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## Discussion Topics:

- Title IX Overview
- Regulatory Changes
- Formal Complaints & Grievance Procedures



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# TITLE IX OVERVIEW



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## What is Title IX?

Federal civil rights statute that prohibits sex discrimination, sexual harassment, and retaliation in all aspects of the educational experience, including academics, extracurricular activities, and athletics

Title IX of the Educational Amendments of 1972 to the Civil Rights Act of 1964

“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.”



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## Title IX – Proposed Regulations

- Title IX's statutory language is brief.
- Federal government has issued guidance clarifying how it interprets and enforces those regulations
  - Obama 2011 and 2014 guidance
  - Trump 2017 Interim guidance
- Final regulations effective August 14, 2020
- Remember—the regulations are the law!



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## REGULATORY CHANGES



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## What's New?

- Mandatory Training
- Roles (the same but different)
- Sexual Harassment Definition
- Scope of Coverage
- Supportive Measures
- Grievance Procedures
- Retention of Records

## Training Requirements

- Must train all Title IX personnel on:
  - Key definitions.
  - How to conduct investigations/grievance process.
  - How to be impartial.
- Must provide decision-makers and investigators with training on evidentiary issues.
  - Relevancy.
  - Rape shield protections.

## Title IX Team: Key Roles

- Title IX Coordinator (must be an employee)
  - Investigator(s)
  - Advisor (party permitted to have an advisor of his/her choice)
  - Decision-maker(s)
  - Appeal Officer(s)
  - Informal Resolution Process Facilitator(s)
- All team members must be impartial, unbiased, and free from conflicts.
- All team members must be trained in the new Title IX Regulations.



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## Title IX Team: Title IX Coordinator

### Duties?

- Conducts Intake meeting with Complainant
- Offers supportive measures to Complainant & Respondent
- Explains grievance process, accepts formal complaint & determines mandatory or permissive dismissal
- Evaluates use of informal resolution process
- Assigns unbiased investigator free from conflicts
- Sends notices (e.g., Notice of Allegations)



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## Title IX Team: Investigator

### Duties?

- Investigates formal complaint
  - Reviews complaint
  - Gathers, reviews, weighs, and synthesizes evidence
  - Interviews parties and witnesses
  - Assesses relevance and credibility
- Prepares a written investigative report and compiles evidence
- Investigator does not make decision about whether Respondent is “responsible” for violation of sexual harassment policy



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## Title IX Team: Decision Maker

- Duties?
  - Reviews Final Investigative Report with “fresh eyes” to see if any information is missing or incomplete
  - Potentially conducts hearing (optional in k-12)
  - Facilitates written “cross-examination” between parties
  - Makes conclusions about whether alleged conduct occurred and the decision about responsibility
  - Prepares written determination with findings of fact, conclusions, and rationale for the result as to each allegation
  - If applicable, recommends sanctions for Respondent and remedies for Complainant
  - Provides written notice of right to appeal to both parties based on three grounds for appeal



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## Title IX Team: Appeals Officer

### Duties?

- If an appeal is filed, the Appeal Officer evaluates the appeal request(s) to determine if within the scope of appeal
- Provides a written Notice of Appeal to both parties
- Reviews both written statements and arguments from the parties
- Renders written decision on appeal and explains rationale for the result
- Provides the written decision to parties at same time

## Advisors

- Complainant and Respondent must have the **same opportunities** to have “others present” during any grievance proceeding
- The school may establish restrictions on the extent of an advisor’s participation, if restrictions apply equally to both parties
  - advisor may be a parent, family member, attorney, or other person
  - advisor may be present for any meeting, interview, and hearing and may inspect and review any evidence obtained as part of the investigation
  - advisor may assist with a written cross-examination process and shall ask the cross-examination questions if recipient opts for a live hearing process
  - If a party does not have an advisor to conduct cross-examination at a live hearing, the school must provide one to the party

## Impartial, unbiased, and free from conflicts

Title IX team members must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment

## Does this situation cause bias?

A member of the Title IX department shares the following image on their personal social media page:





## Sexual Harassment Definition

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



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## Sexual Harassment Definition

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or



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## Sexual Harassment Definition

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) "Sexual assault" as defined in 20 U.S.C.1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

## Sexual Harassment Examples



## Off-Campus Harassment

- Covers sexual harassment occurring “in the school’s education program or activity, against a person in the United States.”

## Off-Campus Harassment

- What is the school’s “education program or activity?”
  - Locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs.
  - Specifically includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

## Who can report?

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment).

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## How?

In person, by mail, by telephone, or by electronic mail, using the contract information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

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## How?

In person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

## When?

At any time (including during non-business hours)



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## When does a school have an obligation to respond?

**“Actual knowledge”** means notice of sexual harassment or allegations of sexual harassment



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## Who can have “Actual Knowledge?”

- In an elementary and secondary school, any employee may develop “actual knowledge” of sexual harassment, triggering a response by the school.
- The only exception—when the only school employee who is aware of the allegation is the respondent.

## SCENARIO

**Student A reports to a friend that her volleyball coach smacked her butt in the locker room. The friend reports this allegation to the school guidance counselor who reports the incident to the Title IX Coordinator. The Title IX Coordinator contacts Student A and meets with her the following day. During this meeting, Student A states that the volleyball coach often texts her and one day after practice in the laundry room he grabbed her butt. The student also stated that when the team was at a volleyball tournament in Ontario, Canada, the coach commented on how her legs looked in her uniform. The student reports that no other witnesses heard or saw that coach but that she has shared some of the text messages with friends.**

## **GRIEVANCE PROCEDURE: PRE-INVESTIGATION**



## Pre-Investigation Topics

- Filing of Formal Complaint
- Mandatory Supportive Measures
- Non-Retaliation Provisions
- Notice of Allegations
- Dismissals
- Informal Resolution Process

## Formal Complaints

- Anyone can make a report of harassment
- The grievance procedure is triggered by a Formal Complaint
- Formal Complaints can be filed by:
  - The Complainant (the aggrieved party), or
  - The Title IX Coordinator

## How must the school respond?

- The school can't be "deliberately indifferent" to the knowledge
- The Title IX Coordinator must provide the following information to the individual:
  - Availability of supportive measures;
  - The right to file a complaint; and
  - How to file a complaint

## Respondent Notice

- The Title IX coordinator must provide written notice to the respondent including:
  - Actual allegations of facts that constitute sexual harassment and evidence that supports this
  - That there is a presumption of innocence
  - That parties are entitled to advisor of their choice
  - That parties can inspect and review evidence
  - Information regarding any code of conduct provisions that prohibit false statements

## Respondent Notice

- Certain actions can be taken with regard to the respondent for the duration of the investigation
  - Can be put on administrative leave if they are an employee
  - Can be removed from educational activities subject to emergency removal procedures – §106.44(c)
    - Conduct an individualized safety and risk analysis which determines respondent poses an imminent threat to the *physical* health or safety of *anyone* which arises from the allegations of sexual harassment
    - Respondent is given the chance to challenge removal immediately

## Supportive Measures

- When a school learns of sexual harassment, its mandatory response must include an offer of supportive measures for both parties.
- The Title IX Coordinator should promptly contact the parties to discuss the availability of supportive measures, consider the party's wishes with respect to supportive measures, etc.
- Supportive measures must remain as confidential as possible.

## Supportive Measures

- Free, individualized services designed to restore or preserve equal access to education, protect safety, or deter sexual harassment
  - Support a student – not punitive or disciplinary with respect to another student
- Does NOT need to be a formal complaint
- Don't unreasonably burden any other person

## Non-Retaliation Provision

- Any person retaliated against can file a complaint with the school and the school must have a procedures in place for the prompt and equitable resolution of those complaints
- Any situation that could “chill” the bringing of Title IX violations can qualify as retaliation
- Regulations provide that protected speech under the First Amendment never constitutes retaliation.

## Dismissals

- Two types
  - Mandatory dismissals
  - Discretionary dismissals
- For both types, notice must be promptly sent to all parties

## Mandatory Dismissals

- Alleged actions fail to meet definition of sexual harassment
- Alleged actions did not occur “in the school’s education program or activity, against a person in the United States.”

These types of claims *can* still be addressed under your Code of Conduct – they are just not Title IX violations!

## Discretionary Dismissals

- If the complainant notifies Title IX Coordinator in writing that they wish to withdraw some or all of their allegations
- If respondent is no longer enrolled or employed by school
- If specific circumstances prevent school from gathering sufficient evidence to reach a determination about allegations

## Informal Resolution Process

- Requires *voluntary* and *written* consent from both parties
  - Can *not* be a condition of employment or enrollment
- Unavailable if respondent is an employee (including a teacher) of the school
- May take any form, but the school must must provide a facilitator who
  - is free from conflicts of interest or bias
  - has received special training
- Either party may abandon the informal resolution process “*at any time prior to agreeing to a resolution*” and proceed the investigation and hearing process

## GRIEVANCE PROCEDURE: INVESTIGATION



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## Investigation: Big Picture

- **Presumption:** School must presume Respondent is *not responsible* for the alleged conduct.
- **Evidence Gathering:** Investigator has the burden to gather sufficient evidence; burden not on Complainant or Respondent.



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## Investigation: Big Picture

- **Equal Opportunities:**
  - to present witnesses, including fact & expert witnesses and other inculpatory and exculpatory evidence
  - to have an advisor present for any meeting or interview
  - to meaningfully respond to the evidence before the conclusion of the investigation
  - To review evidence that is directly related to the allegations, including evidence which the investigator does not intend to rely upon regardless of where it was obtained

## Investigation: Big Picture

- **No “Gag” Orders or Directives:** Cannot restrict the ability of the Complainant or Respondent to discuss the allegations under investigation or to gather and present relevant evidence



## Investigation: Timeline

- Investigations need to be done in order to provide a prompt resolution
- **Written Notice for Interviews:** Provide written notice to all parties of date, time, location, participants, and purpose of all hearings, interviews, and other meetings with sufficient time for the party to prepare
- Interview the Complainant first to identify any witnesses
- Witnesses frequently name more witnesses
- Witnesses' memories and statements are less reliable the more time passes

## Investigation: Timeline

- Coordinate with law enforcement as needed
  - Never force *or* discourage a complainant go to the police
- Gather as much evidence as possible
  - Texts, e-mails, pictures, etc.
- Strategically schedule interviews
  - But surprise interviews are now barred
- Conduct an exhaustive and complete investigation

## Interview Basics

- Put the witness at ease
- Explain the procedure and situation
- Let the witness give a narrative
- Ask questions based on the narrative as well as questions that may be outside the narrative

## Putting the Witness at Ease (or Not)

- Private location
- Comfortable
- Avoid displays of power
  - “Scary” office
  - Sitting across desk
  - High chair, etc.
- Have a note-taker so the interviewer can just have a conversation

## Explain the Procedure

- Set the tone for the interview
- Review the policy as necessary
  - Be clear about privacy/anonymity
  - Explain what steps have been taken
  - Remind them of anti-retaliation provisions
- After the interview, explain the next steps

## Questioning

- The goal is an open-ended conversation
- The narrative – Just let the witness talk
  - Fill in the gaps and get specifics
- Questions outside the narrative are particularly helpful for third party witnesses
- Be non-judgmental
- Get more information than you give
- Listen carefully for witnesses and tangible evidence that would be helpful for the investigation

## Production of All Evidence to Both Parties

- Schools are required to produce all evidence directly related to the allegations to both sides
- The parties get ten days to respond to this evidence before the investigative report can be finalized

*What does this mean for the identity of any witnesses?*



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## Prepare and Share Draft Report of Evidence

- Before completing the Investigative Report, provide a Draft Report of Evidence and Attachments to both parties and their advisor, if any.
- Provide the parties and advisors, if any, **with at least 10 days** to review the Draft Report of Evidence and Attachments & submit written responses
- Share any new evidence with the parties and continue the investigation related to new information, if needed
- Consider and incorporate new information and responses in the Final Investigative Report



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## Investigative Report - Requirements

- Fairly summarize relevant evidence & provide narrative of witness statements
- At least 10 days prior to a hearing or other time of determination regarding responsibility, send the investigative report to each party and the party's advisor, if any, in an electronic format or a hard copy, for their review and written response
- Review written response, revise if needed, and attach written response to the Investigative Report

## INVESTIGATIVE REPORT TEMPLATE

### ▲ **FINAL INVESTIGATION REPORT** **[CONCISE TITLE]**

A concise title should, at minimum, include the name of the respondent in order to facilitate effective record-keeping. For example: "Student Allegations Involving Teacher John Doe"

**INVESTIGATOR NAME:** [NAME]

**REPORT DATE:** [DATE]

# INVESTIGATIVE REPORT TEMPLATE

## NATURE OF COMPLAINT

This sections should provide a brief single paragraph introduction to the case, including who the respondent is, what they are alleged of doing, who reported these actions, and what policies have been violated.

The investigation report should remain objective and impartial to avoid creating any bias during the hearing process. The information contained in the report is for use by the parties to review the evidence and by the decision maker in determining the outcome of the case during the hearing process.

## INVOLVED PARTIES

- *Complainant:* [Complainant Name], [Brief Description of Complainant]
- *Respondent:* [Respondent Name], [Brief Description of Respondent]

## HISTORY OF THE CASE

This section should include a brief overview of the case prior to the investigation, including what the formal complaint alleges happened, who reported the alleged conduct, who received the report, and any additional procedural history that led up to the investigation.



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# INVESTIGATIVE REPORT TEMPLATE

## POLICIES AT ISSUE

### *School Policies*

This section should outline, or directly quote, any school policies that the alleged conduct, if true, would be found to violate.

### *Standard of Proof*

This section should restate the standard of proof that a decision maker will utilize when making a decision in the case.

As the investigation report no longer includes making a determination, this information is included solely for the parties' convenience when they are reviewing the evidence.



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# INVESTIGATIVE REPORT TEMPLATE

## INTERVIEWS

COMPLAINANT: [NAME]

*Date of Initial Interview: [DATE]*

### *Background*

This section should include a brief description of the individual being interviewed and their connection to the case. It should also include a brief description of the method in which the individual was communicated with (i.e. in person, via video conference, through e-mail, etc.), as well as any information provided to the individual (such as what the investigator's role is and an overview of the investigation process).

### *Interview Details*

This section is the bulk of the interview, and should provide a detailed summary of the information gathered during the interview.

The regulations require that parties are given "an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint[.]" Thus it is important to provide as much detail as possible in your summary of the interview. When possible, attaching a transcript or recording of the interview is also recommended.



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# INVESTIGATIVE REPORT TEMPLATE

## INTERVIEWS

### *Allegations*

This section should briefly run through the allegations the complainant is making.

### *[Additional Information Provided]*

If the individual provides any additional information or exhibits, those should be briefly described here. If any exhibits are included in the report, this should also be mentioned.

### *[Follow-Up Interview] or [Follow-Up Communication]*

If any follow-up is done with the individual, any information discussed in that communication should be included as well as the date and method of the communication.



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# INVESTIGATIVE REPORT TEMPLATE

**[RESPONDENT: [NAME]]**

Other than the "Response to Allegations" section, these sections should all be treated the same as those in the Complainant interview. As a reminder, there is a presumption of innocence given to the Respondent throughout the investigation, so it is crucial that the information presented in the report be presented in an objective and non-biased manner.

*Date of Initial Interview: [DATE]*

*Background*

*Interview Details*

*Response to Allegations*

For convenience, the allegations against the respondent should be presented in the same order they were in the Complainant's Interview section. For each allegation, the Respondent should provide a concise answer, such as "denied," "does not recall," or a similar statement. This information can be presented in paragraphs or a list.

*[Additional Information Provided]*

*[Follow-Up Interview] or [Follow-Up Communication]*



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# INVESTIGATIVE REPORT TEMPLATE

**WITNESS 1: [NAME]**

These sections should also be treated the same as the above versions.

*Date of Initial Interview: [DATE]*

*Background*

*Interview Details*

*[Additional Information Provided]*

*[Follow-Up Interview] or [Follow-Up Communication]*

For additional witnesses, duplicate this and list the witnesses by numbers. Any number of witnesses can be interviewed and any witnesses interviewed who provide relevant information should be included.



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# INVESTIGATIVE REPORT TEMPLATE

## ADDITIONAL INFORMATION

### **OTHER RELEVANT INFORMATION**

Any additional information that would be relevant to the decision maker's final decision should be listed in this section. If this information came from a source, such as a webpage or employee's file, the source should be listed as well.

### **EXHIBITS**

This section should provide a list of exhibits obtained during the course of the investigation. These exhibits should be attached to the final investigation report.



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## Potential Hearings

- While hearings are now mandatory for all post-secondary schools, elementary and secondary schools can choose to make decisions without a hearing
- If you have a hearing, it must be conducted live with both parties able to simultaneously see and hear each other
  - If requested by either party, the hearing can be conducted in separate rooms with technology to enable this requirement



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## If No Hearing, What Happens?

- After the investigator has sent the investigative report to the parties and before the decision-maker(s) has reached a determination regarding responsibility, the decision-maker(s) must afford ***each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness***
- Provide each party with the answers
- Allow for additional, limited follow-up questions from each party
- The decision-maker(s) must explain any decision to exclude questions as not relevant

## Questions

- Questions must be relevant before the party or witness provides an answer
- Relevancy is not defined within the regulations
- Questions regarding Complainant's prior sexual history are only allowed when:
  - Such information is offered to prove someone other than the respondent committed the sexual harassment, or:
  - It is prior sexual behavior between the parties offered as proof that there was consent

## What if Someone Refuses to Answer?

- If 1 party fails or refuses to answer, ALL of that parties' statements are barred from consideration by the decision-maker
  - One exception—admissions against interest
- Make sure you warn the parties of this before you strike all of their testimony

## Are these Questions Relevant?

- Sexual history of the Complainant?
  - Is it different for the Respondent?
- Prior bad acts?
- Remember the two key rules:
  - Relevancy
  - Rape Shield rules (exceptions: mistaken identity and consent)

## Questions from Scenario

- “Isn’t it true that coach was fired in the past for sexual harassment?”
- “Isn’t it true that Student A was upset with coach over playing time?”
- “Isn’t it true that coach had a DUI last year?”
- “Isn’t it true that Student A received an “F” in a course last year for cheating?”

## GRIEVANCE PROCEDURE: THE DECISION AND POTENTIAL APPEAL

## Post-Investigation Topics

- Evidentiary Standards
- Determinations
- Remedies
- Appeal Process
- Record Retention

## Evidentiary Standard

- New regulations allow schools to choose between two standards of evidence
  - Preponderance of the Evidence
  - Clear and Convincing
- Same standard must be used for allegations against students and staff/faculty

## Evidentiary Standard

- Preponderance of the Evidence
  - Lower level of proof required
  - 51% certainty
- Clear and Convincing
  - Higher level of proof required
  - Significantly more than 50% certainty

*The choice between these two standards will dictate how easy or hard it is to prove an allegation!*



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## Why choose one standard over the other?



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## Determinations –Decision Maker

- Must conduct an objective evaluation of the evidence
- Cannot be biased
- Cannot be the same person that conducted the investigation
- Must receive special training on how to be impartial and how to decide what evidence is relevant

## Making Credibility Determinations

- Watch for witnesses changing their story – particularly after witnesses may have talked with one another
- Is the witness' story consistent with tangible evidence
- Does it make sense?
- A Respondent's statements are not inherently less valid than a Complainant's *and* vice versa

## Scenario – Student A

### Key evidence:

- Text messages – none are sexual in nature or deemed inappropriate; proof that coach texts all team members regarding practices, games, etc.
- Witnesses – no other witness saw or heard the coach touch the student or comment on her uniform; Coach denies the allegations
- Location – allegation regarding uniform occurred outside the U.S.

*Result?*



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## Written Determinations Must Include:

- Identification of the allegations potentially constituting sexual harassment;
- Description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the recipient's code of conduct to the facts;
- Statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant;
- Must be sent simultaneously to parties with information on appeal process.



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# WRITTEN DETERMINATION TEMPLATE

## FINAL DETERMINATION REPORT [CONCISE TITLE]

A concise title should, at minimum, include the name of the respondent in order to facilitate effective record-keeping. For example: "Student Allegations Involving Teacher John Doe"

INVESTIGATOR NAME: [NAME]

DECISION MAKER NAME: [NAME]

REPORT DATE: [DATE]



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# WRITTEN DETERMINATION TEMPLATE

## GENERAL INFORMATION

### NATURE OF COMPLAINT

This section should provide a brief single paragraph introduction to the case, including who the respondent is, what they are alleged of doing, who reported these actions, and what policies have been violated.

### INVOLVED PARTIES

- *Complainant:* [Complainant Name], [Brief Description of Complainant]
- *Respondent:* [Respondent Name], [Brief Description of Respondent]

### HISTORY OF THE CASE

This section should include an overview of the case prior to the final determination, including what the formal complaint alleges happened, who reported the alleged conduct, who received the report, and any additional procedural history that led up to the final determination.

A description of all procedural steps that have been taken from the receipt of the formal complaint through the final determination needs to be included in the final determination report. This includes:

- Any notifications to the parties
- Interviews with parties and witnesses
- Site visits
- Methods used to gather evidence
- Hearings held



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# WRITTEN DETERMINATION TEMPLATE

## POLICIES AT ISSUE

### **School Policies**

This section should outline, or directly quote, any school policies that the alleged conduct, if true, would be found to violate.

### **Standard of Proof**

This section should restate the standard of proof that a decision maker will utilize when making a decision in the case.

## ALLEGATIONS

This section should contain a concise list of all allegations of policy violations being made against the Respondent.

## SUMMARY OF CONCLUSION

This section should provide a brief conclusion of the final determination (further details supporting this conclusion will be included in subsequent sections).



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# WRITTEN DETERMINATION TEMPLATE

## FINDINGS OF FACT

The following section should outline all findings of fact that support the determination made by the Decision Maker. This includes:

- Relevant information from the investigation – e.g. evidence, interviews, statements
- Summary of the hearing

### **Background**

This section should include a brief description of the background of the case. How are the Complainant and Respondent related to one another? What types of interactions have they had in the past?

### **Investigation Details**

This section summarizes relevant findings of fact that were ascertained through the investigation process and the investigation report. This can include, among other things, summaries of key interviews, descriptions of relevant evidence, credibility determinations made by the investigator, and site visits that were made in the course of the investigation. This section can also outline attempts made at gathering information that were unsuccessful – e.g. interviewees that were unavailable or uncooperative.

### **Hearing Details**

This section summarizes relevant findings of fact that were discovered or confirmed during the hearing procedures. This should include a summary of hearing examinations and cross-examinations, evidence discussed, credibility determinations, and other issues that arose during the hearing.



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# WRITTEN DETERMINATION TEMPLATE

## ADDITIONAL INFORMATION

### **OTHER RELEVANT INFORMATION**

Any additional information that was relevant to the decision maker's final decision should be listed in this section. If this information came from a source, such as a webpage or employee's file, the source should be listed as well.

### **EXHIBITS**

This section should provide a list of exhibits obtained during the course of the investigation. These exhibits should be attached to the final determination report.



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# WRITTEN DETERMINATION TEMPLATE

## CONCLUSIONS

### **APPLICATION OF POLICY TO FACTS**

This section should apply the Code of Conduct or other policies at question to the specific findings of fact discussed above.

### **CONCLUSIONS**

In this section, the Decision Maker should provide a statement of, and rationale for, the result as to each allegation outlined at the beginning of the report. Each statement should also include a determination regarding the Respondent's responsibility.



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# WRITTEN DETERMINATION TEMPLATE

## REMEDIES

### SANCTIONS

In this section, the Decision Maker should outline each disciplinary sanction to be imposed upon the Respondent, if any.

### REMEDIES

This section should outline any remedies provided to the Complainant as a result of this grievance process.

Per the regulations, it is required that both parties be provided with a notice of their appeal rights. It is important that this notice be provided with the final determination report.

## Remedies

- The **Title IX Coordinator** is responsible for effective implementation of any remedies.
- Restore or establish access to educational programming and activities when the investigative and evaluation process results in a finding of responsibility

## Appeals

- Both parties have the right to appeal
  - At dismissal; or
  - At the completion of the formal grievance process

## Bases for Appeals

- Procedural irregularity affecting 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;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias.
- *May* offer an appeal equally to both parties on additional bases.

## Requirements for Appeals

- Notify the other party in writing when an appeal is filed 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 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.

## Record Retention

The following must be retained on file for seven years:

- Records of investigation
- Records of appeals and associated materials
- Records of any informal resolution process
- All materials used to train Title IX staff and any person who facilitates an informal resolution
- Records of supportive measures taken in response to a complaint

## KEY TAKEAWAYS & DISCUSSION



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## Key Takeaways

- No longer a safe harbor, now required by law
- Only if actual knowledge in a controlled area in the US.
- Redefine sexual harassment (severe *and* pervasive)
- Lower evidentiary standard permitted
- Increase due process protections for the accused.
  - Investigations—notice requirements and evidence sharing
  - Written questions before a decision
- Enlarge Title IX department
  - Investigator and decision-maker must be different people
  - No bias allowed



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## QUESTIONS?

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