



2020 TITLE IX APPELLATE DECISION MAKER TRAINING

A Certificate Course

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The information and materials provided during this program were for educational purposes only and not intended to be legal advice. Attendees should seek independent legal advice concerning the issues presented.



COURSE OVERVIEW

1	An Introduction to Title IX
2	Role of the Appellate Decision Maker
3	Writing an Appellate Decision
4	Practice Scenarios
5	Expert Title IX Appellate Decision Maker Q&A

LEARNING OBJECTIVES



Describe the key provisions of Title IX, including its scope, forms of prohibited discrimination, and the steps in the Title IX Grievance Process.



Identify the key elements of the appellate process, including who can appeal, where and how an appeal is filed, and the grounds for appeal.



Explain the specific grounds for appeal—procedural irregularity, new evidence, and conflict of interest or bias—and how they may impact the outcome of a Title IX case.



Analyze an appellate request to determine whether it meets the necessary criteria and if it could have affected the outcome of the original determination.



Compose a well-reasoned appellate decision that clearly outlines the rationale, adheres to procedural guidelines, and maintains impartiality in decision-making.

LESSON COMPLETION

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Level I: Navigating the 2024 Title IX Regulations with Confidence

3% complete

Search by lesson title

Pre-Training Materials0/3

Decoding the 2024 Title IX Regulations: A Roadmap for Educational Institutions1/6

Chapter & Speaker IntroductionVIDEO • < 1 MIN • PREREQUISITE • DRAFT

Defining Sex Discrimination & Sex-Based HarassmentVIDEO • < 1 MIN • PREREQUISITE • DRAFT

Revised Scope & Jurisdiction

Revised Scope & Jurisdiction

106.31 – EDUCATION PROGRAM

“In the limited circumstances in which Title IX or this part permits different treatment or separation on the basis of sex, a recipient must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm.”

Up next

Policy, Training & Reporting Requirements

CONTINUE →

Noted Changes

• 106.31(a)(2) was added addressing gender identity

Comments

• There is pending litigation regarding gender identity protection that may impact this part of the regulations.

MARK INCOMPLETE

CONTINUE →

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See Overview



Coming Soon



June 27-28, 2024: In-Person Title IX Training (Atlanta, GA)



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An Introduction to the 2024 Title IX Regulations



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Start Course



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July 23-24, 2024: Virtual Title IX Training



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Start Course



CERTIFICATE OF COMPLETION

THIS CERTIFICATION OF COMPLETION IS AWARDED TO:

CARTER WILSON

FOR SUCCESSFULLY COMPLETING

*LEVEL I: NAVIGATING THE 2020 TITLE IX REGULATIONS
WITH CONFIDENCE*

ON JULY 18, 2024

Learning Objectives:

- Articulate the key changes outlined in the revised 2024 Title IX regulations, including the updated scope of sex-based harassment and discrimination
- Explain the new requirements for institutions in responding to complaints, including investigation procedures and timelines
- Identify and differentiate the roles of various Title IX personnel within your institution
- Develop strategies for implementing the new Title IX regulations effectively within your educational setting through policy and practice
- Facilitate prompt, equitable, and compliant grievance processes of sex-based harassment and discrimination complaints
- Apply best practices to foster a safe and inclusive education program



Cara Kuhn
CARA KUHN
Training Coordinator
Title IX Solutions, LLC



POSTING REQUIREMENTS

In accordance with the 2020 Title IX Regulations, institutions must post “all materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an informal resolution process.”
34 C.F.R. 106.45(b)(10)(i)(D).

Such training materials must also be kept for seven years.

POSTING REQUIREMENTS

Facilitating Informal Resolution Processes

0/4

▼

Informal Resolution Agreements and Outcomes

0/2

▼

Potential Challenges in Facilitating Informal Resolution Processes

0/2

▼

Understanding Trauma

0/6

▼

Course Wrap-up

0/3

▼

Title IX Posting Requirements

0/2

▲

Instructions for Posting Title IX Solutions Training Materials on Institutional Websites

INSTRUCTIONS · PREREQUISITE

Final Combined Course Materials

DOWNLOAD

Instructions for Posting Title IX Solutions Training Materials on Institutional Websites

Thank you for participating in a Title IX Solutions Certification Training!

Please follow these instructions as you post the training materials to your school's website to comply with Title IX Regulation 106.45(b)(10)(i)(d).

Contact adrienne@titleixsolutions.com or tawny@titleixsolutions.com with any questions regarding the posting of Title IX Solutions' training materials.

Program materials available for download:

If you haven't done so already, you can find and download the program materials for this course by clicking on the next lesson named "Final Combined Course Materials".

Instructions for posting the above training program materials are outlined below:

Step 1: Publish Authorization & Disclaimer

COMPLETE & CONTINUE →

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Courses

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June 27-28, 2024: In-Person Title IX Training (Atlanta, GA)



An Introduction to the 2024 Title IX Regulations



July 23-24, 2024: Virtual Title IX Training
Use code INTD24REG to save \$100

THANK YOU!



TITLE IX SOLUTIONS, LLC

—
AN
INTRODUCTION
TO TITLE IX



SPEAKER

CARA KUHN

TRAINING COORDINATOR

TITLE IX SOLUTIONS

IN THIS CHAPTER

A large, white, serif Roman numeral 'IX' centered within a white square border.

HISTORY OF
TITLE IX



TITLE IX
DEFINITIONS



PARTICIPANTS IN THE
TITLE IX PROCESS



OVERVIEW OF THE
TITLE IX PROCESS

HISTORY OF TITLE IX



Title IX of the Education Amendments of 1972

“

“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)

CREATION OF TITLE IX

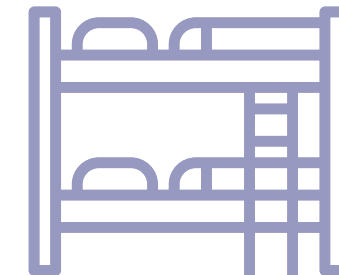
Followed the Civil Rights Act of 1964 to
address discrimination on the basis of sex

Created and enacted for educational
institutions (K to Postsecondary)

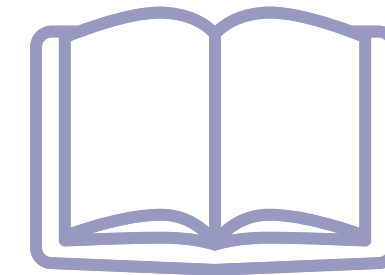
Designed initially to address inequities in:



Admissions



Residence
Life



Academic
Opportunities



Extracurricular
Activities

WHO IS PROTECTED?

All students regardless of:

- Sexual Orientation
- Gender Identity
- Nationality
- Immigration Status
- Race
- Ability

All genders are included

Employees - faculty, staff, administrators

Applies to:

- State and local educational agencies that receive federal funding
 - Vocational, professional, and higher education institutions

BRIEF HISTORY OF TITLE IX



JUNE 23, 1972

Title IX becomes
law and addresses
sex-based
discrimination



APRIL 4, 2011

Guidance expands
Title IX to include
sexual harassment,
dating and domestic
violence, sexual
assault, and stalking



AUGUST 14, 2020

New regulations go into
effect, requiring all
educational institutions
to follow specific
procedures in response
to sexual harassment

NOTE ON THE 2024 REGULATIONS

IN APRIL OF 2024, THE DEPARTMENT OF EDUCATION RELEASED NEW REGULATIONS EXPANDING THE SCOPE OF TITLE IX.

- Many states have challenged these new regulations through injunctions which has led to different school and states following different Title IX guidance.
- Title IX is a continually evolving landscape which makes training that much more important!



**IN JANUARY OF 2025, THE DEPARTMENT OF
EDUCATION ANNOUNCED THAT THE FINAL
RULE AND THE 2024 REGULATIONS ARE NO
LONGER EFFECTIVE IN ANY JURISDICTION.**

All states and schools are required to follow the 2020 Title IX Regulations

TITLE IX DEFINITIONS



ACTUAL KNOWLEDGE

- "[N]otice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient" (Postsecondary)
- Notice of sexual harassment or allegations by ANY employee of an elementary or secondary school
- Includes reports sent to the Title IX Coordinator in person, by mail, by telephone, by email, or by any other means that results in the Title IX Coordinator receiving a person's written or oral report

REPORT VS. COMPLAINT

REPORT

- May allege sexual harassment, sex discrimination, or sexual misconduct
- May be written or oral
- May be submitted by any person, not just the alleged victim
- May be anonymous
- May be made at any time
- May be made in person or by mail, phone, email or any other means

FORMAL COMPLAINT

- Required for initiation of the Title IX grievance process
- Can be oral or written
- Cannot be filed anonymously or by a third-party
- Request to the school that **objectively can be understood as a request for the school to investigate** and make a determination

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REMINDER:



**MAKING A REPORT OR A COMPLAINT
TO YOUR INSTITUTION OR
CONFIDENTIAL RESOURCE IS NOT
EQUIVALENT TO FILING CHARGES
WITH LAW ENFORCEMENT.**

SUPPORTIVE MEASURES

WHAT?

- Non-disciplinary, non-punitive services offered to the Complainant & Respondent
- Includes measures designed to protect the safety of all Parties or the school's educational environment, or to deter sex discrimination and sexual harassment

WHEN?

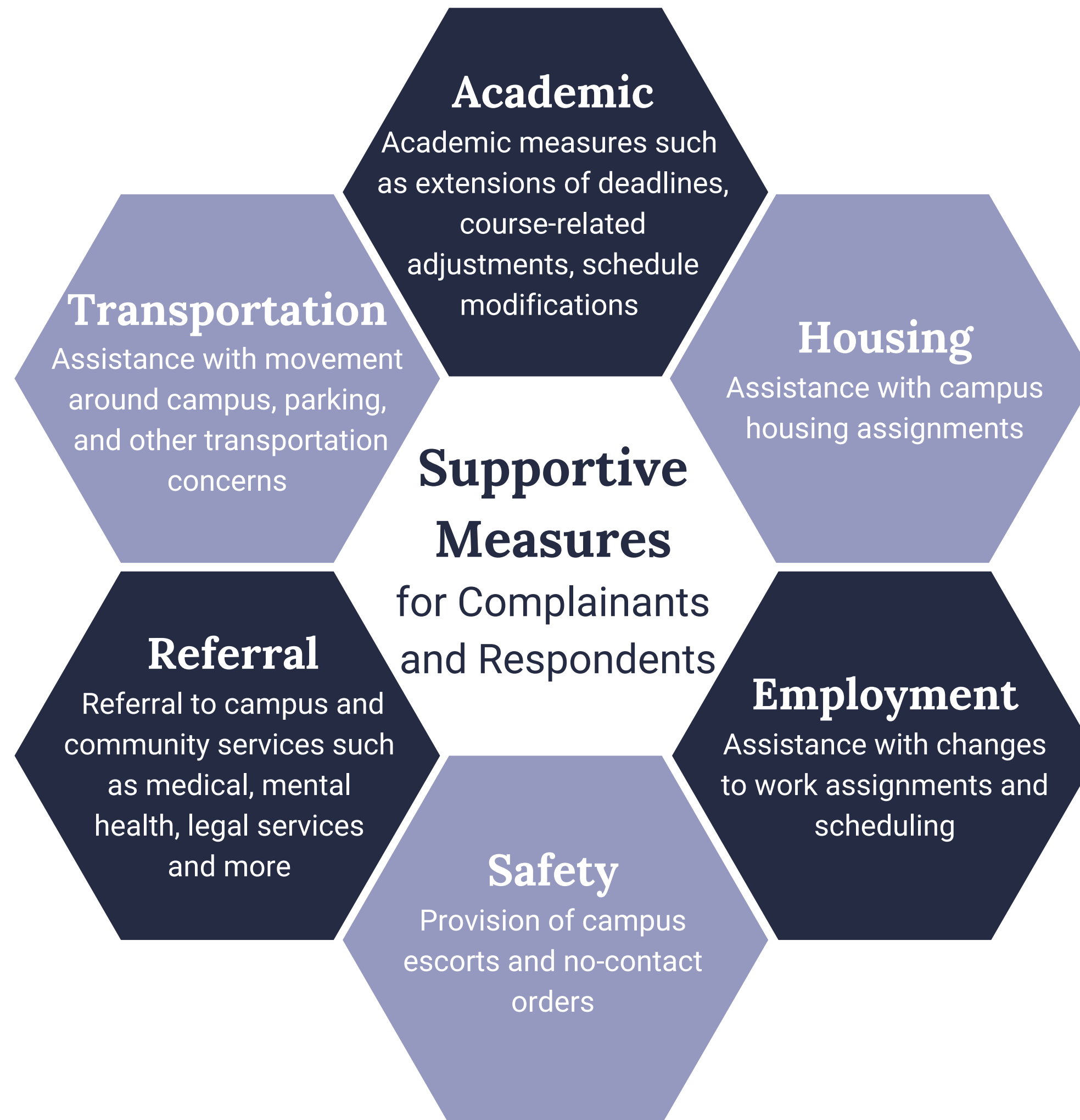
- Available before or after filing a complaint or where no complaint has been filed

WHY?

- Offered without fee or charge to the Complainant or Respondent; as appropriate and reasonably available

HOW?

- Designed to restore or preserve equal access to the school's education program or activity without unreasonably burdening the other party



AMNESTY PROVISION

- Not required under Title IX but often included in the policy to encourage reporting
- Individuals may not be subject to disciplinary action for a minor violation of other school policies (e.g., Code of Conduct) when participating in a Title IX investigation

SCENARIO



Sam is a college freshman and was sexually assaulted at a house party. Sam had been drinking heavily and is scared to report the assault as they are underage.

CONFIDENTIALITY

- Explicitly stated in Title IX
- Identities of the reporting parties, Complainants, Respondents, and Witnesses are to remain confidential
 - Identities of these individuals will be known to the individuals conducting the Title IX process

RETALIATION

- Intimidation, threats, coercion, or discrimination against any individual for either of the following reasons:
 - Interfering with any right or privilege under Title IX
 - Because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX

RETALIATION

All persons are prohibited from retaliating against reporting parties, Complainants, Respondents, Witnesses, and others who participate in the Title IX process.



EXAMPLE ONE:

Friends of the Complainant intimidating the Respondent, or vice versa.



EXAMPLE TWO:

School personnel discriminating against an individual for refusing to participate in the Title IX process.

REMEDIES AND SANCTIONS

REMEDIES

- Offered to Complainants
- Designed to restore or preserve equal access to the school's education program or activity
- May be the same as supportive measures
- DO NOT need to be "non-punitive" or avoid burdening the respondent

SANCTIONS

- Available after the grievance process is complete
- List or range of remedies and sanctions should be listed in policy
- Issued to Respondents found responsible for violating the school's sexual harassment policy, following the conclusion of the Title IX grievance process

EDUCATION PROGRAM OR ACTIVITY

THE EDUCATIONAL PROGRAM OR ACTIVITY INCLUDES ALL OPERATIONS OF THE SCHOOL, BOTH ON OR OFF CAMPUS.

- Includes locations, events, or circumstances over which the school exercises substantial control over both:
 - The Respondent, and
 - The context in which an incident of sexual harassment occurs
- Includes any building owned or controlled by student organizations which are officially recognized by the school (including fraternity & sorority houses)
- Includes computer and internet networks, digital platforms and computer hardware or software owned or operated by, or used in the operations of the school

STANDARD OF PROOF

STANDARD USED TO DETERMINE WHETHER OR NOT A SEXUAL HARASSMENT POLICY VIOLATION OCCURRED.

Preponderance of the Evidence

- Evidence demonstrates it is “more likely than not” the alleged conduct or policy violation occurred
- Greater than 50% chance a policy violation occurred

Clear and Convincing

- Evidence is highly and substantially more likely to be true than untrue
- A higher standard of evidence to meet when compared to the “preponderance of the evidence” standard

STANDARD OF PROOF

Preponderance of the Evidence

Anything that tips the scale to more than 50/50

Clear and Convincing

More likely to be true than untrue, substantial evidence to support

Beyond a Reasonable Doubt

Criminal court standard, overwhelming amount of evidence to support

Not enough evidence to support a finding of responsibility, doesn't necessarily mean the claim is false

Where does your needle point?

PARTICIPANTS IN THE TITLE IX PROCESS



OVERVIEW

TITLE IX PERSONNEL VARY, DEPENDING UPON SEVERAL FACTORS:

- Institution size
- Institution type
 - K-12
 - Community/two-year colleges
 - Four year colleges and universities
 - Public/private
- Institution structure and resources
 - Organizational charts and reporting
 - Full-time/part-time
 - Budget



TITLE IX PERSONNEL

EXCEPT FOR THE TITLE IX COORDINATOR, TITLE IX PERSONNEL MAY BE INTERNAL OR EXTERNAL.



Title IX
Coordinator



Deputy
Coordinators



Title IX
Investigator



Decision-
Maker



Informal Resolution
Facilitator



Advisor



Appellate
Decision-Maker

TITLE IX COORDINATOR

EVERY SCHOOL MUST HAVE A DESIGNATED TITLE IX COORDINATOR.

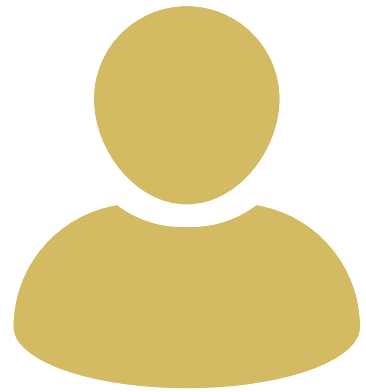
CAN

- Serve as the Title IX Investigator
- Serve as the Informal Resolution Facilitator
- Have other roles on campus
 - Dean of Students, Director of Human Resources, etc.

CANNOT

- Serve as the Title IX Decision-Maker
- Serve as the Appeals Decision-Maker

TITLE IX INVESTIGATOR

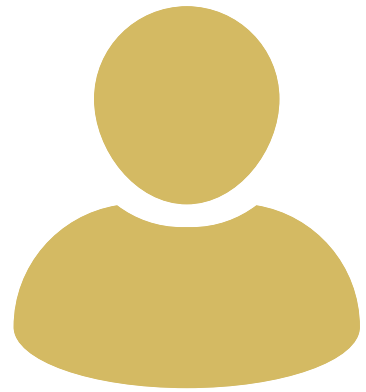


MAY BE THE TITLE IX COORDINATOR, OTHER SCHOOL EMPLOYEE, OR INDEPENDENT CONTRACTOR.

RESPONSIBILITIES:

- Collects evidence and interviews the Parties and Witnesses
- Provides all evidence to the Parties and their Advisors for inspection and review
- Creates an investigative report that fairly summarizes relevant evidence
- Sends the investigative report to the Complainant, Respondent, Advisors, and Decision-Maker

TITLE IX DECISION-MAKER

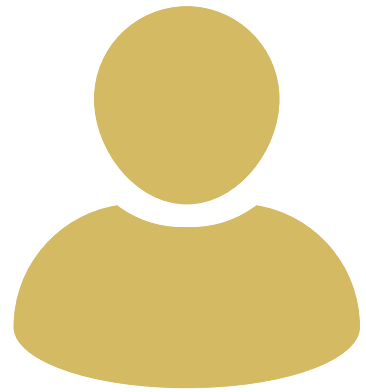


**MAY BE A SINGLE DECISION-MAKER OR A HEARING PANEL,
SCHOOL EMPLOYEE(S), OR INDEPENDENT CONTRACTOR(S).**

RESPONSIBILITIES:

- Oversees and facilitates the Title IX adjudication process, including a hearing if the school has one
- Supervises the conduct of the involved Parties and their Advisors
- Determines the relevance of evidence and questions presented during the credibility assessment process
- Drafts and issues the written determination regarding responsibility
- Issues sanctions when appropriate

INFORMAL RESOLUTION FACILITATOR

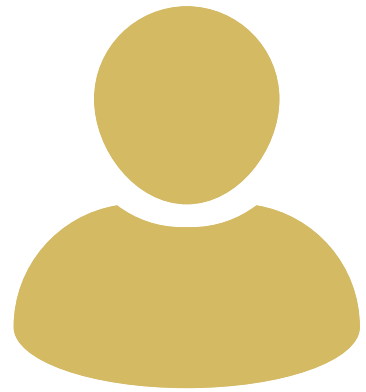


MAY BE A SCHOOL EMPLOYEE, OR INDEPENDENT CONTRACTOR. CAN BE THE TITLE IX COORDINATOR.

RESPONSIBILITIES:

- Provides information to the Parties and Advisors about the informal resolution process
- Various forms of informal resolution may be available
- Facilitates the informal resolution process
- Drafts informal resolution settlement agreements at the conclusion of the process (if the complaint is resolved)

ADVISOR



COMPLAINANT AND RESPONDENT HAVE THE RIGHT TO AN ADVISOR OF THEIR CHOICE.



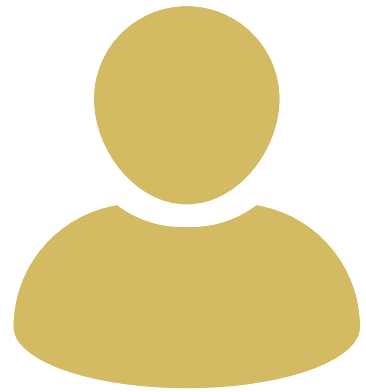
An Advisor may be, but is not required to be, an attorney.



A party's Advisor may be a friend, teacher, parent, professor, etc.

- School must provide an Advisor for the live hearing if a Party does not have one present
- School cannot limit the choice or presence of the Advisor for either Party in any meeting
- Parties have the option to include the Advisor in any meeting or investigative interview
- Schools may set specific expectations or provide guidelines for Advisors to follow during meetings, investigative interviews, and the hearing

ADVISOR



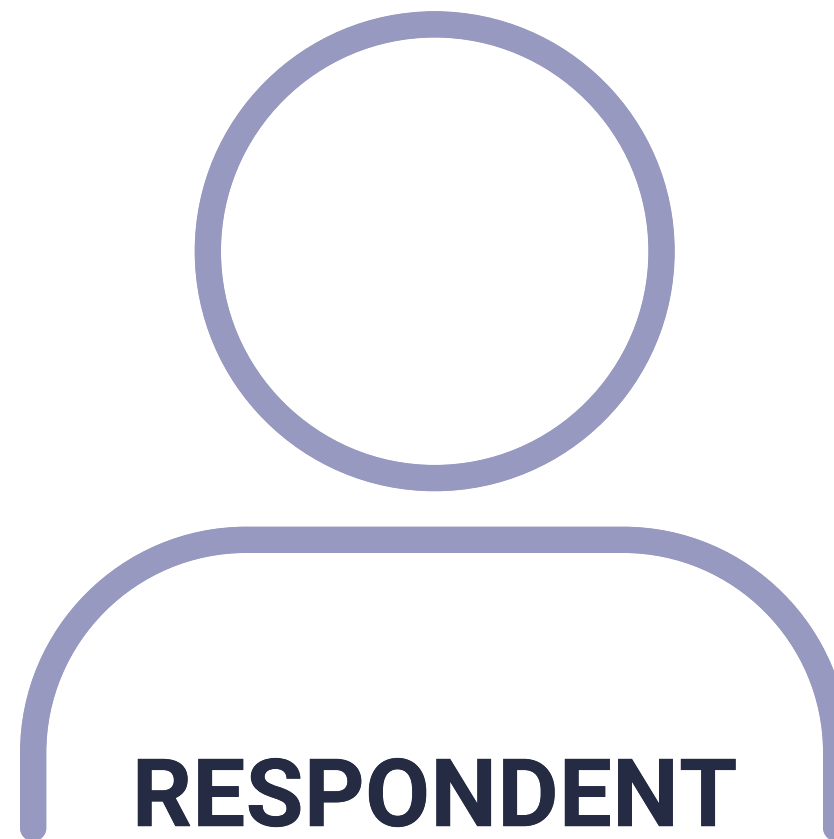
COMPLAINANT AND RESPONDENT HAVE THE RIGHT TO AN ADVISOR OF THEIR CHOICE.

RESPONSIBILITIES:

- Supports their Party by accompanying them during interviews, meetings, and the credibility assessment process
- Provides information regarding the Title IX process and resources available
- Reviews the investigative report and all evidence, as well as help craft a response
- Participates in the hearing and conducts cross-examination

PARTIES IN THE PROCESS

ASIDE FROM THE TITLE IX PERSONNEL WHO TAKE PART IN THE FACILITATION OF THE GRIEVANCE PROCESS, WE WILL ALSO SEE THESE INDIVIDUALS INVOLVED:



COMPLAINANT

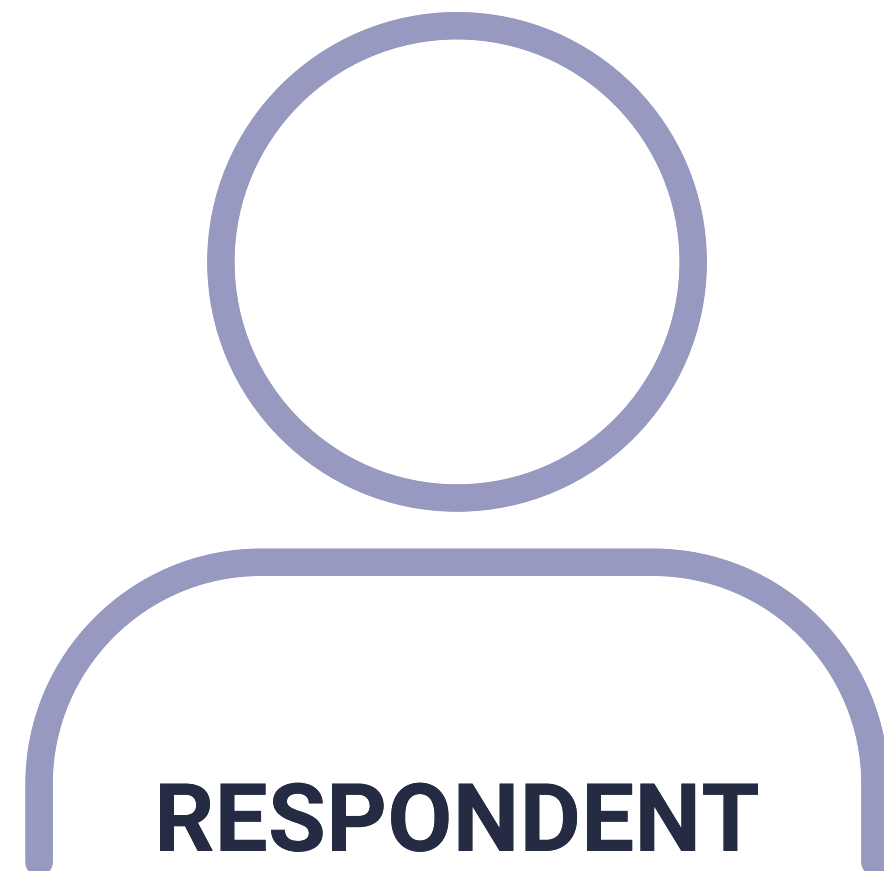
ALLEGED TO BE THE **VICTIM** OF CONDUCT THAT COULD
CONSTITUTE SEXUAL HARASSMENT



- May be a student, employee, or other community member
- Must be participating in or attempting to participate in the school's education program or activity with which the complaint is filed
- There may be more than one Complainant in a case

RESPONDENT

REPORTED TO BE THE ALLEGED **PERPETRATOR** OF CONDUCT THAT COULD CONSTITUTE SEXUAL HARASSMENT.



- May be a student, employee, community member, or non-community member
 - The school's ability to respond to incidents perpetrated by non-community member Respondents may be limited
- School may dismiss the complaint if the Respondent is no longer enrolled or employed by the school
- There may be more than one Respondent in a case

WITNESS

**INDIVIDUALS THAT ARE IDENTIFIED IN THE GRIEVANCE PROCESS AS
HAVING INFORMATION THAT MAY SUPPORT OR REFUTE ALLEGATIONS OF
SEXUAL HARASSMENT.**



- May be identified by the Complainant, Respondent, or institution
- Could have first-hand knowledge regarding allegations or may have other information that could be helpful in an investigation
- There may be multiple witnesses in a case

OVERVIEW OF THE TITLE IX PROCESS



DURING THE TITLE IX GRIEVANCE PROCESS:

A SCHOOL MUST:

- Treat Complainants and Respondents equitably
- Require objective review of all relevant evidence
- Train Coordinators, Investigators, Decision-Makers, and Informal Resolution Facilitators and ensure they are free of conflicts of interest and bias
- Include a presumption that Respondent is not responsible for allegations until determination is reached at conclusion of grievance process

DURING THE TITLE IX GRIEVANCE PROCESS:

A SCHOOL MUST:

- Include reasonably prompt time frames for the conclusion of the grievance process
- Describe the range of possible disciplinary sanctions and remedies
- State the standard of proof
- Describe the range of supportive measures available to Complainants and Respondents
- Not require or seek the disclosure of information protected under a legally recognized privilege

GOAL OF TITLE

ULTIMATELY, THE GOAL OF TITLE IX IS TO:



Stop the harassment or discrimination



Prevent future recurrence of harassment or discrimination



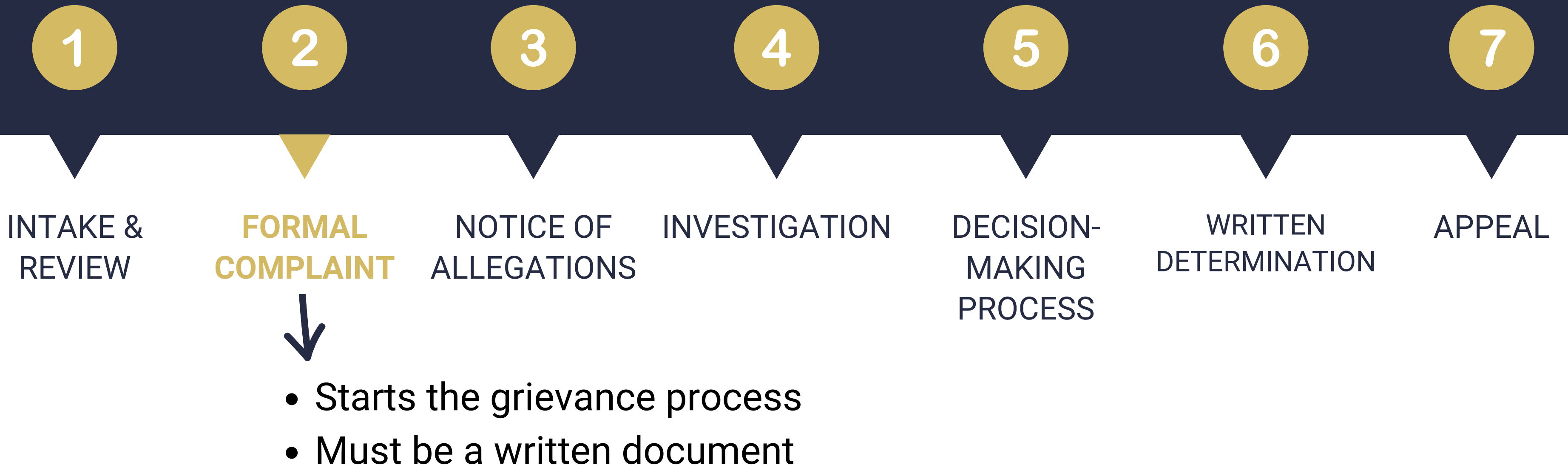
Remedy the effects of harassment or discrimination

GRIEVANCE PROCESS



- Title IX Coordinator must respond in a way that's not deliberately indifferent
- Meet with the Complainant to discuss supportive measures and process for a formal complaint

GRIEVANCE PROCESS



GRIEVANCE PROCESS



- Provided to both parties outlining the grievance procedures, information about the allegations, prohibition of retaliation, and the parties' rights

GRIEVANCE PROCESS



- Parties have the opportunity present witnesses and evidence
- Parties also have the right to access, review and respond to evidence gathered during the investigation

GRIEVANCE PROCESS



- Decision-maker has opportunity to question parties and witnesses to evaluate allegations and assess credibility

*Some conduct does not require a live hearing. The Title IX Coordinator will be able to help identify cases when a live hearing is required and cases when it is not.

GRIEVANCE PROCESS



- Standard of evidence is used to determine whether a policy violation occurred
- Notification is issued to the parties in writing

GRIEVANCE PROCESS



- Parties have the right to appeal the process on the following bases:
 - Procedural irregularity that would change the outcome
 - New evidence that would change the outcome and that was not reasonably available when the determination was made
 - The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias that would change the outcome

INFORMAL RESOLUTION

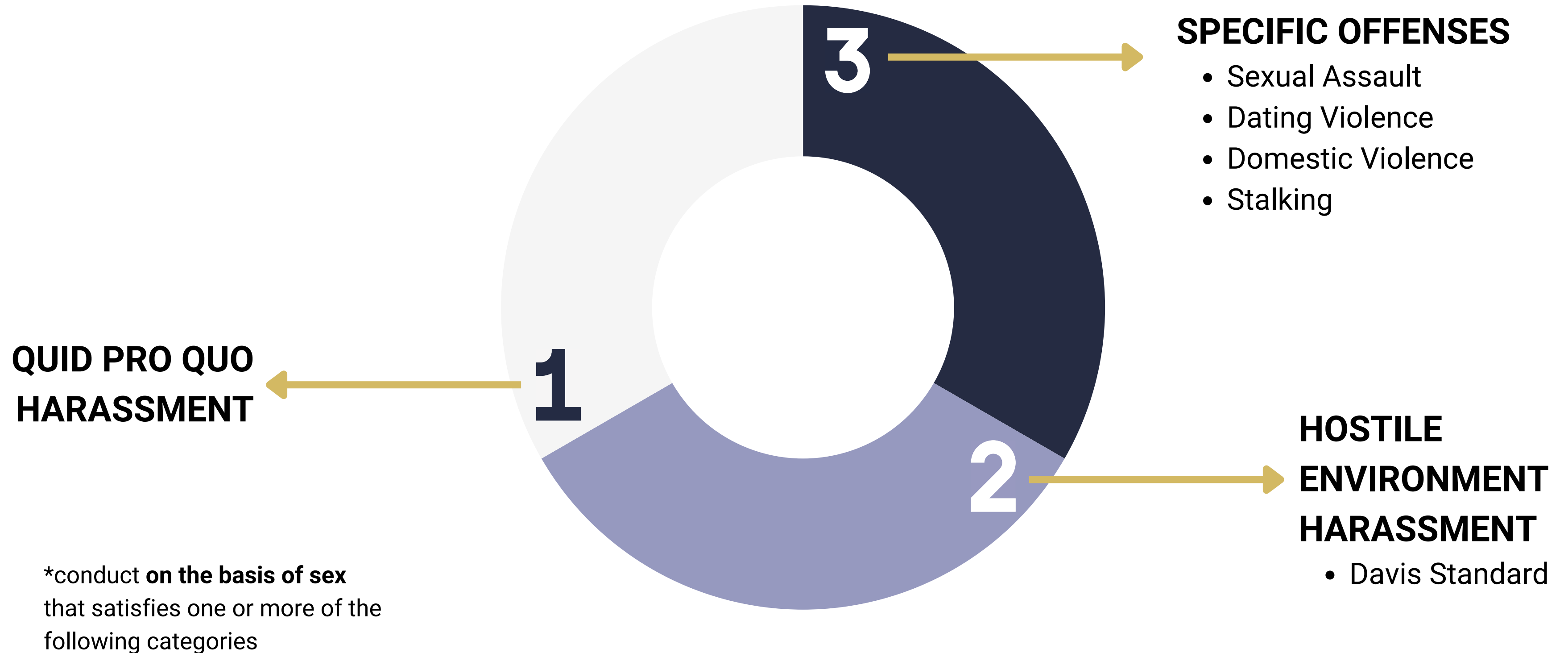
AT ANY TIME PRIOR TO DETERMINING WHETHER SEXUAL HARASSMENT OCCURRED, A SCHOOL MAY OFFER TO A COMPLAINANT AND RESPONDENT AN INFORMAL RESOLUTION PROCESS.

- Cannot offer informal resolution if the complaint includes allegations that:
 - An employee engaged in sexual harassment of an elementary school or secondary school student
 - Process would conflict with Federal, State or local law
- Schools cannot require or pressure the parties to participate in an informal resolution process.
- The school must obtain the parties' voluntary consent to the informal resolution process

DEFINING SEXUAL HARASSMENT



SEXUAL HARASSMENT



SEXUAL HARASSMENT

1

QUID PRO QUO

DEFINITION:

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

SCENARIO



Dr. Smith tells Amy, a graduate student, that her research funding and recommendation letter for a prestigious fellowship depends on them going out for drinks and spending time together after hours. Amy feels uncomfortable but fears rejecting the invitation will jeopardize her academic career.

SEXUAL
HARASSMENT

2

HOSTILE
ENVIRONMENT

DEFINITION:

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.

SEXUAL
HARASSMENT

2

HOSTILE
ENVIRONMENT

DEFINITION:

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.

- ☒ Severe
- ☒ Pervasive
- ☒ Objectively Offensive

SEXUAL
HARASSMENT

2

HOSTILE
ENVIRONMENT

EXAMPLES MAY INCLUDE:

- Sexual flirtations, advances, or propositions
- Requests for sexual favors
- Jokes or comments of a sexual nature
- Cyber or electronic harassment of a sexual nature
- Verbal commentary about an individual's body
- Disseminating photos or videos without consent
- Visual conduct such as leering or making gestures
- Unwanted kissing

SEXUAL HARASSMENT

2

HOSTILE ENVIRONMENT

DEFINITION:

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.

SCENARIO



Alex (they/them) regularly faces sexual jokes and unwanted comments about their appearance from peers in the locker room. When asked to stop, Alex's peers continue to harass them, making Alex feel unsafe and uncomfortable.

SEXUAL
HARASSMENT

3

**SPECIFIC
OFFENSES**

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

*As defined by the Clery Act

SEXUAL
HARASSMENT

3

SEXUAL
ASSAULT

DEFINITION:

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

TYPES OF SEXUAL ASSAULT:

- Rape
- Fondling
- Incest
- Statutory Rape (sex with a minor)

*as defined in Code of Federal Regulations (Title 34, Part 668, Subpart D, Appendix A)

SEXUAL
HARASSMENT

3

DATING
VIOLENCE

DEFINITION:

Violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim
- Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship
 - The type of relationship
 - The frequency of interaction between the persons involved in the relationship

SEXUAL
HARASSMENT

3

DOMESTIC
VIOLENCE

DEFINITION:

Felony or misdemeanor crimes committed by a person who:

- Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim
- Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner
- Shares a child in common with the victim
- Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction

SEXUAL
HARASSMENT

3

STALKING

DEFINITION:

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.

EXAMPLES:

- Repeated, unwanted communication by phone, email, mail, texting, social media, etc.
- Repeatedly leaving or sending the victim unwanted items or presents
- Making direct or indirect threats to harm
- Damaging or threatening to damage personal property
- Repeatedly posting information or spreading rumors about the victim

CONSENT

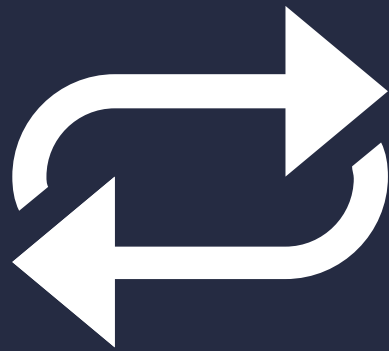
THE REGULATIONS DO NOT INCLUDE A DEFINITION OF CONSENT, BUT IT DOES REQUIRE SCHOOLS TO ADOPT A DEFINITION OF CONSENT.

- Regulations do require a school to clearly define consent
- Consent definition must be applied consistently between men and women and between complainants and respondents in particular cases
- Many states have adopted statutes addressing sexual assault on college campuses and those statutes may have a state-specific definition of consent

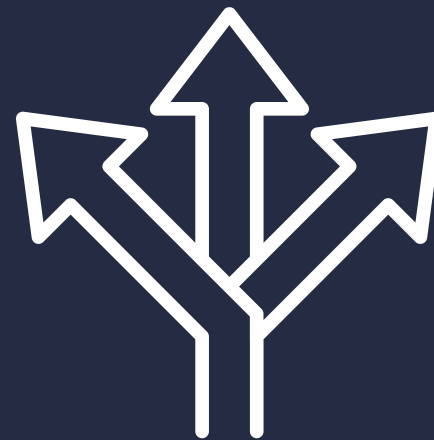
TITLE IX SOLUTIONS, LLC

ROLE OF THE APPELLATE DECISION MAKER

IN THIS CHAPTER



THE APPEAL PROCESS



BASES FOR APPEAL



QUALITIES OF AN
APPELLATE DECISION
MAKER



SPEAKER

THE HONORABLE JUDGE RIEHL

DECISION-MAKER AND INFORMAL
RESOLUTION FACILITATOR

THE APPEAL PROCESS



GRIEVANCE PROCESS



INTAKE &
REVIEW

FORMAL
COMPLAINT

NOTICE OF
ALLEGATIONS

INVESTIGATION

DECISION-
MAKING
PROCESS

WRITTEN
DETERMINATION

APPEAL



WE ARE HERE

APPEALING A DECISION

- 1 Title IX Regulations stipulate that a school must provide an appeal from a determination regarding responsibility and from a recipient's dismissal of a formal complaint or any allegations therein
- 2 The appeal process is available to both the Complainant and Respondent
- 3 The Appellate Decision-Maker must be a separate individual who was not involved in the investigation or the decision to dismiss the complaint.

APPEALING A DECISION

- 4 Parties must be notified in writing when an appeal is filed
- 5 Appeal procedures must be implemented equally for both Complainant and Respondent
- 6 Parties must have a reasonable opportunity to submit a written statement supporting or challenging the determination
- 7 Parties must be issued simultaneously a written decision describing the result of the appeal and the rationale, drafted by the Appellate Decision-Maker

KEY ELEMENTS OF APPEAL

WHO?

- Complainant, Respondent, or School (if the school proceeded with a complaint without a Complainant)
- Appeal is received by the Title IX Office

WHERE?

- An appeal is filed with the Title IX Office

WHEN?

- Determined by school policy
- Usually within 5 days of the written determination

HOW?

- Process for filing an appeal is set forth in the school's policy and outlined in the written determination

AFTER AN APPEAL IS FILED

THE TITLE IX COORDINATOR WILL:

- Designate an Appellate Decision Maker
- Ensure proper training of Appellate Decision Maker
- Establish timelines for appeal resolution
- Ensure strict compliance with the process
 - Only one chance to appeal
- Notify the other party in writing of the appeal
- Ensure equal rights for both parties
- Provide an equal opportunity to submit written arguments
 - If no school policy exists, the Appellate Officer should allow written arguments and set parameters in accordance with DOE regulations.

BASES FOR APPEAL



BASES OF APPEAL

PROCEDURAL IRREGULARITY THAT AFFECTED THE OUTCOME OF THE MATTER.

1

Respondent was only given four days to inspect evidence and provide a written response when the Title IX Regulations stipulate parties have ten days.

2

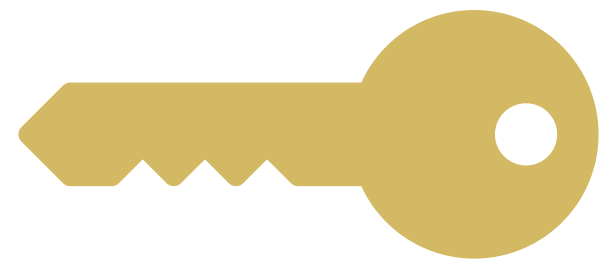
Complainant's Advisor was not allowed to cross-examine one of the Respondent's witnesses who was present during the hearing due to "time constraints"

3

The Respondent was not allowed an Advisor in the pre-hearing meeting.

§106.45(b)(8)

**KEY
CONSIDERATIONS
AS AN APPELLATE
DECISION MAKER**



- Review the record and determination for irregularities.
- Assess whether deadlines were met as per school policy.

**IF AN IRREGULARITY IS FOUND,
DETERMINE IF IT AFFECTED
THE OUTCOME**

BASES OF APPEAL

NEW EVIDENCE THAT WAS NOT REASONABLY AVAILABLE AT THE TIME THE DETERMINATION OR DISMISSAL WAS MADE, WHICH COULD AFFECT THE OUTCOME OF THE MATTER.

1

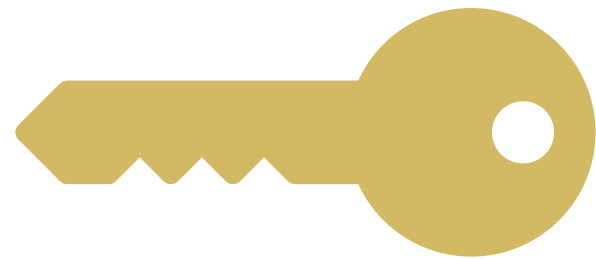
A previously unknown Witness came forward with information regarding the incident after hearing about the incident from a friend.

2

A Respondent was able to recover an email containing a conversation with the Complainant he previously believed to be deleted.

§106.45(b)(8)

**KEY
CONSIDERATIONS
AS AN APPELLATE
DECISION MAKER**



**EVIDENCE DISCOVERED AFTER THE
INVESTIGATION BUT BEFORE, DURING,
OR AFTER THE HEARING**

- Was the new evidence reasonably available at the time of the determination?
- Could the new evidence affect the outcome?

BASES OF APPEAL

CONFLICT OF INTEREST OR BIAS BY THE TITLE IX COORDINATOR, INVESTIGATOR(S) OR DECISION-MAKER(S)

1

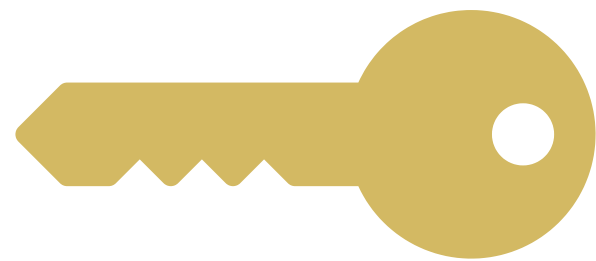
Respondent discovered the Decision-Maker has made several public statements on social media about their unwavering support for sexual assault survivors and their extreme distrust of males.

2

Complainant learned the Title IX Investigator is an involved athletic booster for the football team which the Respondent plays on.

§106.45(b)(8)

**KEY
CONSIDERATIONS
AS AN APPELLATE
DECISION MAKER**



- Assess if the Title IX Coordinator, investigator, or Decision-Maker had bias or a conflict of interest.

**IF BIAS OR CONFLICT IS FOUND,
DETERMINE IF IT AFFECTED
THE OUTCOME**

OPTIONAL BASES OF APPEAL

SCHOOLS MAY PROVIDE OTHER BASES OF APPEAL AS LONG AS THEY APPLY EQUALLY TO BOTH PARTIES.

SANCTIONS BEING INADEQUATE OR EXCESSIVE

1

The Complainant appeals, citing that the sanction of mandatory counseling for stalking was insufficient.

2

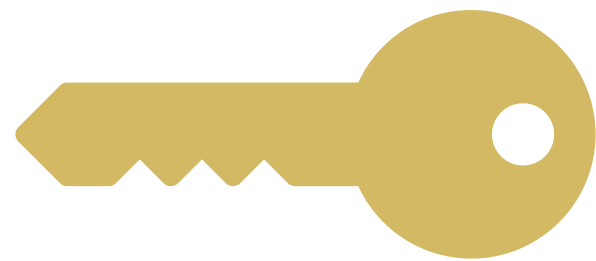
Respondent appeals, stating a sanction of termination of employment was excessive for his offense of sexual harassment as a previous co-worker received a written warning for a similar offense.

§106.45(b)(8)



Review your school policy to identify if additional bases exist

**KEY
CONSIDERATIONS
AS AN APPELLATE
DECISION MAKER**



- Must be equally available to both parties
- Must be clearly stated in the school's policy



REMINDER:



The first three grounds for appeal require that the irregularity, evidence, or bias could have or did affect the outcome.

Optional outcomes (if allowed by school policy) do not have to affect the outcome.

APPEAL DENIED

IF A REQUEST FOR APPEAL IS DENIED, THE ORIGINAL DETERMINATION STANDS AND THE TITLE IX GRIEVANCE PROCESS CONCLUDES.

- This does not mean Parties will not seek action or resolution outside of Title IX (*e.g. filing a complaint with the Office for Civil Rights or pursuing legal action*)

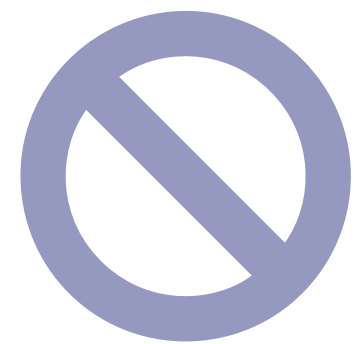


If the Parties do not submit their appeal within the timeframe specified in the policy, the original determination stands and the Title IX grievance process concludes.

APPEAL ACCEPTED

IF A REQUEST FOR APPEAL IS ACCEPTED, THE POSSIBLE OUTCOMES INCLUDE:

AFFIRM DETERMINATION



No valid grounds for appeal.

REVERSE DETERMINATION



At least one valid ground for appeal is met.

REMAND DETERMINATION



Record is incomplete. Return to the Decision-Maker for further review.

QUALITIES OF AN APPELLATE DECISION MAKER



THE APPELLATE DECISION MAKER

WHAT ARE THE QUALITIES OF A GOOD APPELLATE DECISION MAKER AND WHAT DO THEY DO?

- Determined by school policy
 - Could be a school official, panel, or external contractor
- Reviews the appeal and drafts the appellate decision
- Must be free of bias or conflict of interest
- Cannot be the Title IX Coordinator, Investigator, or Decision Maker
- Must be trained in Title IX policy and procedure



BEST PRACTICE

Use an external contractor to reduce bias and conflict of interest claims



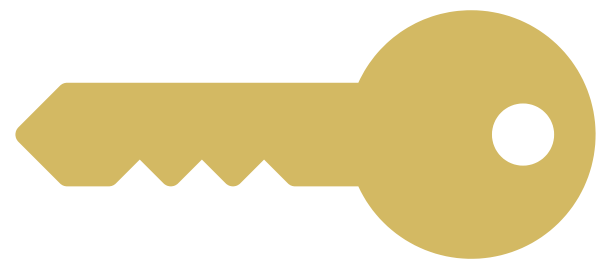
JUDGE RIEHL TIP:



YOU SHOULD NOT PUT YOURSELF IN THE SHOES OF THE DECISION MAKER BECAUSE THEY WILL NOT FIT.

Do not fall into the trap of “If I was the decision maker I would have done it differently so their decision must be wrong!”

KEY REMINDERS FOR THE APPELLATE DECISION MAKER



- Do not re-decide the case—give deference to the Decision-Maker’s findings.
- Follow the school’s policy and bases for appeal.
- Stay in your lane—review based on the grounds for appeal, not personal opinions.



QUESTIONS TO CONSIDER:

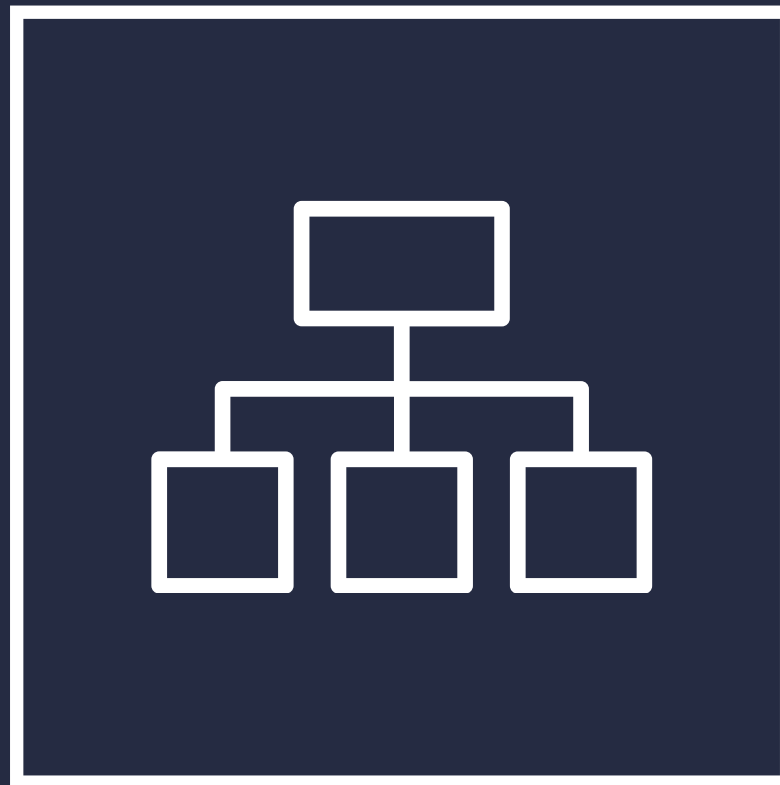
- What if an appeal is filed late?
 - 2 days late? 10 days late? Is it ever too late?
- What if a Complainant appeals the sanctions imposed on the Respondent?
 - Does it change if the Respondent appeals based on the severity of the sanction?
- What if a Complainant appeals the school's dismissal of their formal complaint?
- Can the school file an appeal of a determination?

TITLE IX SOLUTIONS, LLC

WRITING AN APPELLATE DECISION



IN THIS CHAPTER



STRUCTURE OF AN
APPELLATE DECISION



APPEAL OUTCOMES



SPEAKER

THE HONORABLE JUDGE RIEHL

DECISION-MAKER AND INFORMAL
RESOLUTION FACILITATOR

STRUCTURE OF AN APPELLATE DECISION



APPELLATE DECISION STRUCTURE

EXAMPLE STRUCTURE

- ➊ Header of Decision
- ➋ Introduction
- ➌ Factual and Procedural Background
- ➍ Procedural History
- ➎ Relevant Policy
- ➏ Issues on Appeal
- ➐ Issues Raised on Appeal
- ➑ Standards of Review on Appeal
- ➒ Analysis of Issues Raised on Appeal
- ➓ Conclusion

HEADER OF DECISION

EXAMPLE:

“

To: Title IX Coordinator

From: [Your Name]

Date: [Date of Final Appeal Decision]

Re: Appeal by Complainant/Respondent
from Determination of Decision Maker

”

1

INTRODUCTION

2

SUMMARIZE ALLEGATIONS, FINDINGS, AND IF THE APPEAL WAS TIMELY FILED.

This is the Decision of the Appellate Officer appointed by Sample University to decide the Appeal submitted by the Complainant challenging the Determination by the Title IX Adjudicator dated August 22, 2024 (“Determination”). As described by the Adjudicator in her Determination, the following allegations of sexual harassment are at issue:

[INSERT ALLEGATION HERE]

The Adjudicator determined...**[insert adjudicators findings here]**.

The Complainant timely filed her Appeal of Outcome, and the Respondent timely filed his response to Complainant’s Appeal.

BACKGROUND

3

RECAP THE DECISION MAKER'S FINDINGS AND DESCRIBE THE INCIDENT.

Adjudicators' Findings of Fact

- Complainant and Respondent status at the University
- Timeline of the incident
 - Include dates, times, locations, and witnesses

PROCEDURAL HISTORY



4

INCLUDE:

- Date of Complainant's report to the institution
- Date of formal complaint filing
- Date final investigation was completed
- Pre-hearing conference date (if applicable)
- Witness list and who testified
- Hearing date and attendance

RELEVANT POLICY

5

INCLUDE FULL POLICY LANGUAGE RELEVANT TO THE APPEAL.

The Sample University Sexual Misconduct Policy, Effective August 1, 2024 ("Policy"), sets forth and defines the specific types of conduct that are prohibited by the University. The Policy provides:

- ***Sexual harassment*** is defined in the Title IX regulations to be conduct on the basis of sex that satisfies one or more of the following....
- ***Sexual assault*** is defined as an act of sexually motivated physical contact directed towards another person when the other person does not consent or is incapable of giving consent. This includes but is not limited to rape, sodomy, sexual battery, fondling, incest, and statutory rape

ISSUES ON APPEAL

6

RECITE THE BASES FOR APPEAL AS SET FORTH IN THE TITLE IX REGULATIONS...

The right to appeal is an important right established by the Regulations of the United States Department of Education (DOE) in disputes involving alleged sexual misconduct under Title IX. As stated by the DOE: “[B]oth respondents and complainants face potentially life-altering consequences from the outcomes of Title IX proceedings. Both parties have a strong interest in accurate determinations regarding responsibility and it is important to protect complainants’ right to appeal as well as respondents’ right to appeal.”

The DOE Regulations require that appeals be allowed on three bases:

- **List appeal bases here**

ISSUES ON APPEAL



6

AND SCHOOL POLICY.

The Sample University policies adopted to comply with the procedural requirements of the DOE Title IX Regulations add two additional grounds for appeal:

- The determination cannot reasonably be supported by the evidence; or
- The severity of the sanction.

The Complainant has raised both procedural and substantive issues on appeal.

ISSUES RAISED ON APPEAL

7

DIRECTLY STATE THE ISSUES RAISED BY THE APPEALING PARTY.

The Adjudicator's findings cannot reasonably be supported by the evidence in that:

- The Adjudicator failed to appropriately consider numerous inconsistencies and falsehoods which significantly undermine Respondent's credibility.

The Adjudicator was biased against the Complainant in a way that affected the outcome of the matter.

- The Adjudicator wrongly held Complainant's processing of the first assault against her.

The Adjudicator Committed procedural irregularities that affected the outcome.

- It was a procedural irregularity to rely on the erroneously redacted statement of Jane Smith.

STANDARDS OF REVIEW



8

PROCEDURAL VIOLATIONS:

- Due deference is given to the Decision Maker
- Reversal only if there was an abuse of discretion

FACTUAL FINDINGS:

- Cannot be reversed just because you disagree

STANDARDS OF REVIEW

PROCEDURAL VIOLATIONS:

Review of Alleged Procedural Violations

- Under both the regulations of the DOE and the Sample's policies, an appealing party may base their appeal on a "procedural irregularity that affected the outcome of the matter." In analyzing an alleged procedural irregularity an Appellate Officer must determine if a procedural violation occurred and, if so, whether it was significant enough to have "affected the outcome of the matter."

FACTUAL FINDINGS:

Review of Factual Findings

- Complainant argues in support of her position that the evidence does not support the Determination by the Adjudicator. This type of issue is not included in the DOE Title IX regulations as a basis for appeal, but schools are not precluded from allowing additional bases for appeal in their own policies. The Sample University Policy allows an Appeal on the ground that: "The determination cannot reasonably be supported by the evidence."

8

ANALYSIS OF ISSUES RAISED

STATE THE ISSUE(S) AND ANALYZE IT USING THE DECISION MAKER'S FINDINGS.

- Make a finding as to each of the issues
- Explain Decision Maker's findings as supported by the evidence and not erroneous or were erroneous and not supported by the evidence and could have affected the outcome.

ANALYSIS OF ISSUES RAISED

Issue 2C: There was a visible tear on Complainant's face, consistent with the fact that she was just assaulted.

The Complainant asserts that she had been visibly crying in the bathroom following a nonconsensual sexual assault. Complainant left Respondent's room at 6:47 a.m. to use the restroom. While in the restroom, Complainant responded to two text messages, sent a text message and then took a "selfie" of herself. She returned to Respondent's room at 6:52 a.m. and fell asleep in his bed. None of the text messages sent by the Complainant reference a sexual assault that had just occurred (p.15).

The Adjudicator determined that there were two equally reasonable interpretations in this instance. One interpretation supports the Respondent and the other supports the Complainant.

Having made that determination, the Adjudicator viewed the interpretations as being neutral rather than supporting or refuting either party's account of the morning in question. This left the parties in an equal position as to credibility.

As Appellate Officer, I find that the Adjudicator's determination was reasonable and supported by the evidence in this case with regard to this point.

CONCLUSION



10

AFFIRM

- You find that the Adjudicator's findings were supported by the evidence

REVERSE

- You find that the Adjudicator's findings were not supported by the evidence and in violation of one of the bases for appeal and that such determination could have affected the outcome

REMAND

- Need further findings or evidence/ you just don't know

APPEAL OUTCOMES



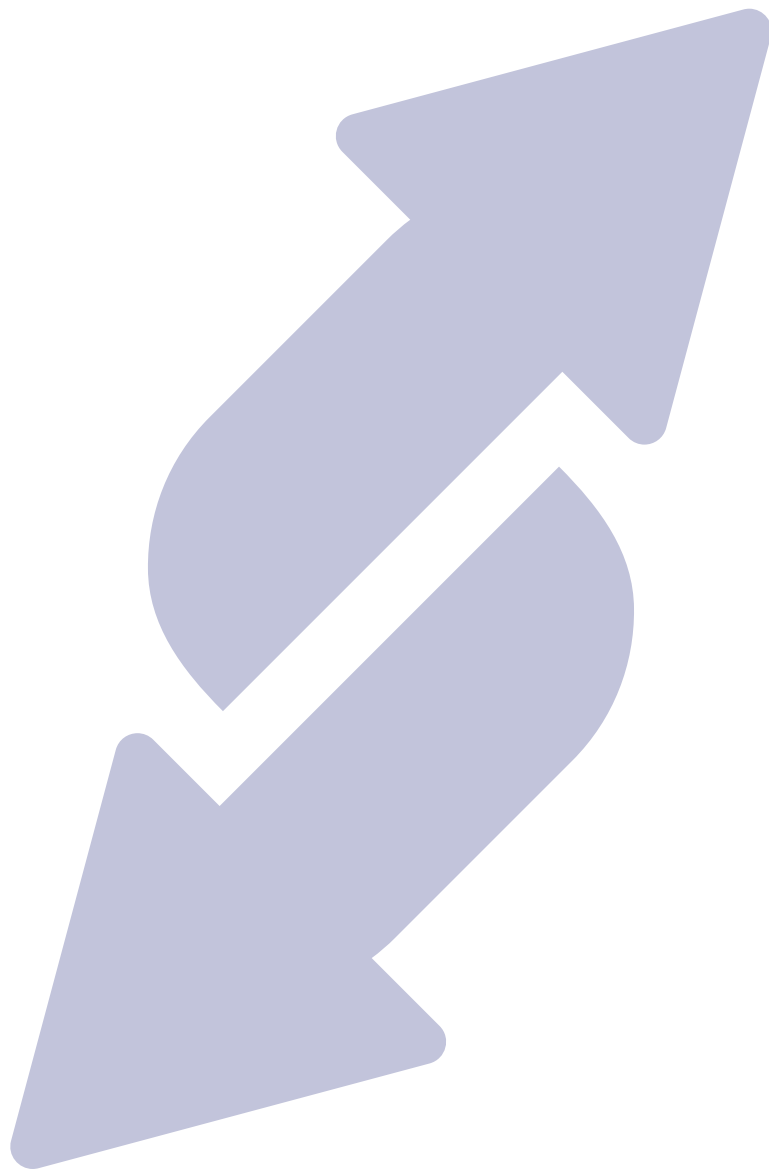
APPELLATE DECISION AFFIRMED



IF THE APPELLATE DECISION-MAKER UPHOLDS ORIGINAL DETERMINATION:

- Title IX grievance process ends
- Sanctions, as determined in the written determination, are upheld and enforced
- Remedies, as determined in the written determination, are offered to the Complainant

APPELLATE DECISION REVERSED



IF THE APPELLATE DECISION-MAKER DETERMINES THE APPEAL WAS VALID UNDER ONE OF THE LISTED BASES, THEY MAY REQUIRE:

- A new investigation to take place
- A new hearing to take place
- If policy allows sanctions to be appealed, a new sanction may be imposed

APPELLATE DECISION REMANDED



IF THE APPELLATE DECISION-MAKER FINDS THAT THE DETERMINATION WAS INCOMPLETE:

- Return to the Investigator for further investigation
- Return to a hearing for further cross examination and questioning
- Return to the Decision Maker for further review
- Return to the Coordinator for additional considerations