies is “... whether the recipient has disciplinary authority over the respondent’s conduct in the context in which it occurred.”

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## Precautions on Policy Crossovers

- These claims are not only against the other sex.
- Bullying also may be sexual harassment. Sexual harassment must be processed in accordance with Title IX.
- While the context of the school setting can be considered in determining whether conduct is inappropriate, beware of generalizations (e.g. “boys will be boys”).
- Be mindful of application outside of the school building (field trips, athletic events, banquets, class trips, school concerts, etc.)

## Common Ground: A Glance At Conflict of Interest & Bias



## Being Impartial and Unbiased

- Serving impartially means avoiding prejudice of the facts at issue, conflicts of interest, and bias.
- **Key:**
  - Presumption that the respondent is not responsible for the alleged conduct and that a determination will be made on responsibility at the conclusion of the grievance process.
- Prohibited prejudice would include:
  - Assuming what happened if there are 'signs' suggesting truth or falsity.
  - Assumptions based on sex or other stereotypes.
- Being unbiased requires an objective approach that does not prejudice or have a preference for the complainant or the respondent, or the characteristics of the parties.

## Conflict of Interest

- There are no specific examples of a conflict of interest in the regulations; this is left to the discretion of the school district.
- Conflict of interest:
  - When a personal interest or relationships might interfere with a school employee's ability to act neutrally on a complaint regarding a staff member, student or other person.
  - When a person working on a particular matter may not be impartial due to the circumstances or persons involved. Conflicts may be:
    - » **Direct** (actual issue between personal interests/relationships and official responsibilities),
    - » **Perceived** (someone might believe there is a conflict) or
    - » **Potential** (conflict could develop).
  - **Disclose potential conflicts before serving on the matter.** District can always get someone else to avoid a claim of conflict or bias.

## Conflict of Interest

- A conflict of interest could be present when:
  - The Title IX staff demonstrates preference for or against complainants or respondents generally, or;
  - Title IX staff has a conflict with a particular complainant or respondent;
  - Examples: assuming everything a complainant says is true, or scrutinizing factual inconsistencies or errors of respondents more closely as this would be inconsistent with prohibition on prejudging the facts, conflict of interest, or bias.
- One of the bases for an appeal of a decision-maker's decision is that a conflict of interest or bias affected the decision.

## Treatment of Parties

- Title IX requires a district's grievance procedures to treat complainants and respondents equitably.
- Any person designated as a Title IX coordinator, investigator, or decision-maker may not have a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent.
- Respondents are presumed to be not responsible for the alleged discrimination until a determination is made at the conclusion of the grievance procedures.

## Restrictions to Serve in Other Positions

- An investigator in the District's grievance procedures may not serve as the facilitator for the informal resolution process.
- The decision-maker may not be the same person as the investigator.
- Title IX Coordinator MAY serve as the investigator (but not as the decision-maker).
- Decision-maker for *appeal* may not be same decision-maker below, investigator, Title IX Coordinator, or anyone who took part in investigation or dismissal of complaint.

## 2024 Differences



Would allow a single investigator model where the Title IX Coordinator, investigator and decision-maker could be the same person.



Individual circumstances of the school district allow for determination based on local factors- update policy and regulations accordingly.

## Let's Get Started! It Begins with Knowledge . . .

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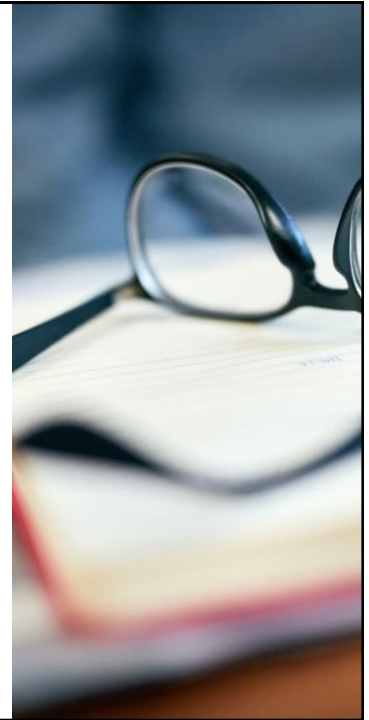
### “Actual Knowledge” Defined

- When any school employee has notice of sexual harassment
  - A report to any school employee
  - A report from any individual
  - Personal observation by any school employee
  - “various other means”
- When notice is received this starts the clock on responding to the complaint promptly.
  - This means notice must very quickly result in a report to a Title IX coordinator

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## “Actual Knowledge” of What?

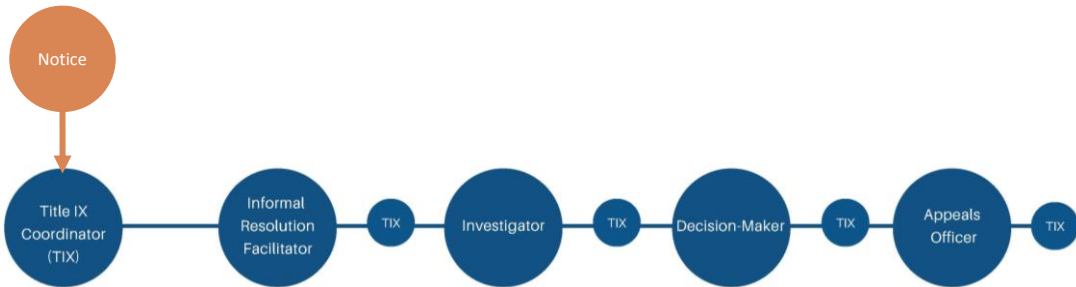
- There are many examples in which notice of sexual harassment may be obtained other than by direct complaint:
- Examples:
  - Teacher hears a rumor about a sexual relationship between another teacher and a student;
  - A staff member watching a student speak in a sexually inappropriate way to another student;
  - The school receiving notice that an off-campus sexual violence event is creating retaliation at school.
  - Incident on the bus where a student grabs another student.
- Although the law is still not quite settled on what constitutes notice, it is recommended these types of instances be reported to the district’s Title IX coordinator for follow-up.



## When Must a Complaint be Submitted?

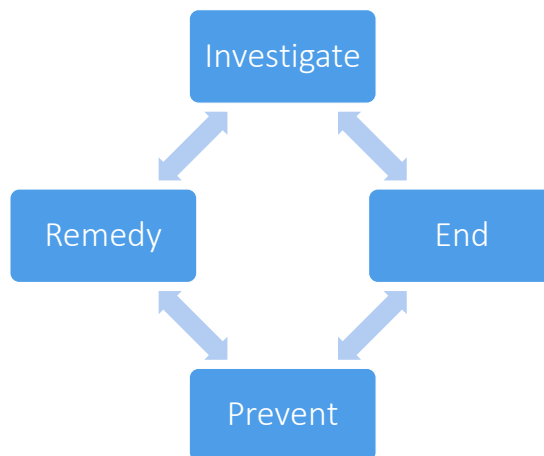
- There are **no timelines** to initiate a complaint.
  - Statutes of limitations don’t really confine Board’s duty to investigate.
  - Policy may recommend that individuals make every effort to report within a certain number of days. However, from an investigation standpoint... the sooner the better.
  - Failure to adhere to this deadline **is not** sufficient reason to ignore the investigation process.

## The Line-Up



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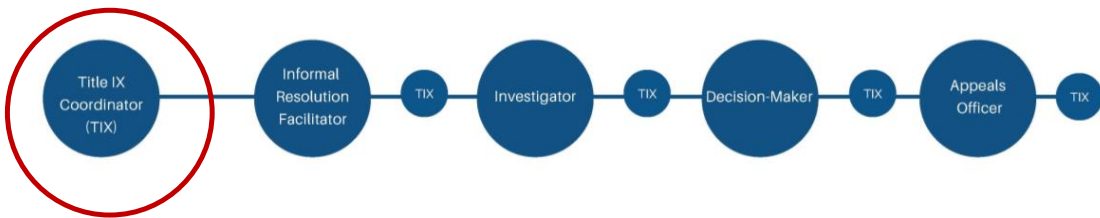
## District's Title IX Obligations with Respect to Sexual Misconduct



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## A Quick Glance at the Title IX Coordinator's Role

## The Line-Up



## Title IX Coordinator: Designation and Notice

- Every school receiving federal funds must designate at least one Title IX Coordinator who must be referred to as the “Title IX Coordinator.”
- Specific contact information for the Title IX Coordinator must be communicated to:
  - All applicants for admission
  - All applicants for employment
  - Current students and their parents/guardians
  - Current employees
  - All unions or employee organizations with collective bargaining agreements with the school

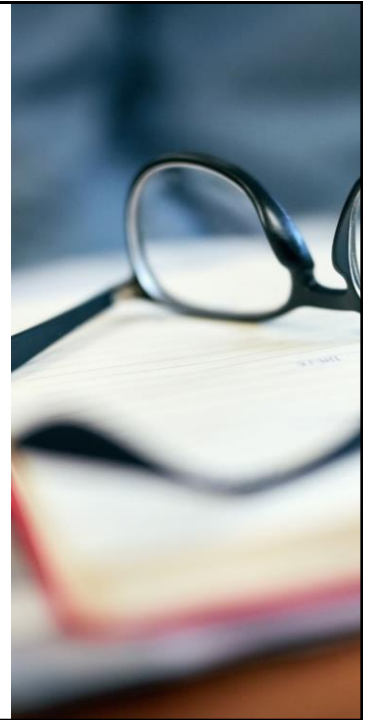
## Title IX Coordinator: Designation and Notice

- Specific contact information of the Title IX Coordinator listed must include:
  - Name or title\*
  - Office address
  - Electronic mail address
  - Telephone number
- This contact information must be “prominently displayed’ on the school’s website and in each handbook or catalog made available to the individuals listed on the previous slide.
  - Student codes of conduct
  - Employee handbooks
  - Prospective student catalogs
  - Each of these items must include how to report or file a complaint.



## Conducting the Investigation and Grievance Process

- Title IX Coordinator responsible for receiving:
  - Reports of conduct that could meet the definition of sex discrimination or harassment
  - Formal complaints of sex discrimination or harassment
- Remember – Actual knowledge occurs when notice is received by an official of the school who has the authority to institute corrective measures or an employee of the school.
  - It is not only when the Title IX Coordinator receives notice.



## Conducting the Investigation and Grievance Process

- Actual knowledge is communicated to the Title IX Coordinator resulting in the following required actions:
  - Title IX Coordinator **promptly contacts** the complainant with information regarding supportive measures
  - Title IX Coordinator **discusses** the options of supportive measures with the complainant, including if they are available with or without a formal complaint
  - Title IX Coordinator **explains** the formal complaint process to the complainant

## Supportive Measures Defined:

- “Individualized services reasonably available that are:
  - nonpunitive,
  - non-disciplinary, and
  - not unreasonably burdensome to the other party
  - while designed to ensure equal educational access, protect safety, or deter sexual harassment.”
- Examples: changing classes, stay away orders, different schedules, assigning buses, guidance counselor access, checking in regularly, etc., etc.



## Supportive Measures

- 2024 regulations further refined “supportive measures” to state that supportive measures:
  - May vary depending on what the recipient deems to be reasonably available.
  - Must not unreasonably burden either party.
  - Must be designed to protect safety of the parties or provide support during the recipient’s grievance procedures or informal resolution process.
  - Not imposed for punitive or disciplinary reasons.
  - May modify, terminate, or continue supportive measures at the end of the grievance procedure or informal resolution process.
  - If modified or terminated, must provide timely opportunity to complainant/respondent to challenge the decision with an impartial employee.
  - Must not be the employee who made the decision.
  - If there is a material change in circumstances, complainants/respondents may seek a modification of supportive measures.

## Conducting the Investigation and Grievance Process

- Formal complaint is filed. 2020 regulations require written and signed complaint.
- Title IX Coordinator may consider informal resolution, if appropriate.
  - **Never** appropriate when a staff member is the respondent.
- Title IX Coordinator may offer informal resolution to the complainant provided the parties involved are provided with written notice of the allegations, the requirements of the informal resolution, and the ability for either party to withdraw from the informal resolution process at any time.
  - Must have **voluntary, written consent**.

## Complaints – Ability to Dismiss

- Coordinator decides if there are reasons to dismiss:
  - Outside of scope of educational program or activity; or
  - Even if true the allegations would not constitute sexual harassment as defined in statute and school policy; or
  - Respondent is no longer enrolled or employed; or
  - Circumstances prevent recipient from gathering evidence sufficient to reach a determination.\*

## Conducting the Investigation and Grievance Process

- If still moving forward with formal complaint, the Title IX Coordinator is the coordinator of the process.
- Title IX Coordinator
  - Serves as or assigns an investigator
  - Sends Notice of Allegations

## Title IX Coordinator: Additional Responsibilities

- Keep records for 7 years
  - Training materials to be collected and posted on school's website
  - Investigatory and appeal records, including recording or transcript
  - Disciplinary sanctions and remedies provided
  - Informal resolution and results
  - Supportive measures documentation
  - Denial of supportive measures documentation

## Title IX Coordinator: Additional Responsibilities

- Oversee/provide training in compliance with Title IX
- Identify and address patterns and/or systemic problems
- Monitor students' participation in athletics & extra-curricular activities (disproportionality)
- Monitor students' participation in academic programs (disproportionality)

## Part 1: Understanding The Investigator Role

## Investigators: Training Requirements

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### Investigator Training Requirements

- Relevance of questions and evidence for reporting
- Relevance of sexual predisposition or prior sexual behavior for reporting
- Same as Title IX Coordinator:
  - Statutory definition of sexual harassment
  - Scope of educational program or activity
  - How to serve impartially – avoiding prejudgment of facts, conflicts of interest, bias
  - Conducting an investigation and grievance process

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## Investigators: Managing the Grievance Process

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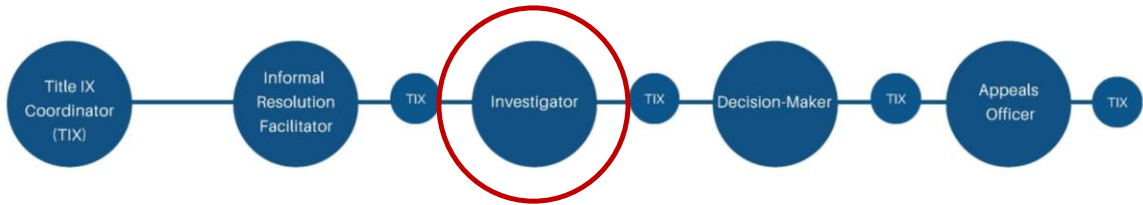
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### Your District's Grievance Process

- You are responsible for familiarity with the grievance process, from reporting actual knowledge of sexual harassment, taking a formal complaint, through evaluation, investigation, decision and appeal.
- OSBA policy or NEOLA policy and regulations.
- The grievance process begins with a formal complaint signed by the Complainant or Title IX Coordinator, alleging sexual harassment and requesting an investigation.

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# The Title IX Line-Up



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## Investigator: Duties During the Investigation

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## Your Mission

- Investigate allegations in the formal complaint.
- Title IX Coordinator will draft a notice of allegations informing the parties about the allegations.
- Then, you will send a notice to the parties and witnesses for investigative interviews (date, time place, participants, and purpose).
  - Complainant(s)
  - Witnesses
  - Respondent(s)
  - Give sufficient time to prepare and arrange representative
- Discuss the allegations under investigation.

## Duties of the Investigator

- The burden is on the investigator, not either of the parties, to gather sufficient evidence to allow the decision-maker to determine whether sex discrimination occurred.
- Investigator is charged with collecting information and evidence and evaluating whether that evidence is **relevant and permissible** consistent with Title IX.
- Investigators must provide each party with an equal opportunity to:
  - Present fact witnesses and other **inculpatory and exculpatory evidence** that is relevant and not otherwise impermissible, and
  - **Access the evidence** that is relevant to the allegations of sex discrimination and not otherwise impermissible.

## Investigation of Complaints



Districts must provide for adequate, reliable, and impartial investigation of complaints.



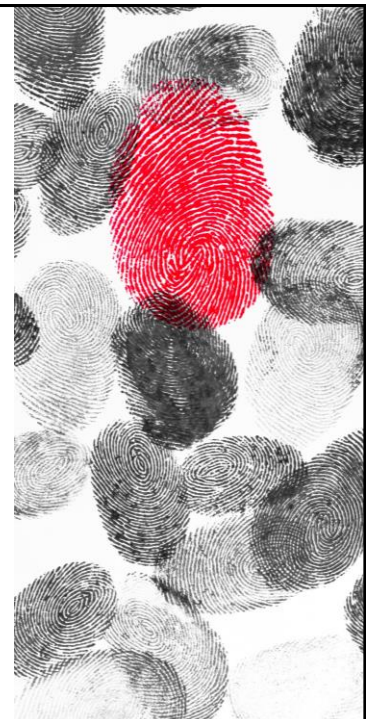
To accomplish this, the investigator must gather and review the **relevant** evidence while providing each party with an equal opportunity to present and review evidence throughout the investigation while remaining impartial and without bias.



Make a thorough search for relevant facts and evidence.

## Additional Allegations During Investigation: Action item

- During the investigation, additional allegations may arise.
- If this occurs, give additional notice to the parties of the additional allegations, including the time, date, place, identity of parties, etc. of the new allegation(s).



## Investigators: What is “Evidence?”

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## Evidence Basics

- Investigators have the burden to evaluate evidence to determine if it is relevant to the alleged discrimination at issue in the complaint.
  - Certain types of evidence are presumed to be impermissible, regardless of how relevant it may be to the investigation.
  - But there are exceptions that allow otherwise impermissible evidence to be admitted in specific circumstances.
  - Note: The 2024 regulations place an added emphasis on evidence that is “relevant and not otherwise impermissible.”

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## What is “Relevant”?

- “Relevant” means it is related to the allegations of sex discrimination under investigation as part of the District’s grievance procedures.
  - **Questions** are relevant when they seek evidence that *may* aid in showing whether the alleged sex discrimination occurred.
  - **Evidence** is relevant when it *may* aid a decision-maker in determining whether the alleged sex discrimination occurred.
  - **Dictionary says:** “relevant” means: having a significant and demonstrable bearing on the matter at hand; affording evidence tending to prove or disprove the matter at issue or under discussion.

## Impermissible Evidence

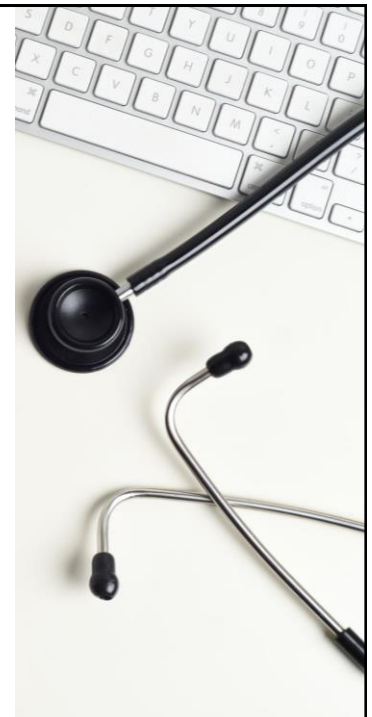
- The following types of evidence or questions are impermissible regardless of their relevance (unless an applicable exception applies):
  - Privileged evidence
  - Medical records
  - Evidence of the complainant’s prior sexual interests or conduct.

## Privileged Evidence

- Evidence that is protected under a privilege recognized by Federal or State law (or evidence that is provided to a confidential employee per the 2024 regulations).
  - Unless the person to whom the privilege or confidentiality is owed has **voluntarily waived** the privilege or confidentiality.
- Examples of federally recognized privileges:
  - Attorney-client privilege
  - Marital privilege
  - Psychotherapist-patient privilege

## Medical Records

- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness.
- Unless the recipient obtains that party's or witness's **voluntary, written consent** for use in the recipient's grievance procedures.



## Complainant's Prior Sexual Conduct

- Evidence that relates to the complainant's sexual predisposition is not relevant evidence and should not appear in the report.
- Evidence of prior sexual conduct is deemed not relevant by the regulations, **unless**:
  - The evidence is offered to prove that someone other than the respondent committed the alleged conduct, or
  - Is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment.
    - » The fact of prior consensual sexual conduct between the parties does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

## Parties' Rights to Access Evidence

- Equal opportunity to access the evidence must be provided in the following manner:
  - Provide a **reasonable opportunity to respond** to the evidence or to the accurate description of the evidence; and
  - Take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures.
    - » Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

## Investigation

- The burden of collecting evidence sufficient to make a determination of responsibility is on the school district, not the parties.
- Provide an equal opportunity for complainant and respondent to offer evidence (inculpatory or exculpatory), including fact and expert witnesses.
- On the same basis, allow parties to have a representative at meetings, but district may regulate the participation of those representatives.
- Give the parties or witnesses notice of time, date, place, participants and purpose of interviews with sufficient time to prepare.

## Notable Changes in 2024 Regulations

- New regulations emphasize that the investigation will focus on relevant evidence and removed a reference to expert witnesses.
- Although the parties still have a right to review relevant evidence, the District is no longer required to provide the parties with an electronic or hard copy of the evidence, but may instead provide a summary of the evidence.\*
- The new regulations removed a requirement that Districts needed to give parties at least 10 days to respond to the evidence and consider that response before writing the investigative report.
- "Gag orders": New regulations left out 2020 provisions that prohibited Districts from restricting either party's ability to discuss the allegations under investigation and required LEAs to allow parties to have other individuals present during the grievance procedure.

## Investigator: Completing the Investigation

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## Time Frames for Investigations

- Districts are required to establish *reasonably prompt* timeframes for the major stages of the grievance procedures, including for investigations (34 CFR 106.45).
- Must have a process that allows for the reasonable extension of time frames on a case-by-case basis for good cause.
  - Required to provide notice to the parties in the event of an extension that includes the reason for the delay.
  - Provide this notice in writing to the parties.

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## The Investigation Process and Timeline

Confirm Title IX Coordinator has discussed supportive measures and coordinate regarding same.

Title IX Coordinator will notify parent/guardian of complainant and respondent of allegations (including basic details), assumption of respondent is not responsible, applicable policy/procedures.

1. Review the complaint.
2. Identify sources of evidence and investigate – plan to allow parties sufficient time to prepare. Send notice of investigative interview and allow time to prepare/get representative.
3. Present parties a draft report and all evidence directly related to allegations **at least 10 days** before finalizing report. Allow a written response. (Work with Title IX Coordinator.)

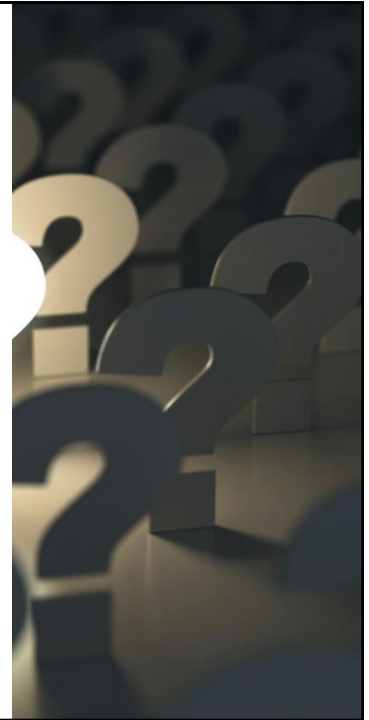
## The Investigation Process and Timeline

4. Consider written responses before finalizing report.
5. Draft final report summarizing relevant evidence. Present to parties **at the same time, and at least 10 days** before sending to decision-maker.
6. Send notice, written responses, evidence, and final report to decision-maker.
7. After investigative report sent to parties and prior to hearing or determination of responsibility, allow for written questions submitted by either party and directed at witnesses or parties. Provide answers. Allow for follow-up questions. Provide answers. (Offer a hearing if provided in your policy)
8. Decision-maker or Title IX Coordinator will notify parties of determination of responsibility, and discuss the right to appeal.

Do all of this in a “reasonably prompt” time frame.

## Gathering Evidence

- Have a list of questions for each witness or party.
  - It helps to ask witnesses essentially the same questions but may clarify or expand if additional topics come up.
  - Use the pause
  - Who else should I talk to?
- Order of interviews
  - Complainant(s)
  - Witnesses, if any
  - Respondent(s)



## Getting the Information

- Use open-ended questions (who, what, when, how)
- Try to avoid close-ended questions (Did you..., were you...)
- Avoid suggesting an answer in your question or phrasing a question to get a specific answer.
- Work from a prepared outline/list, but stay flexible.
- Listen carefully and seek to clarify terms that can have multiple meanings or a spectrum of meanings such as “acted creepy” “sketchy” or “bad vibes.”
- Be aware of distinctions like someone “heard” (hearsay), what a person assumed (circumstantial), and what was actually “witnessed” (facts).
- Be aware of your own body language. Stay neutral, even if you hear something you distrust or dislike. You are a neutral party, not a detective seeking to build a case.
- Restate or summarize what the person is saying for clarity. “What I hear you saying is....” or “Tell me more about... ”
- Take your time, take good notes.

## Factors to Consider with a Hostile Environment Claim

- The degree conduct affected the complainant's ability to access education programs and services.
- The type, frequency, and duration of conduct.
- The parties' ages, roles, previous interactions, and other relevant factors to evaluate the effects of the conduct.
- The location and context of conduct.
- Other sex-based harassment in programs or activities of the school district.

## Investigator: Writing the Report

## The Report

- The investigation report must contain a summary of the relevant evidence collected.
- Refer to the policy and procedural steps.
- Refer to the dates and times of actions, including your actions.
- Summarize evidence reviewed, including witness interviews.
- Review efforts to interview or collect evidence that were unsuccessful.

## May the Investigation Report Contain Recommendations?

- The investigator's report is not required to make a recommendation on determination of responsibility....but it may.
  - Investigators may include recommended findings or conclusions.
  - Investigators may make notes on credibility.
  - The decision-maker has to independently review the evidence and may not simply defer to recommendations, if included.

## Part 2: Understanding the Decision-Maker Role

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## Decision-Maker: Training Requirements

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## Decision-Maker Training Requirements

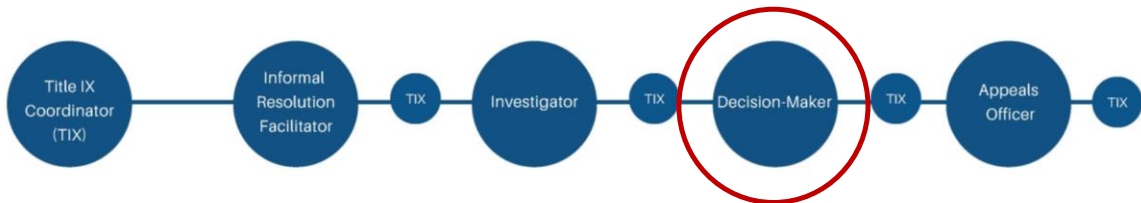
- Technology for live hearings (if applicable)
- Relevance of questions and evidence
- Relevance of sexual predisposition or prior sexual behavior
- Same as Title IX Coordinator:
  - Statutory definition of sexual harassment
  - Scope of educational program or activity
  - How to serve impartially – avoiding prejudgment of facts, conflicts of interest, bias
  - Conducting an investigation and grievance process

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## Decision-Maker: Overview of Responsibilities

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## The Title IX Line-Up



## Your Role: Determination of Responsibility

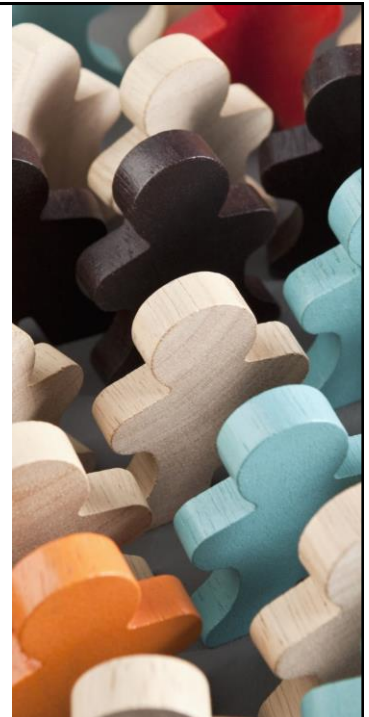
- The investigator may not be the decision-maker or part of a decision-making committee.
- The decision-maker must review the report and apply the board-adopted standard of evidence (likely preponderance of the evidence) to determine responsibility.
  - Preponderance of the evidence: Is it more likely than not that the alleged facts occurred.
  - Clear and convincing: Highly probably that the facts alleged are true. Not as high a standard as beyond a reasonable doubt.
- The same standard will apply in all Title IX cases you decide.

## Your Role: Determination of Responsibility

- The decision-maker must dismiss any complaint that does not meet the regulation's definition of "sexual harassment" or that does not occur in a school's education program or activity and within the US.
  - Such a dismissal does not prohibit application of other school rules and discipline, but brings to an end any Title IX proceedings (except for an appeal of the dismissal)
- Unless a complaint is dismissed, there must be a determination of responsibility.

## Your Role: Providing Due Process

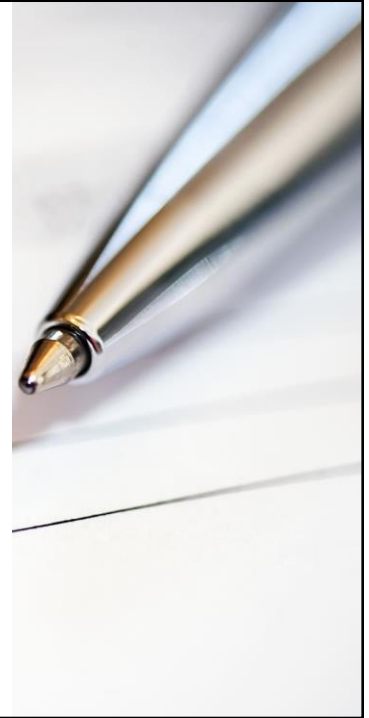
- Substantive due process:
  - Decision is impartial and made in good faith, free of conflict or bias.
  - The decision is based on the policy and is not arbitrary or capricious.
  - The decision is rationally related to the evidence and based on it.
- Procedural due process:
  - You complied with the policy and grievance process.
  - You thoroughly reviewed the allegations, documents and evidence.





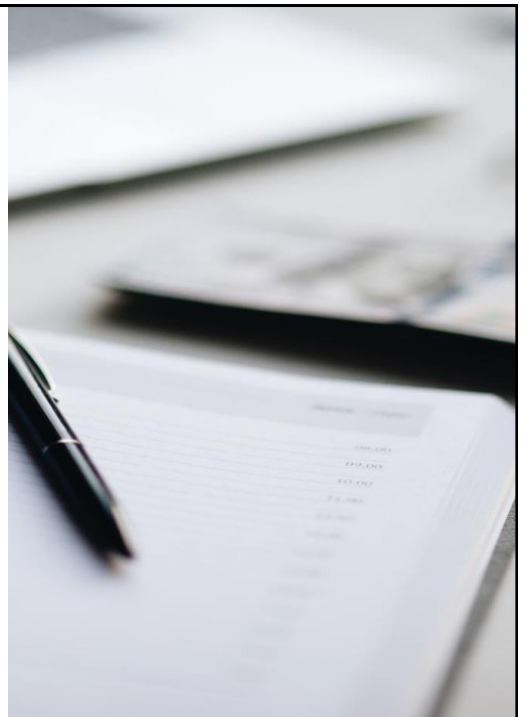
## Determination of Responsibility

- After investigative report sent, and prior to making determination of responsibility, offer opportunity for parties to ask relevant questions and gather and provide answers, with limited follow up. You determine relevance of questions. Check your policy/regulation for the specific process the district will follow.
- Review the investigation report, written statements, evidence collected and any questions and answers.
- Remember to treat the parties equally. The complainant is not given an extra weight.



## Determination of Responsibility

- You decide what evidence is credible and its relevance in determining whether the allegations are more likely than not to be true.
- Weigh both inculpatory and exculpatory evidence that is relevant, not on the skill in presenting it of the complainant or respondent or their advisors.
- Not all evidence should be weighed equally.



## Relevance

- Evidence is generally considered **relevant** if it has value in proving or disproving a fact at issue.
  - Regarding the allegation(s) and/or–
  - Regarding the credibility of parties or witnesses.
- Investigator may have included evidence in the investigation report they considered relevant, but the decision-maker is **not bound** by these determinations.
  - Examples: If investigator's report contains credibility determinations, recommends an outcome, whether policy was violated, how evidence should be interpreted, etc.
- The decision-maker is free to accept or reject any recommendation of the investigator. May ask investigator for clarity.

## Writing the Determination of Responsibility

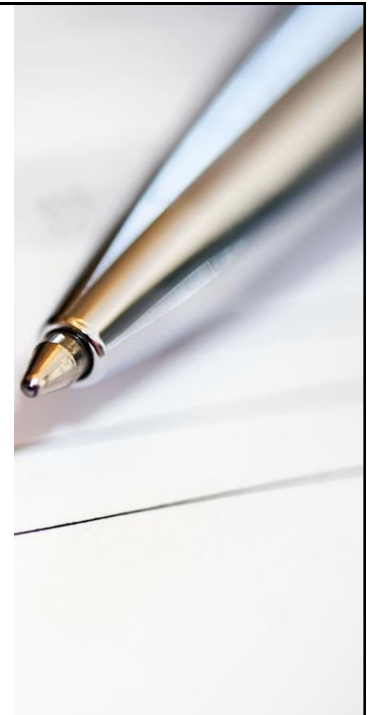
- Include the allegations (and be specific).
- Describe the timeline of events and procedural steps of the grievance process that were followed.
- Make a **finding of fact** for each allegation.
- Explain the rationale for the determination of responsibility on each allegation, referencing evidence/witness interviews.
- Note what policies were violated, if any.
- Note that all evidence and submissions of parties were reviewed.
- Include disciplinary actions as applicable and any remedies provided to the complainant.
- Add information regarding appeal rights and timeline.

## Privacy and Personally Identifiable Information

- School districts must not disclose PII obtained through this process except when:
  - Written consent given, or
  - When disclosed to a parent, guardian or other authorized legal representative with the right to receive disclosures, or
  - To carry out its duty to address conduct that reasonably may constitute sex discrimination, or
  - As required by federal law, regulations, federal grants, or
  - When required by state or local law and not in conflict with the regulations or when permitted by FERPA.

## Making the Call

- Coordinate the sending of the decision with the Title IX Coordinator.
- The decision is in writing, sent simultaneously to both parties and includes:
  - Findings of fact;
  - Conclusions about whether the alleged conduct occurred
  - Rationale for findings as relates to each allegation;
  - Disciplinary sanctions to be imposed on respondent (if any);
  - Remedies provided to the complainant (if any); and
  - Offer of an appeal process to either party.



## Characteristics of an Effective Response to Confirmed Harassment

Must be **tailored** to the situation

Must be **reasonably calculated** to address behavior

Must set **good precedent** for issues down the road

**Consistent** application

Must be **ongoing**

*Must be reevaluated in the future – Title IX Coordinator’s Role*

## 2024 Changes to Determination of Responsibility

- Revised provision- still requires the district to issue a written decision.
- But with less paper? Written determination must include only the rationale behind the decision and the procedures and permissible bases for the complainant and respondent to appeal.
- **What would change?**
  - Less stringent requirements as to what the decision-maker must include in the written decision (2020 regulation content requirements are not included in the 2024 regulations)
- **Potential Impact?**
  - Less burdensome for the decision-maker when writing the decision

## Part 3: Understanding the Appeals Officer Role

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## Appeals Officer: Training Requirements

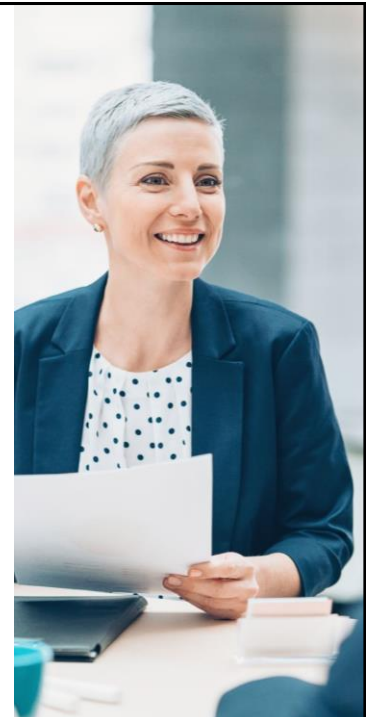
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## Appeals Officer Training Requirements

- ❑ Relevance of questions and evidence
- ❑ Relevance of sexual predisposition or prior sexual behavior
- ❑ Same as Title IX Coordinator:
  - ❑ Statutory definition of sexual harassment
  - ❑ Scope of educational program or activity
  - ❑ How to serve impartially – avoiding prejudgment of facts, conflicts of interest, bias
  - ❑ Conducting an investigation and grievance process

## Appeals Officer Essentials

- **Appeals officer must not** be the Title IX Coordinator, Investigator, or Decision-maker

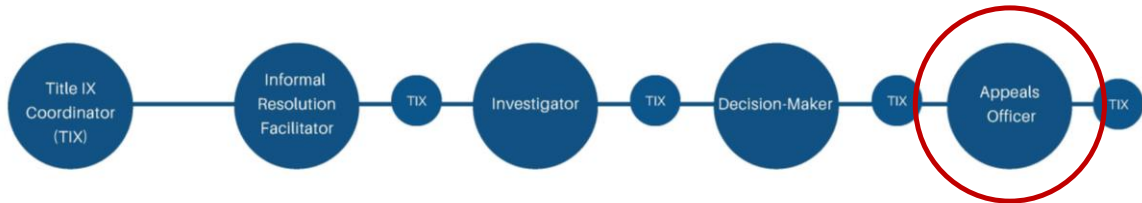


## DoR and Right to Appeal

- **Determination of Responsibility** becomes final either:
  - On the date that the recipient provides the parties with written determination of any appeal (if one is filed), OR
  - The date when an appeal is no longer timely.
- Must provide **both parties** with an **equal opportunity** to appeal
- Appeal occurs **either** after determination of responsibility **or** dismissal of formal complaint
- **Role is not to second guess the decision-maker**
  - Not a de novo appeal
  - Bases for appeal are limited

## Appeals Officer: Appeals Process and Responsibilities

## The Title IX Line-Up



## Appeals Process Requirements

- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- 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;
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- Issue a written decision describing the result of the appeal and the rationale for the result; and
- Provide the written decision simultaneously to both parties.



## Appeals Officer

- If the decision is appealed, the Appeals Officer reviews that determination.
- Mandatory bases for appeal:
  - **Procedural irregularity** that affected the outcome of the matter
  - **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
  - 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.
  - **Note:** *Enjoined 2024 regulations no longer list the bases for appeal. Instead, the appeals process must, at a minimum, mirror the processes for comparable appeals.*
- Recipients may offer an appeal on additional bases (but must still be equal for both parties)
  - Example: someone was issued a disproportionate sanction

## What are Procedural Irregularities?

- Failure to follow the grievance process
- Erroneous relevance determination

## Appeals Regarding Complaint Dismissals

- An example might include complaints that were dismissed because it was determined that the alleged action did not meet the definition of sexual harassment.
- This dismissal may be appealed by the Complainant:
  - Asserting newly-discovered evidence that demonstrates the alleged action does meet the definition of sexual harassment.
  - Asserting a procedural irregularity on the basis that the conduct does in fact meet the definition and thus mandatory dismissal was not appropriate.

## Analyzing Appeals Through Three Simple Questions

- **Question 1:** Do sufficient grounds exist for at least one basis of appeal (procedural violation, new evidence, bias/conflict, etc.)?
- **Question 2:** is there any merit to the appeal (evidence of procedural violation, bias, etc.)?
- **Question 3:** IF there is merit, did it affect the outcome (or if there is new evidence, would it have affected the outcome)?



## Appeals Officer Written Decision Components

- Names of Complainant(s) and Respondent(s)
  - Date of Appeal
  - Issues on Appeal
  - Decision with Rationale for the Result
    - » Regulations require “reasoned written decisions describing the appeal results.”
  - Signature of Appeals Officer
- Again, written decision must be provided simultaneously to parties
- Document this if you can!

## Wrapping Things Up

- Each role we discussed today is part of a system
- Your Title IX investigator is the glue that holds the process together
- Don't be shy when you run into issues
  - Connect with coordinators
  - Call legal counsel



## Questions?

Pamela A. Leist

[pleist@ennisbritton.com](mailto:pleist@ennisbritton.com)

Robert J. McBride Sr.

[rmcbride@ennisbritton.com](mailto:rmcbride@ennisbritton.com)

C. Bronston McCord III

[cbmccord@ennisbritton.com](mailto:cbmccord@ennisbritton.com)

Hollie F. Reedy

[hreedy@ennisbritton.com](mailto:hreedy@ennisbritton.com)



## CONTACT US

### CINCINNATI OFFICE

1714 West Galbraith Road  
Cincinnati, Ohio 45239

Phone: (513) 421-2540  
Toll-Free: (888) 295-8409  
Fax: (513) 562-4986

### CLEVELAND OFFICE

6000 Lombardo Center  
Suite 145  
Cleveland, Ohio 44131

Phone: (216) 487-6672  
Fax: (216) 674-8638

### COLUMBUS OFFICE

8740 Orion Place  
Suite 315  
Columbus, Ohio 43240

Phone: (614) 705-1333  
Fax: (614) 423-2971

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