
NEW TITLE IX REGULATIONS

FOCUS: DECISION MAKING

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YOUR TITLE IX TOOLBOX



- Training materials from this session are available at the following link:

<https://scottscrivenlaw-my.sharepoint.com/:f:/p/julia/EsHO6vR3exZBlrdvRM2BIIUB6-gYEPbjqdvT8JN-ObaE8w?e=YDkq7d>

- The folder is your Title IX Toolbox.
- It also contains other useful resources we will reference during the training.

YOUR TRAINING OBLIGATIONS UNDER THE NEW TITLE IX REGULATIONS



TRAINING REQUIREMENTS



- Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an informal resolution process must receive training on:
 - the definition of sexual harassment in the regulations,
 - 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.

ROLE-SPECIFIC TRAINING REQUIREMENTS



- Districts must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in the regulations.

TRAINING REQUIREMENTS



- Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution must be made available on the school's website, if it has one.
- Training materials must be kept for 7 years.

TITLE IX BACKGROUND



TITLE IX BACKGROUND



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).

BACKGROUND ON TITLE IX REGULATIONS



U.S. Department of Education, Office for Civil Rights (OCR) issues a Dear Colleague Letter and Q&A; rescinds Obama-era guidance.

Sep. 2017

OCR released the highly anticipated final rule.

6 May 2020

?

2021

Nov. 2018

Notice of Proposed Rulemaking seeking comments on changes to the Title IX regulations.

14 Aug. 2020

August 14, 2020
• Final rule becomes effective.

TITLE IX BACKGROUND



- **Q: Whom does Title IX protect?**
- **A: Any person participating in an educational program in the United States that receives federal financial assistance.**
 - Students.
 - Staff.
 - Applicants for admission.
 - Visitors and community members.

TITLE IX BACKGROUND



- **Q:What does Title IX protect against?**
- A: Exclusion from participation in, or denial of benefits of, any educational program or activity on the basis of sex.

TITLE IX ENFORCEMENT – REGULATORY



- United States Department of Education’s Office for Civil Rights (“OCR”) oversees Title IX compliance. OCR also enforces other federal civil rights laws that apply to schools.
- OCR issues regulations regarding Title IX. See 34 C.F.R. Part 106.
- OCR has the power to receive complaints alleging violations of Title IX, investigate complaints, issue remedial measures and sanctions, and even take away a school’s federal funding for violations of Title IX.

TITLE IX ENFORCEMENT - LAWSUITS



- Individuals may file private lawsuits to seek awards of money damages.
- *Franklin v. Gwinnett Public Schools* (1992): Money damages are an available remedy in a private lawsuit alleging a school's intentional discrimination in violation of Title IX.
- *Gebser v. Lago Vista Independent School District* (1998): A school district is liable for failing to respond to a teacher's sexual harassment of a student if a school official who had authority to institute corrective measures on the district's behalf had **actual notice** of, and was **deliberately indifferent** to the teacher's misconduct.
- *Davis v. Monroe County Board of Education* (1999): A school district is liable for failing to respond to a student's sexual harassment of another student if the district was **deliberately indifferent** to known acts of harassment in its programs or activities, and the harassment was **so severe, pervasive, and objectively offensive** that it effectively barred the victim's access to an educational opportunity or benefit.

NEW TITLE IX TERMS AND DEFINITIONS



NEW TITLE IX LINGO (TERMS)



Recipients: School districts are now referred to as “recipients.”

Complainant: A person alleged to be the victim of conduct that could constitute sexual harassment.

Respondent: A person who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Supportive Measures: These are your “interim measures.”

Determination of Responsibility. Finding whether a person is responsible for sexual harassment.

Advisors: Parties may have an advisor, who may be an attorney, participate in the process.

NEW TITLE IX LINGO (DEFINITIONS)



Sexual Harassment: Conduct on the basis of sex that satisfies one or more of the following:

- 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 (i.e., *quid pro quo* sexual harassment);
- 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
- "Sexual assault," "dating violence," "domestic violence," or "stalking," as defined by the Clery Act.

NEW TITLE IX LINGO (DEFINITIONS)



Actual Knowledge

- Notice of sexual harassment or allegations of sexual harassment **to any employee.**

Obligation to Respond

- A school with **actual knowledge** of sexual harassment in a program or activity against a person in the U.S. must respond promptly and in a manner that is **not deliberately indifferent.**

NEW TITLE IX LINGO (DEFINITIONS)



Deliberate Indifference

- Failure to respond reasonably in light of known circumstances.
- (Old rule: The school must take immediate action to eliminate the sexual harassment or sexual violence, prevent its recurrence, and address its effects.)

NEW REQUIREMENTS



- Prescriptive grievance procedures.
- Reasonably prompt timeframes.
- Must select evidentiary standard.
- Abandonment of single investigator/decision-maker model.
- Jurisdictional decisions and dismissal of formal complaints.
- Lots of due process.

TITLE IX TEAM MEMBERS



Title IX Coordinator

Initially contacts and offers supportive measures. Assesses and sometimes files complaints. Documents and manages the process.



Investigator

Person designated to investigate, gather evidence and compile an investigation report.

(May be Title IX Coordinator).



Decisionmaker

Person who issues a written determination regarding responsibility.

Cannot be the same person as the Title IX Coordinator or the Investigator.



Appeals Designee

Must offer both respondent and complainant an opportunity to appeal.

Cannot be the same person as the Title IX Coordinator, Investigator, or the Decisionmaker.

NEW PROCESS



- Initial report
- Response to report
- Formal complaint
- Possible dismissal
- Informal resolution optional
- Investigation
- Hearings (optional)
- Decision/Determination of Responsibility
- Remedies/Discipline
- Appeal

SUPPORTIVE MEASURES



- *Supportive measures* means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
- Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.
- Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- Must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures.
- The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

JURISDICTION & DISMISSALS



JURISDICTION



- To file a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient.
- “Education program or activity” includes locations, events, or circumstances over which the recipient exercised **substantial control** over both the **respondent and the context** in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

JURISDICTION



- What about off campus conduct?
 - Jurisdiction may still lie if there is control over the Respondent and the context, even if it occurs off campus.
- For off-campus misconduct outside the jurisdiction of the district, there may be in-program effects.
- Even if no jurisdiction under Title IX, a non-disciplinary remedial response would be best practice.
- May also want to look to other policies and code of conduct.

MANDATORY DISMISSAL OF FORMAL COMPLAINT



- Must dismiss a formal complaint if:
 - The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the law/policy, even if proved;
 - If the conduct alleged did not occur in the recipient's education program or activity;
 - If the conduct alleged did not occur against a person in the United States.
- Such dismissal does not preclude other action under the District's code of conduct or other policies.

DISCRETIONARY DISMISSAL OF FORMAL COMPLAINT



- The District may dismiss a formal complaint or any allegations in the complaint if:
 - Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations;
 - The Respondent is no longer enrolled or employed by the District;
 - Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.
- Upon dismissal, must promptly send written notice of the dismissal and the reasons to the parties.
- Dismissal may be appealed to the appeals decision-maker.

JURISDICTIONAL APPEALS



- Apply the relevant standard.
- Issue written notice of decision within the timelines of policy.
- Note that dismissal under Title IX policy does not mean that nothing will happen.

DETERMINATION OF RESPONSIBILITY



NEXT STEPS – AFTER INVESTIGATION



- Must give the final report to both parties at least 10 days prior to a hearing, or determination, for their review and written response.
- The decision-maker either conducts a hearing or a conducts a written decision-making process that includes a question exchange.

HEARINGS



- Required for postsecondary institutions, which include vocational schools.
- K-12 school districts may choose to include hearings in their grievance processes but are not required to.
- If the grievance process includes a live hearing, the following is required:
 - The parties' advisors are permitted to ask live questions of the other party(ies) and witnesses.
 - Questioning must be conducted directly, orally, and in real time. At the same geographic location or connected by technology, at the option of the district.
 - If the hearing is conducted with all parties at the same geographic location, upon request, the district must facilitate questioning with the parties located in separate rooms and connected by technology.
 - The decision maker must determine whether each question is relevant before allowing the other party or witness to answer it.
 - If a party does not have an advisor present, the district must provide one for free.
 - In determining responsibility, the decision maker may only rely on statements by parties or witnesses who agree to be questioned.
 - The District must create a recording or transcript of the hearing.

WRITTEN DECISION MAKING PROCESS



- If the district opts not to include hearings in the grievance process:
 - No interaction between the parties or live questioning is required.
 - The district need not appoint a hearing officer.
 - Districts must:
 - Appoint a Decision Maker.
 - Afford each party an opportunity to submit written, relevant questions to the other party or witnesses.
 - Exclude questions that are not relevant and explain the reason for the exclusion to the asking party.
 - Provide each party with the answers to their questions.
 - Allow for additional, limited follow-up questions from each party.

WHO SHOULD THE DECISION MAKER BE?



- The Decision Maker must not be:
 - Biased.
 - Conflicted.
 - The Title IX Coordinator, the investigator, or the person who will hear the appeal (if there is one).
- The Decision Maker must be:
 - Appropriately trained.
 - Capable of timely reviewing the investigative report and making a determination of responsibility.

WHO MUST THE DECISION MAKER NOT BE?



- The decision maker must not be **biased**.
- Black's Law Dictionary: Bias is a mental inclination or tendency; prejudice; predilection.
- May not be biased for or against complainants or respondents generally.
- May not be biased for or against the individual complainants or respondents involved in the formal complaint.

WHO MUST THE DECISION MAKER *NOT* BE?



- The decision maker must not be **conflicted**.
- Black's Law Dictionary: "Conflict of interest" means a real or seeming incompatibility between one's private interests and one's public duties.
- May not have a conflict of interest in favor of or against complainants or respondents generally.
- May not have a conflict of interest in favor of or against the individual complainants or respondents involved in the formal complaint.

WHO MUST THE DECISION MAKER *NOT* BE?



- The decision maker must not be the Title IX Coordinator, the investigator of the complaint, or the person who will hear the appeal.

WHO *MUST* THE DECISION MAKER BE?



- The decision maker must be appropriately trained on:
 - The Title IX regulations' definition of sexual harassment.
 - The scope of the district's education program.
 - How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable. If live hearings are used, the decision maker must receive training in any technology to be used.
 - How to serve impartially, including by prejudgment of the facts at issue.
 - Conflicts of interest.
 - Bias.
 - Relevance of questions and evidence, including regarding the relevance of a complainant's sexual predisposition or prior sexual behavior.
 - Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

WHO *SHOULD* THE DECISION MAKER BE?



- The decision maker should be capable of timely reviewing the investigative report and making a determination of responsibility.
- A District administrator who has the power to discipline the Respondent.

THE DECISION-MAKING PROCESS



INVESTIGATION IS COMPLETE



- The investigator has considered the parties' responses, created an investigative report, and sent a copy of this investigative report to both parties and their advisors.
- The district has appointed a qualified and appropriate decision maker to reach a determination of responsibility.

DECISION MAKING PROCESS



- Before reaching a decision, the decision maker must:
 - Afford each party the opportunity to submit written, relevant questions that the party wants to ask of any party or witness.
 - Determine whether the question the party wants to ask is relevant and exclude any question that is not.
 - Provide each party with the answers to their questions.
 - Allow for additional, limited follow-up questions from each party.

WHAT IF A PARTY OR WITNESSES REFUSES TO ANSWER QUESTIONS?



- For districts conducting hearings: “If a party or witness does not submit to cross- examination at the **live hearing**, the decision maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision maker cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross- examination or other questions.”
- This requirement is specific to live hearings but proceed with caution in relying too heavily evidence provided by a party or witness who refuses to answer questions and thus may be considered to not have submitted to cross-examination.

DECISION MAKING PROCESS – ALLOWING QUESTIONING



- The decision maker may only allow **relevant** questions.
- What is a relevant question?
 - Relevance” is not generally defined in the regulations.
 - Under the Federal Rules of 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.

DECISION MAKING PROCESS – ALLOWING QUESTIONING



- What is a relevant question?
 - Questions and evidence about 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
 - Concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

DECISION MAKING PROCESS – ALLOWING QUESTIONING



- What is an allowable question?
 - “The grievance process may not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legally protected privilege, unless the person holding the privilege has waived it.”
- Legal Privilege (See Ohio Revised Code section 2317.02).
 - Confidential communications between attorneys and clients.
 - Confidential communications between doctors and patients.
 - Confidential communications between counselors or therapists and clients.
 - Confidential communications between religious clerics and parishioners.

INVESTIGATIVE REPORT VS. DETERMINATION OF RESPONSIBILITY

Investigative Report

- The investigator should be a **fact finder**.
 - Gather the facts.
 - Provide sufficient details to provide context and information on the importance of specific evidence.
 - Explain what questions were asked, what evidence was reviewed, and why the investigator made the choices to ask those questions and review that evidence.
 - Explain what evidence the investigator believes is most important and why. Explain what evidence the investigator believes is unimportant and why.
 - Explain why the investigator thinks certain evidence or statements are more or less credible.

Determination of Responsibility

- The decision maker should be a **decision maker**.
 - Make credibility determinations, including whether parties and witnesses were telling the truth.
 - Make determinations about what happened and when.
 - Make determinations about the relative importance of facts and evidence.
 - ***Make a determination regarding whether the Respondent sexually harassed the Complainant that is supported by the facts, as presented by the investigative report and reviewed by the decision maker.***
 - ***Make determinations regarding appropriate sanctions and remedies.***

WHAT RULES APPLY TO THE DECISION MAKER'S CONSIDERATION OF THE EVIDENCE?



- Objectively evaluate all relevant evidence, both inculpatory and exculpatory.
 - “Inculpatory evidence” is evidence that shows, or tends to show, a person’s involvement in an act, or evidence that can establish responsibility.
 - “Exculpatory evidence” is evidence that tends to excuse, justify, or absolve the alleged fault or responsibility as a Respondent.
- Make credibility determinations that are not based on a person’s status as a complainant, respondent, or witness.
- Continue to presume that the Respondent is not responsible for the alleged conduct until a **final** determination regarding responsibility is made.
- Remember that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the **District**, not the Complainant or Respondent.

MAKE A DETERMINATION REGARDING RESPONSIBILITY



- Apply the standard of evidence your district has chosen to use:
 - Preponderance of the Evidence.
 - Clear and Convincing Evidence.
- The same standard of evidence must be used for all formal complaints of sexual harassment against students and employees.

WHAT IS SEXUAL HARASSMENT?



- Determine whether the respondent has engaged in “**sexual harassment**” in violation of Title IX and its regulations.
 - A district employee conditioning the provision of an aid, benefit, or service on the individual’s participation in unwelcome sexual conduct;
 - 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
 - “Sexual assault” as defined the Clery Act, or “dating violence,” “domestic violence,” or “stalking” as defined in the Violence Against Women Act (VAWA).

WHAT IS SEXUAL HARASSMENT?



- A district employee **conditioning** the provision of an aid, benefit, or service on the individual's participation in **unwelcome** sexual conduct.
 - *Quid pro quo* harassment.
 - Whether *quid pro quo* harassment exists may be implied from the circumstances; the exchange need not be explicit.
 - *Quid pro quo* harassment need not be severe, pervasive, and objectively offensive. Even a single instance is “inherently offensive and serious enough to jeopardize equal educational access,” even when only verbal conduct is at issue.

WHAT IS SEXUAL HARASSMENT?



- What is “**unwelcome conduct**”? Subjective standard.
 - OCR: “The Complainant’s subjective statement that the Complainant found the conduct to be unwelcome suffices to meet this ‘unwelcome’ element.”
 - Does not require an explicit statement to the Respondent that the conduct is unwelcome.
 - A sexual relationship between an employee and a student will constitute unwelcome sexual conduct regardless of whether the student nominally consented or welcomed the sexual activity.



- What does it mean to **condition** something on participation in sexual conduct?
 - K-12 students are generally expected to submit to the instructions and directions of teachers, such that if a teacher makes a student feel uncomfortable through sex-based or other sexual conduct (e.g., back rubs or touching students' shoulders or thighs), it is likely that the students will interpret that conduct as implying that the student must submit to the conduct in order to maintain the educational benefits (e.g., not getting in trouble or continuing to please the teacher and earn good grades).
 - In situations where an employee did not intend to commit quid pro quo harassment (e.g., where the teacher did not realize that what the teacher believed were friendly back rubs had sexual overtones and made students feel uncomfortable), the District may take the specific factual circumstances into account in deciding what remedies are appropriate for the complainants and what disciplinary sanctions are appropriate for the respondent.

WHAT IS SEXUAL HARASSMENT?



- 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.
 - Unwelcome conduct.
 - Severe **and** pervasive **and** objectively offensive.
 - Effectively denies equal access to the education program or activity.



- “Sexual assault” as defined the Clery Act, or “dating violence,” “domestic violence,” or “stalking” as defined in the Violence Against Women Act (VAWA).
 - “Sexual Assault” means “any sexual act directed against another person, without the consent of the victim including instances when the victim is incapable of consent” or “unlawful, nonforcible sexual intercourse.” “Sexual act” includes forcible rape, forcible sodomy, sexual assault with an object, forcible fondling (the touching of private body parts of another person for the purpose of sexual gratification), incest, or statutory rape.
 - “Dating Violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship is determined based on a consideration of the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in a relationship.
 - “Domestic Violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under applicable domestic or family violence laws, or by any other person against an adult or youth victim who is protected by applicable domestic violence laws.
 - “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

- ✓ **Applies the standard;**
- ✓ **Identifies the allegations that potentially constitute sexual harassment;**
- ✓ **Describes the recipient's procedural steps taken from the receipt of the complaint to the determination;**
- ✓ **Includes findings of fact supporting the determination;**
- ✓ **Includes conclusions regarding application of board policy to the facts;**
- ✓ **Includes a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions, and whether remedies to restore or preserve equal access to the recipient's education program or activity will be provided to the complainant; and**
- ✓ **Includes procedures and permissible bases for appeals.**

Written Determination of Responsibility

PROVIDING THE WRITTEN DETERMINATION TO THE PARTIES



- The District must provide the written determination simultaneously to the parties.
 - Must actually give the written determination to the parties, either electronically or physically.
 - Cannot just show them the report, as was often the practice in the past.
- The written determination becomes final on either:
 - The date that the District provides the parties with the written determination of the result of an appeal, if an appeal is filed; or
 - If an appeal is not filed, the date on which an appeal would no longer be considered timely.

APPEALS



GROUNDS FOR APPEAL



Both parties have the right to appeal a determination of responsibility or a dismissal for the following reasons:

1. A procedural irregularity affected the outcome;
2. New evidence that was not reasonably available at the time of the determination and could affect the outcome;
3. Conflict of interest on the part of the Title IX Coordinator, Investigator, or Decisionmaker that affected the outcome; or
4. Other reasons as permitted by the recipient.

PROCEDURES FOR APPEALS – NOTICE OF APPEAL



- Include appeal procedures, including deadlines, in your district's grievance process.
 - Whom should parties notify of their appeal? (Title IX Coordinator?)
 - What will the deadline be to notify the district of the appeal?
 - The deadline can be fairly quick, e.g., between 3 and 5 days.
 - The grievance process can allow for limited, equitable extension of time for good cause.
 - How should the party notify the appropriate person of the appeal (e.g., in writing, at a particular email address, via mail)?
 - What information must be included in the notice of the appeal?
- Restate the appeal procedures outlined in the grievance process in each written determination of responsibility, and also refer the parties to the grievance process.

- When an appeal is received, notify the other party(ies) in writing of the appeal, and implement appeal procedures equally for both parties.
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the determination of responsibility.
 - The grievance procedure should specify the deadline for submitting this statement. (Like the notice of appeal, this timeline can be fairly quick.)
 - The grievance procedure should specify any other requirements for this statement.

Written Notification of Appeal

DECIDING THE APPEAL



- The Appeal is not a Re-Do, but a Review.
 - Confine the review of the Determination of Responsibility to the specific issue raised in the Appeal and the statements the parties submitted in the Appeal.
 - The Appeals Decision Maker should not substitute his/her judgment for that of the Decision Maker, especially regarding factual determinations.
 - If no additional investigation is needed, the Appeals Decision Maker should identify the error and correct it, explaining how that changes the Determination of Responsibility, sanctions, and/or remedies.
 - If additional investigation is needed, the Appeals Decision Maker should “remand” the Complaint to the Decision Maker, with instructions on how to correct the error and appropriately revise the Determination of Responsibility.

Recommended to include:

- Identify the basis/bases for appeal.
- Describe the **relevant** procedural steps taken from the receipt of the formal complaint to the issuance of the Determination of Responsibility.
- Describe the **relevant** findings of fact and **relevant** conclusions in the Determination of Responsibility.
- Include a statement of, and rationale for, the result as to each basis for appeal.
- Describe the result of the appeal.

Appeal **Decision**

THE WRITTEN APPEAL DECISION



- What are possible results of the appeal?
 - The Determination of Responsibility is “affirmed.”
 - The Determination of Responsibility is completely or partially “reversed,” and the Appeals Decision Maker comes to a different final conclusion.
 - The complaint is “remanded” to the Investigator for limited further investigation in accordance with specific instructions from the Appeal Decision.

PROCEDURES FOR APPEALS – NOTIFYING PARTIES OF THE RESULT



- Issue a written appeal decision describing the result of the appeal and the rationale for the result.
- Simultaneously provide the written appeal decision to both parties.

SANCTIONS & REMEDIES



SANCTIONS



- The district may not impose any disciplinary sanctions or other actions that are not supportive measures against a Respondent until the grievance process has concluded.
- The Determination of Responsibility becomes final either on the date the appeal is resolved or the date the appeal is no longer timely.
- The sanctions must be among those listed or described in the grievance process as within the range of possible disciplinary sanctions and remedies.
- The Title IX Coordinator is responsible for effectively implementing any sanctions and/or remedies.

REMEDIES



- The Determination of Responsibility must include a statement of whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the Complainant.
- Remedies may be the same as supportive measures, but after the Determination of Responsibility becomes final, need not be non-disciplinary or non-punitive, and need not avoid burdening the Respondent.

THANK YOU!

