Clark Hill

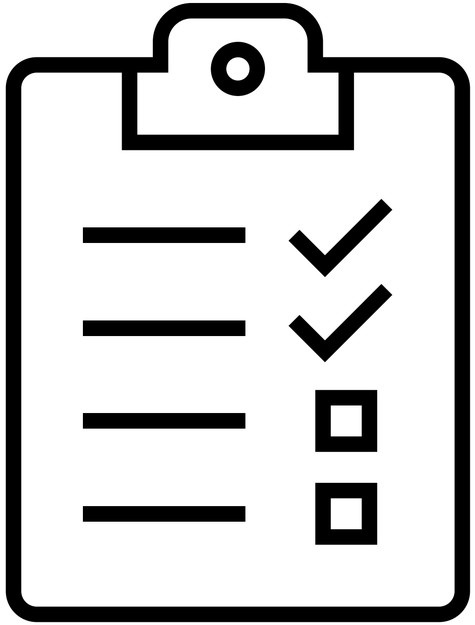
Title IX of the Education Amendments of 1972

Kentwood Public Schools

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Agenda



Overview of Title IX

- What is Title IX?
- Relevant and important definitions

Current Title IX Policy and Procedure Requirements

- Ten mandatory Title IX policy requirements

Investigation and Grievance Procedures

- Step-by-step review of the formal grievance procedure
- Appeals, dismissals, informal resolution, and other requirements

Overview of Title IX



What is Title IX of the Education Amendments of 1972?

No **person** in the United States shall, **on the basis of sex**, be excluded from participation, or denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.
20 U.S.C. § 1681, *et seq*.



Title IX's Protections



Protects ALL students in the educational environment

- ALL students protected – all grade levels
- General Education & Special Education students

Protects ALL employees of the District as well as 3rd party employees

- Employees protected under both Title IX and Title VII for sexual harassment

"Same sex" discrimination claims must be handled with same procedures as opposite sex claims

Title IX is More Than Athletics

Title IX protects students in all:



- Academics and Education
- Extracurricular and Athletic Programs
- Other programs or activities of the school:
  - in a school's facilities;
  - in classrooms (including virtual);
  - on school transportation; and
  - at an activity or program sponsored by the school at another location or where the school has substantial control over the students (i.e., field trips, sporting events)

Within District's Educational Program or Activity

- All operations of the District, including but not limited to:
  - In-person and online educational instruction
  - Employment
  - Extracurricular activities, athletics, performances, and community engagement and outreach programs
  - All activity that occurs on school grounds or on other property owned or occupied by the Board
  - Also includes locations, events, and circumstances that take place off school property/grounds over which the Board exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs

NOT Within the Educational Program or Activity

- Remember this language: **Board must exercise substantial control over both the Respondent and the context in which the Sexual Harassment occurs**

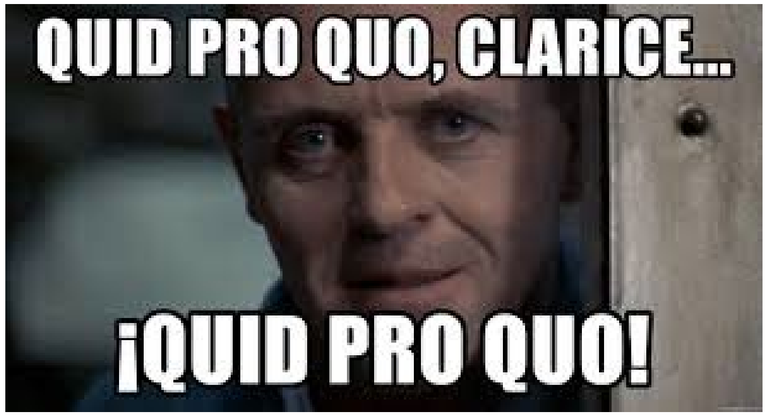
- Does not apply to Sexual Harassment that occurs off school grounds, in a private setting, and outside the scope of the District's education programs and activities

- This is a fact-specific determination

- What about:
  - An incident in the bathroom of a museum during a field trip?
  - An incident in the parking lot after a football game ended?
  - An incident between students at a weekend house party?

Definition of Sexual Harassment

- "*Quid Pro Quo*" harassment by a school employee. Quid pro quo (Latin for "this for that") conditions a benefit (i.e., higher grades) on sexual advances/favors.
- 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 school's education program or activity.
- "Sexual assault," "dating violence," "domestic violence," or "stalking" as those terms are defined under other Federal laws called the Cleary Act and the Violence Against Women Act.



A Note on “Sexual Assault” Definitions

- "Sexual assault," "dating violence," "domestic violence," or "stalking" are defined by federal law.
- The Clery Act defines “sexual assault” as “an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.” The definitions in the FBI User Manual are intended to be “generic” so as to not exclude more specific **state crimes**. Thus, we look at state law!
- Michigan’s Penal Code addressing criminal sexual conduct and similar offenses defines “sexual contact” as:

> the intentional touching of the victim’s or actor’s intimate parts or the intentional touching of the clothing covering the immediate area of the victim’s or actor’s intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for i) revenge, ii) to inflict humiliation, iii) out of anger. MCL 750.520a(q).

Sexual Assault and Law Enforcement Reporting

MCL 380.1308: Statewide School Safety Information Policy requires schools to report certain offenses that occur at school, on school property, or at a school-sponsored activity or event.

Armed student or hostage	**Robbery or extortion**
Suspected armed student	**Unauthorized removal of student**
Weapons on school property	**Threat of suicide**
Death or homicide	**Suicide attempt**
Drive-by shooting	**Larceny (theft)**
Physical assault (fights)	**Intruders (trespassing)**
Bomb threat	**Illegal drug use or overdose**
Drug possession	**Explosion**
Vandalism or destruction of property	**Arson**
Minor in possession of alcohol	**Sexual assault**
Bus incident or accident	

Off Campus Sexual Assault and Reporting

- MCL 380.1311: expressly authorizes school districts to discipline a student for committing criminal sexual conduct (CSC) against another student enrolled in the same district, even when the conduct occurs off school grounds.
- 2 parts:
    1. May authorize or order the suspension or expulsion from school of a pupil who commits criminal sexual conduct against another pupil enrolled in the same school district.
    2. Shall permanently expel a pupil who pleads to, is convicted of, or is adjudicated for criminal sexual conduct against another pupil enrolled in the same school district.
- This revision to the Revised School Code does not require the CSC to have occurred at school, on school grounds, or at a school-sponsored event or activity.
- Bottom line? = The district should refer allegations of off campus sexual assault to law enforcement rather than attempt to determine culpability through its own investigation.

Is It Title IX Sexual Harassment (Severe, Pervasive, and Objectively Offensive)?

- **SEVERE:**
  - *Causing discomfort or hardship*
  - *Very painful or harmful*
  - *Requiring great effort or a great degree*
  - *Dependent upon the circumstances (age, disability status, other characteristics)*

- **PERVASIVE:**
  - *Existing in or spreading through every part of something*
  - *Systemic*
  - *Extensive, Widespread, Prevalent*
  - *"Pervasive" can also mean multiple people are involved*



- **OBJECTIVELY OFFENSIVE:**
  - *Giving painful or unpleasant sensations*
  - *Causing displeasure or resentment*
  - *Disrespectful, derogatory, insulting*
  - *Based on the reasonable person – not just the victim's perception*

Is It Title IX Sexual Harassment?

Going to require individual case-by-case analysis by frontline Administrators first.

- **Single, isolated, events = unlikely, but could qualify (e.g., rape)**
  - Butt smack in hallway
  - Single inappropriate text/photo (isolated vs. systemic disclosure?)
  - Verbal allegations only = grey area (simple teasing and name-calling = not Title IX)
  - Mutual sexual conduct/communication (consent = not Title IX)

- **Effectively <u>denies</u> equal access to education**
  - Drop out/withdrawal from program or activity
  - Increased absences
  - Decline in grades
  - Increased emotional or academic supports

If Not Title IX, What Is It?



- **Bullying/Cyberbullying?**
- **Other discrimination/harassment?**
- **Student Code of Conduct Offenses?**
  - Inappropriate Displays of Affection
  - Undesirable Physical Conduct
  - Sexual Misconduct
  - Profanity/Obscenity
  - Inappropriate Conduct/Communication (Teasing/Disorderly Conduct)
  - Acceptable Use Violation/Technology Abuse
- **What is your duty to investigate? Who is your investigator? What type of investigation required?**

If Not Title IX, What Is It?

STATE LAW = ELLIOTT-LARSEN CIVIL RIGHTS ACT

"Sexual harassment" is defined under Michigan law as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

- Submission to such conduct is made either implicitly or explicitly a term or condition of an individual's employment, or status in a class, educational program, or activity;
- Submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting such individual;
- Such conduct has the purpose or effect of interfering with the individual's work or educational performance; of creating an intimidating, hostile, or offensive working, and/or learning environment; or of interfering with one's ability to participate in or benefit from a class or an educational program or activity.

Informal/Formal Investigation vs. Title IX Grievance Procedure



Allegation of Sexual Harassment ("SH")

1. Ask where the conduct occurred. Was it at school, on the bus, or at a school activity/program?

YES

NO

2. Is it severe, pervasive, AND objectively offensive?

Must meet all three to qualify as SH under Title IX; also consider quid pro quo or sexual assault if applicable

NO

YES

3. AND did it effectively deny complainant's access to the program or activity (not a high bar)?

Look at grades, attendance, and participation.

NO

YES

Proceed under Title IX Grievance Procedures (formal or informal)

NOT Title IX SH

1. If the school <u>does not</u> have substantial control over BOTH the respondent and the context

2. If it does not meet the definitions of SH

Proceed with:
Code of Conduct or other Board Policy Mandatory Dismissal of Complaint

Also consider:
State law SH
Bullying or Other Harassment
Inappropriate Displays of Affection
Indecency

Actual Knowledge and School Personnel

- The Title IX Coordinator(s) for the school district.
- Schools must provide the contact information for the Title IX Coordinator(s) (Board Policies, Handbooks, Website)
- Other people within the school who have authority to institute corrective measures. This could vary from school to school but always includes the Title IX Coordinator(s).



IMPORTANT: In elementary and secondary schools, telling <u>any school employee</u> always puts the school on notice. The school must not respond in a manner that is <u>deliberately indifferent</u>.

Actual Knowledge – What Is It?

- **Notice to any employee triggers the duty to respond.** There is no distinguishing between employees at the K-12 level (and it is unreasonable to require young students to make a distinction between the "right" and "wrong" person).
- Notice results whenever any elementary and secondary school employee:
  - witnesses sexual harassment;
  - hears about sexual harassment or sexual harassment allegations from a complainant or a third party (parent, friend, or peer);
  - receives a written or verbal complaint about sexual harassment or sexual harassment allegations.
- Must inform the Title IX Coordinator.

Deliberate Indifference – What Is It?

- When a school is deemed to have actual knowledge, the school must not act in a manner that is deliberately indifferent.
- Deliberate indifference is when a school responds to sexual harassment in a manner that is "**clearly unreasonable** in light of the known circumstances." Federal courts in Michigan have noted that "clearly unreasonable" is a high bar.
- A response must:
  - Be prompt;
  - Consist of offering supportive measures;
  - Ensure the Title IX Coordinator contacts each complainant to discuss supportive measures;
  - Explain the process for filing of a formal complaint (*side note: the Title IX Coordinator can sign a formal complaint even if the complainant decides against it*).

Current Title IX Policy and Procedure Requirements



Title IX Board Policies and Grievance Procedure

- Definition of Sexual Harassment under Title IX Final Rule
- Identify Title IX Coordinators, or that the school will designate at least one (most schools identify two: one male and one female administrator)
- Continue to identify Compliance Officers: responsible for *other* complaints of discrimination/harassment (e.g., race, religion, disability, etc.) and non-Title IX sexual harassment
- Separate grievance procedure for investigation of non-Title IX sexual harassment complaints – know your policies & procedures!

Who Are the Title IX Players at your District?

- Title IX Coordinator(s)
- Investigators: Title IX Coordinator(s), Central Office Administrators, Principals, Assistant Principals, Athletic Director
- Decision-Maker: NOT Title IX Coordinator, NOT Investigating Administrator
- Appeal: Superintendent? BOE? Committee appointed by the BOE?
- Informal Resolution Facilitators: Administrator, School Counselor, School Social Worker
- Legal counsel may be consulted at any/all stages of Title IX Grievance Procedure; legal counsel may be assigned or designated as Investigator, Decision-Maker or Appeal Officer

Note: Individuals involved must be trained in Title IX!

written grievance procedure for dealing with sexual harassment
the regulations.

dures themselves cannot discriminate on the basis of sex, and
ons that a school adds must apply equally to complainants and
complainants and respondents fairly and equally is a

cedures need to include 10 specific items.

e process must treat complainants and respondents equitably
s to a complainant if a respondent is found responsible, and by
ed grievance process imposing discipline on a respondent.

mplainant have to be designed to restore or preserve equal
education program or activity.

sures in place with or without a grievance process pending, a
es CAN be punitive or disciplinary against the respondent.



e process must ensure an objective evaluation of all relevant
inculpatory and exculpatory evidence.

ions can't be made on the basis of a person's status as a
dent, or witness.



ed in the process – Title IX Coordinator, investigators, appeals,
eal or facilitators of informal, voluntary resolution efforts – must
conflict of interest.

also be trained. The materials used to train Title IX personnel
otypes, must promote impartial investigations and
ust be posted on each school's website (and if a school does
e, make them available for public inspection upon request).

on who can serve in what role:
be decision-maker.
nnot be investigator or Title IX Coordinator.
appeal cannot be the investigator, Title IX Coordinator, or the

ny finding of responsibility only comes at the conclusion of a

s: Reasonably Prompt Timeframes

s must include reasonably prompt timeframes for resolving
sexual harassment. Prior OCR guidance 60 days.
days.

permitted only for good cause (law enforcement activities, the
witness, etc.).

proscribed (Investigation Report, Decision-Maker).

s must describe or list the range of possible remedies and
that could occur following a determination of responsibility.

anctions:

nd including permanent expulsion

d including termination

a Remedial Measures)

(for both parties)

m, lunchroom, bus, locker assignment

if applicable

gnment

es to be continued after investigation

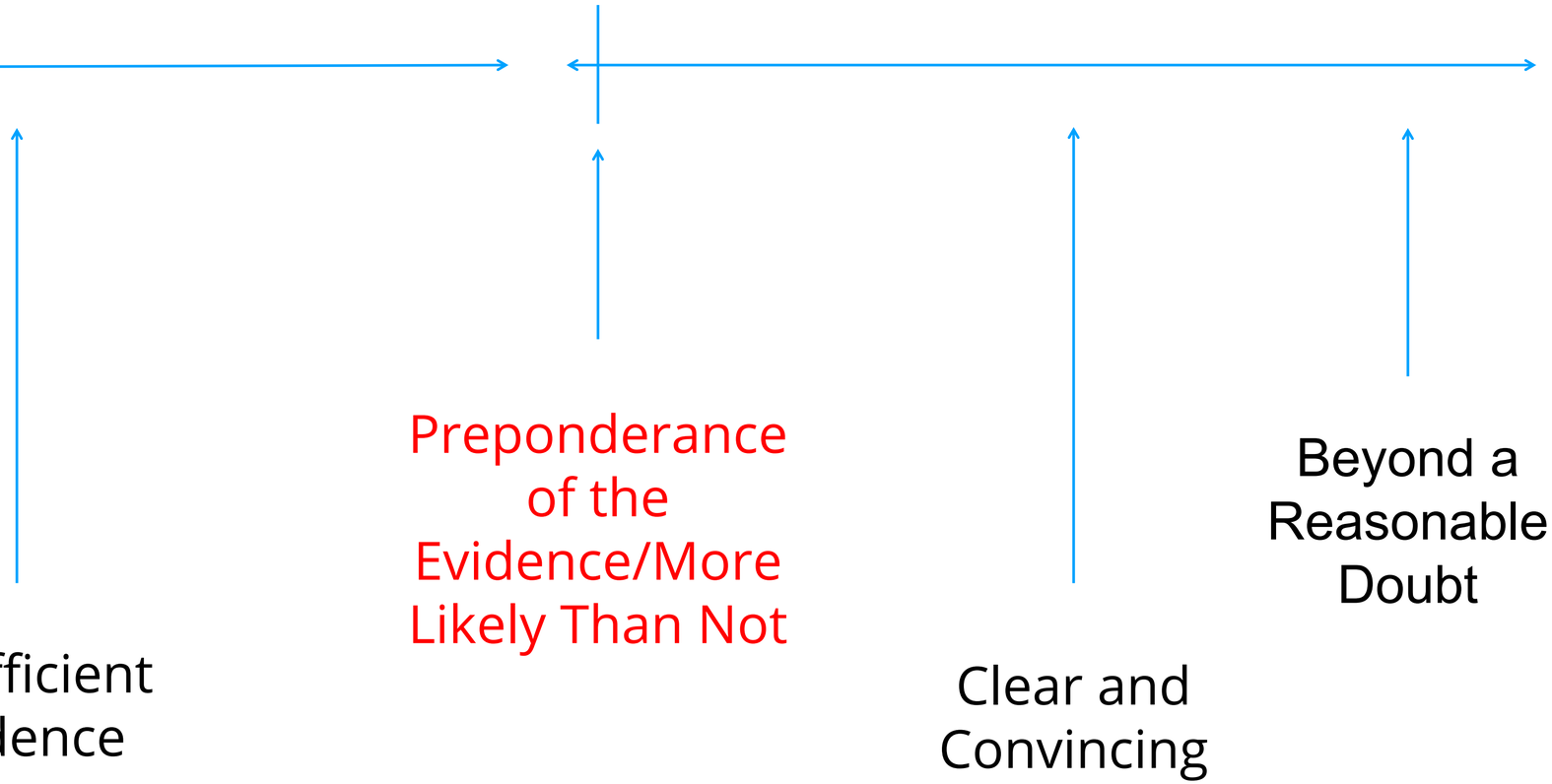
s must state which standard of evidence the school will use to
n regarding responsibility, to be used for all sexual harassment

between the preponderance of the evidence standard and the
evidence standard.

he school chooses, it has to use that standard for all formal
harassment, whether the respondent is a student or employee,
ember.

proceedings must have the same standard of evidence.

EVIDENTIARY STANDARDS



nd information about how to invoke the right to appeal.

appeal to every party on certain bases, and schools also pand the bases on which an appeal may be taken, as long ases equally to both parties.

Description of Range of Supportive

e process must describe the range of supportive measures nants and respondents.

can include no contact orders, changes in schedules, campus or other measures.

otected by a legal
attorney-client privilege
privilege, can be used
n unless the person
has waived it.

e school is allowed to
s about, or allow the
nce that is protected by
e.

s opt to waive their
want, but they don't



Grievance Procedures



ions of Sexual Harassment – Respond!

ve Measures (even if no formal complaint)

ed Formal Complaint of Sexual Harassment

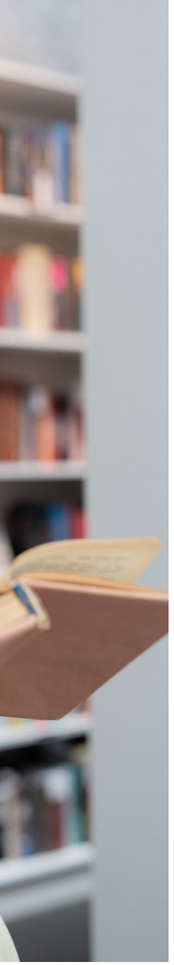
f the Allegations Sent to Both Parties

ring and Investigation

port (also: party responses and written relevant questions)

ation of Responsibility from the Decision-Maker

cable, of the Determination or a Dismissal



Apply to parties in both ***reports*** and ***formal complaints*** of sexual harassment

- ***Complainant***: A person who is alleged to be the victim of conduct that could constitute sexual harassment
  - NOT a third party who reports alleged sexual harassment perpetrated against someone else
  - NOT the Title IX Coordinator, even if this person "signs" a formal complaint
  - NOT the District
- ***Respondent***: A person who has been reported to be the perpetrator of conduct that could constitute sexual harassment

4(d)

ust promptly, even if no formal complaint is filed:
ainant to discuss the availability of "supportive measures"
lainant's wishes with respect to supportive measures
nant of the availability of supportive measures with or without
l complaint
for filing a formal complaint; discuss/offer informal, if

ct's response – must NOT be deliberately indifferent!

e free, individualized services designed to restore or preserve equal
rotect safety or deter sexual harassment.

be a formal complaint for an alleged victim to receive supportive

pport a student, and they aren't punitive or disciplinary with respect

ust be kept confidential (need-to-know basis).

on't unreasonably burden any other person.

is responsible for implementing and monitoring supportive measures.

err" on the side of the victim as school always has to consider the
when it comes to requests for supportive measures.

oth ways)

es for assignments/tests
/lunchroom/bus assignments
and Supervision
rson
Temporary Transfer
sures



e dependent on a student or employee's unique needs and
ation with various departments may be necessary.

ainst a respondent and requesting that the recipient investigate
al harassment. 34 C.F.R. § 106.30(a).

e complainant or Title IX Coordinator. A document or electronic
) that contains a physical or digital signature suffices.

ng a form to be completed, as this can help gather important



ency Removal
6.55(c))

alized safety and

a student or
mmediate threat
safety

challenge
ly" following the

e.g., "change in
EA

Employee Administrative Leave
(34 C.F.R. 106.44(d))

- Not prohibited. Consider state law, board policy, handbooks, and bargaining agreements.



egations is provided to the parties after receipt of a formal

:

acts that would constitute sexual harassment, including: the
and the date and location of the incident(s), if known.

nnocence for the respondent.

parties are entitled to advisor of their choice (attorney, parent).

parties can request to inspect and review certain evidence.

g the code of conduct and prohibition of false statements.

comply with the 10 items under Final
sending the policy as an attachment.

pportunity to engage in informal
when respondent is an adult
istrict).

vide written notice of the date, time,
and purpose of all hearings,
eetings, with sufficient time for the

t be sent to the parties if additional
are going to be investigated.



- The school must also provide equal opportunities for the parties and their advisors to inspect and review the evidence obtained by the school as part of its investigation, if the information is directly related to the allegations raised in the formal complaint.

- The school also has to give the parties a meaningful opportunity to respond to the evidence after the school has provided it.

- Formal complaint, witness statements, emails, text messages, video, etc.

rties to have witnesses
as inculpatory or
.

ct the ability of either
legations under
ther and present
., No Gag Orders).

vide the same
arties to have others
evance proceedings,
n advisor of choice for
ngs.



epare a written investigative
the relevant evidence
d response. The report can be
electronic format or hard copy.
inary" report).

parties **at least 10 days** to
nd evidence in writing. If a
he investigator must consider
alizing the investigative report.

can then be finalized and
(advisors) and decision-maker.
report).



port" provides the parties and their advisors (if any) an
ew the evidence gathered
ys for the parties to review and provide a response, if any

with responses from the parties (if any) and provide the final
s, their advisors (if any), and the decision-maker

ge, the Title IX investigator's duties are complete.
er carries out the remaining steps of the grievance process.

ents to comply with Title IX include allowing the parties (and their
portunity to inspect/review all relevant evidence as well as providing a
n reports, the following safety measures are recommended to
nd FERPA compliance:

ence, allowing the parties to view the video is sufficient under Title IX
ot provide a copy of the video unless the District can effectively blur
aces).

es on documents and replace with identifiers ("Complainant"
ess 1, 2, 3," etc.)
nly to the Complainant and Respondent identifying the names of the

("Complainant" and "Respondent") on all documents provided.

rrict the parties and advisors from downloading or copying an

ondary school must give the parties equal opportunity to submit
tions to each other, before the decision-maker reaches a
cond # day requirement under Title IX Final Rule, differs
.

ust then ask the questions to the party and record the answers,
aker determines the questions are not relevant to the

ce about a complainant's prior sexual history are not relevant,
ptions:
at someone other than the respondent committed the alleged

onsent.

to Note:

e allowed to cross-examine the parties. The parties themselves
personally cross-examine.

stions must be relevant, and decision-makers must decide if a
ORE the other party or witness has to answer it.

he entire hearing must be held with the parties located in separate
enabling everyone to see and hear each other.

d to answer questions or participate in grievance process. If a party
erences can be made about the determination regarding
the fact a party or witness didn't come to the hearing or refused to

audio or audiovisual recording or transcript of the hearing and
parties.

aker needs to objectively evaluate the relevant evidence and reach
ther the respondent is responsible for the alleged sexual harassment.

ker needs to use independent judgment, so the decision-maker
rson who conducted the investigation and cannot be the school's

nakers?

e free from conflicts of interest or bias for or against complainants or
eceive special training about how to be impartial and how to
is relevant.

weigh the relevant evidence, decide whether it meets the school's
or sexual harassment allegations and issue the written determination
come letters).

ased

bias towards either party or special relationship with either party.
ptions about the evidence before interviewing a party or a witness.
m like that type of person."
ouldn't have been wearing that."
naker."
know the answer to something, ask the question anyway.

pportunity to present "their side" of the story.

nts that could lead a party or witness to believe you are bias or have

om others (note: confidentiality considerations). If you consulted with
n prior to a final determination, less opportunity for a party to allege
partial.

dence define “Relevant evidence” as:

means evidence having any tendency to make the existence **consequence to the determination** of the action **more bable** than it would be without the evidence.

gation does not take place in a courtroom, you need to ence is relevant to an investigation and what is not.

th written and oral evidence (i.e., witnesses).

e ability to exclude evidence that is not relevant, but before eview the evidence and be prepared to explain why it is not gation.

ed in the investigation and the written report. It must include:

tentially constituting sexual harassment and portion of the
at apply.

e procedural steps that were taken by the school (when the
was filed, when interviews were held, etc.).

ection that is used to support the determination.

ws conclusions after applying the facts to the portion of the
t applies.

ationale for the ultimate determination of responsibility.

nctions that the school will impose on the respondent, and state
l will provide remedies to the complainant.

ationale for any remedies for the complainant, addressing how
l restore or preserve equal access.

e recipient's procedures, a statement that the parties have a
e initial determination regarding responsibility, and the
or appeal.

the written determination
neously, along with
w to appeal the

n to set deadlines for
t be filed, bearing in mind
clude the entire
d bring resolution to the
ies, within a reasonably

or is responsible for
dies contained in the





opportunity to appeal. Appeals are determined by a separate individual (the decision-maker on appeal), who was not involved in the process.

- Appeals are offered in two circumstances:

1. **After a dismissal** (either mandatory or permissive) of a formal complaint of sexual harassment.

2. At the end of the grievance process **following a determination of responsibility**.

itle IX are limited! Schools can offer additional grounds for
, so long as the grounds apply on an equal basis to the parties.

rity affected the outcome of the matter.

een discovered that was not reasonably available at the time
on responsibility or dismissal, that could affect the outcome of

on the part of a Title IX Coordinator, an investigator who
or a decision-maker, and the conflict of interest affected the

ify both parties in writing that an appeal was filed and implement
ually.

equal opportunity to submit a written statement supporting or
ne. There is no specific deadline applied for the statements (must be
unity but check your policy).

o decides the appeal cannot be the same person who reached the
g responsibility, or the investigator or Title IX Coordinator.

arties' written statements, the decision-maker on appeal must issue a
ing the results and rationale and send it to the parties simultaneously.

ion about whether the respondent is responsible for the sexual
becomes **final** after appeal.

complaint.

ribe conduct that meets the harassment;

harassment that did not occur in tion program or activity;

harassment that did not occur in t all.

ess these complaints under their en if the misconduct is not sexual e IX.

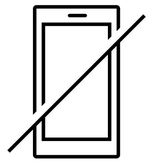


complaint:

tifies the Title IX Coordinator in writing that the complainant
e formal complaint or some of its allegations;

longer enrolled or employed by the school; or

ces prevent the school from gathering evidence sufficient to
n about the allegations.


years, and includes several categories of documents:

investigation.

eal, the results, and the materials associated with an appeal.

nal resolution process and result therefrom.

rain Title IX Coordinators, investigators, decision-makers, and itates an informal resolution. These materials also must be t's website, or made available for public inspection if the e a website.

ortive measures that they took in response to a report or harassment. (This is your proof that the school was not nt.)

eged sexual harassment must be maintained for a minimum of

ds
ns

ions taken, including supportive measures

very instance:
not deliberately indifferent
e taken to restore or preserve equal access to the educational

asures provided, why that was not deliberately indifferent

allowed to retaliate against anyone
der Title IX.

against can file a complaint with the
l must have procedures in place for the
e resolution of such complaints.

p the identities of parties and witnesses
sclosure of someone's identity is
aws or is necessary in order to conduct
s.



nal resolution in appropriate cases.
e respondent is an employee of the school.
y exist in policies – make sure to check!

only be attempted if each party enters the process completely

ce, threaten, or require any party, complainant or respondent, into
lution.

ceeds, the school must provide a facilitator who is free from conflicts
who has received special training.

provide complainants and respondents with notice of the
eir rights, information about whether an informal process is
t withdrawing from the process.

mal, doesn't mean you can skip formal

voluntary consent to participate.
, day, time, location.
ons with parties, parents/union/advisor (if

taken to remedy the complaint.
n correspondence.
nator involved.
es must still be considered (and



nator(s)
ay be involved in Grievance Procedure



aker(s)
Facilitator(s)
for these individuals
to your website
Policy/Grievance Procedure
/Grievance Procedure
port!



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claimer
ment is not intended to give legal advice. It is comprised of general information.
s facing specific issues should seek the assistance of an attorney.