



# NOTICE OF ALLEGATION, INVESTIGATION, & DECISION-MAKING PROCESS

*A Title IX Coordinator Refresher Course*

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# IN THIS CHAPTER



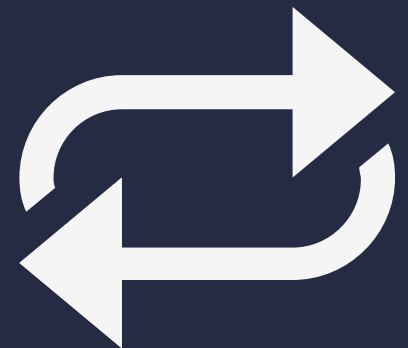
NOTICE OF  
ALLEGATIONS



TITLE IX  
INVESTIGATIONS



DECISION MAKING  
PROCESSES



THE APPEAL  
PROCESS



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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 →


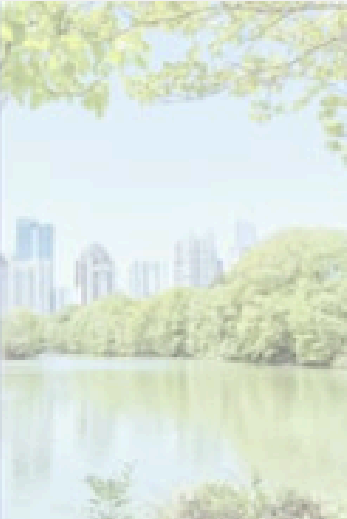







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# STEPPING AWAY



 See Overview	 Coming Soon
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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
 See Overview	 See Overview	 See Overview
 Start Course	 Start Course	 Start Course



# 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](mailto:adrienne@titleixsolutions.com) or [tawny@titleixsolutions.com](mailto: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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**JUNE 27 & 28, 2024**  
ATLANTA, GA

**NAVIGATING THE 2024  
TITLE IX REGULATIONS  
WITH CONFIDENCE**

*Training for Higher Education Administrators*



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

**AN INTRODUCTION TO  
THE 2024 TITLE IX RULE**



APRIL 25, 2024

An Introduction to the 2024 Title IX Regulations



**JULY 23 & 24, 2024**  
LIVE VIRTUAL TRAINING

**NAVIGATING THE 2024  
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WITH CONFIDENCE**

*Intensive for Higher Education Administrators*



July 23-24, 2024: Virtual Title IX Training  
Use code INTRO24BEGS to save \$100



# THANK YOU!



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# NOTICE OF ALLEGATIONS AND START OF THE GRIEVANCE PROCESS



# IN THIS CHAPTER



DRAFTING THE NOTICE  
OF ALLEGATIONS



INITIATING THE TITLE IX  
GRIEVANCE PROCESS



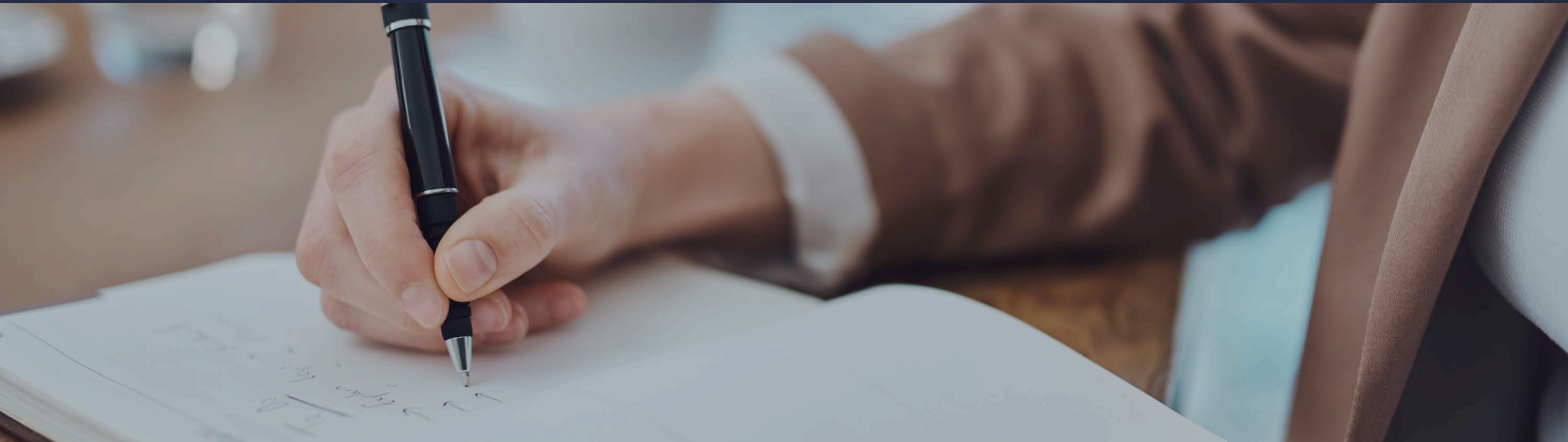


# SPEAKER

**ADRIENNE MATHIS**

EXECUTIVE DIRECTOR  
TITLE IX SOLUTIONS

# DRAFTING THE NOTICE OF ALLEGATIONS



# GRIEVANCE PROCESS



INTAKE &  
REVIEW

FORMAL  
COMPLAINT

**NOTICE OF  
ALLEGATIONS**

INVESTIGATION

DECISION-  
MAKING  
PROCESS

WRITTEN  
DETERMINATION

APPEAL



**WE ARE HERE**



# PURPOSE OF THE NOTICE OF ALLEGATIONS

CONSISTENT

TRANSPARENT

COMPLIANT

# ELEMENTS OF THE NOTICE OF ALLEGATIONS

**UPON RECEIPT OF A FORMAL COMPLAINT, THE TITLE IX COORDINATOR MUST ISSUE WRITTEN NOTICE TO THE PARTIES, IF KNOWN.**

**THE NOTICE MUST CONTAIN THE FOLLOWING INFORMATION:**

- 1** Notice of the allegations potentially constituting sexual harassment under Title IX, including:
  - Sufficient details known at the time, such as:
    - Identities of the Parties involved in the incident (if known)
    - Description of the conduct allegedly constituting Title IX sexual harassment
    - Date and location of the alleged incident (if known)

# HELPFUL HINT

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## IDENTITIES OF STUDENTS CAN BE SENSITIVE.

Although names must be included in the Notice, consider defining the appropriate individuals as "Complainant" and "Respondent" in the opening paragraph and then refer to the students with such terms throughout the Notice.



# ELEMENTS OF THE NOTICE OF ALLEGATIONS

## THE NOTICE MUST CONTAIN THE FOLLOWING INFORMATION:

- 2 Statement that if, during the course of an investigation, the school decides to investigate allegations about the Complainant or Respondent that are not included in the Notice, the school will provide written Notice of the additional allegations to the parties whose identities are known
- 3 Statement that the Respondent is presumed not responsible for the alleged conduct unless and until the determination of responsibility is final

# ELEMENTS OF THE NOTICE OF ALLEGATIONS

## THE NOTICE MUST CONTAIN THE FOLLOWING INFORMATION:

- 4 Notice and copy of the school's Title IX grievance process
- 5 Statement that the Parties have the right to inspect and review evidence collected during the investigation
- 6 Statement that a determination of responsibility is made at the conclusion of the grievance process
- 7 Option for informal resolution, if appropriate and permitted

# NOTICE OF ALLEGATIONS ELEMENTS

- Provide basic information about Title IX and the school's requirements under the Regulations
- Include an overview of the Title IX process and explain what happens next (e.g., interview with an Investigator)
- Summarize the Parties' rights under Title IX (e.g., right to participate or refuse to participate in the process, right of a parent or guardian to act on behalf of a party, right to supportive measures, etc.)

# HELPFUL HINT

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## MAKE THE TITLE IX POLICY AND PROCEDURES ACCESSIBLE TO THE PARTIES

Include a hyperlinked URL to the applicable policy in the Notice, attach a digital copy of the policy to the email, and attach physical copy of the policy to the printed letter to the Complainant and Respondent.



# ELEMENTS OF THE NOTICE OF ALLEGATIONS

## THE NOTICE MUST CONTAIN THE FOLLOWING INFORMATION:

- 8 Statement that the Parties have a 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.



Parties have the option to include the Advisor in any meeting or interview.

# HELPFUL HINT

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## ASK THE PARTY TO SHARE THE NAME OF THEIR CHOSEN ADVISOR

This allows the Title IX Coordinator to communicate with the Advisor and share information about the Title IX process. This also helps the Title IX Coordinator recognize if a Party is unable to find an Advisor and therefore assist in identifying an Advisor, if necessary.

# ELEMENTS OF THE NOTICE OF ALLEGATIONS

## THE NOTICE MUST CONTAIN THE FOLLOWING INFORMATION:

- 10 Notice to expect an initial interview with the Title IX Coordinator or Investigator
  - Provide sufficient time for the Party to prepare for any initial interview
- 11 Reference to any provision in the school's code of conduct or other policy that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

# ADDITIONAL ELEMENTS TO INCLUDE

- Provide the name and contact information of the Title IX Coordinator and Investigator
- Include a statement that retaliation is prohibited, and define retaliation under Title IX
- Relay confidentiality expectations, as outlined under Title IX and school policy (sometimes referred to as “privacy” within a policy)
- Provide a list of campus and community support resources
- Provide information about disability services and the process for requesting reasonable accommodations

# RETALIATION

- Intimidation, threats, coercion, or discrimination against any individual for either of the following reasons:
  - Intention to interfere with the individual's rights under Title IX; or
  - Because an individual has submitted a report or formal complaint, testified, assisted, or participated or refused to participate in the investigation, proceeding, or hearing under Title IX



# CONFIDENTIALITY

## TITLE IX STATES EACH SCHOOL OR “RECIPIENT” MUST:

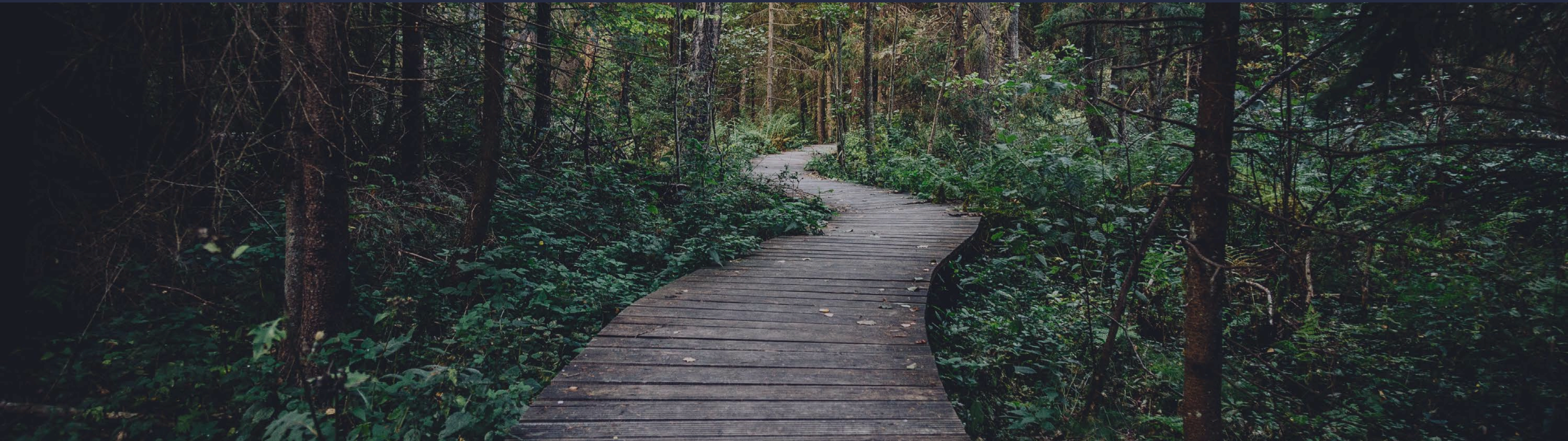
- Keep confidential the identity of:
  - Any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment,
  - Any complainant
  - Any individual who has been reported to be the perpetrator of sex discrimination
  - Any respondent
  - Any witness
- Except as may be permitted by the FERPA statute or FERPA regulations, or as required by law, or to carry out the purposes of any investigation, hearing, or judicial proceeding arising thereunder.

# PRACTICAL TIPS

- Prepare the Notice of Allegations on school letterhead, then attach it to an email
- Consider the reading level of the Parties and do your best to use accessible language
- Make yourself available to Parties and the Advisors so they can ask questions, discuss the process, etc.
- Proofread this Notice! Misspellings impact trust and confidence
- Send these notices to both the Complainant and Respondent at the same time



# INITIATING THE TITLE IX GRIEVANCE PROCESS





# NEXT STEPS

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## A COMPLAINT HAS BEEN INITIATED. NOW WHAT?

In addition to preparing the Notice of Allegations, the Title IX Coordinator is responsible for initiating the Title IX process.

Key responsibilities include:



Engaging Title IX  
team members



Contacting Parties'  
Advisors



Communicating  
with the Parties



# ENGAGING TITLE IX TEAM MEMBERS

## SHARE WITH TEAM MEMBERS THE FOLLOWING INFORMATION:

- Date of the formal complaint
- Potential timeline of the grievance process and their expected participation
- Confidentiality requirements
- Reminder that all Title IX personnel are prohibited from having a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent participating in the process
  - Provide the names of the Complainant & Respondent
  - Inform Title IX personnel that they must contact you immediately and recuse themselves from the case if they have a conflict of interest or bias
- Copy of the Title IX or Sexual Harassment Policy





## CONTACTING PARTIES' ADVISORS

### WITH THE PARTY'S PERMISSION, CONTACT EACH ADVISOR TO PROVIDE THE FOLLOWING INFORMATION:

- Explain your role as the Title IX Coordinator
- Explain their role and responsibilities as an Advisor
- Provide a copy of the Title IX or Sexual Harassment policy
- Provide Advisor guidelines and explain confidentiality and information sharing
- Invite to a meeting or phone call to answer questions and discuss process



## COMMUNICATING WITH THE PARTIES

**FACILITATE A TRANSPARENT AND  
EQUITABLE PROCESS BY PROVIDING  
REGULAR UPDATES TO THE PARTIES.**

### **SUPPORTIVE MEASURES**

- Check in to confirm supportive measures are meeting the Parties' needs and/or offer alternative measures

### **STATUS UPDATES**

- Provide status updates, explain which stage of the Title IX process is taking place, and outline what to expect in the coming weeks



## **COMMUNICATING WITH THE PARTIES**

**FACILITATE A TRANSPARENT AND  
EQUITABLE PROCESS BY PROVIDING  
REGULAR UPDATES TO THE PARTIES.**

### **INTRODUCTIONS**

- Share the name of the Title IX Investigator, Decision-Maker, Appellate Decision-Maker, and Informal Resolution Facilitator, when appropriate

### **AVAILABILITY**

- Reiterate the Title IX Coordinator's role and availability to answer questions in person, via email, etc.



## CONSIDER THE FOLLOWING QUESTIONS:

- Is it possible to confer with colleagues about a difficult case while maintaining the required level of confidentiality?
- Who might be appropriate or inappropriate to share information with?
- Is another another safety and risk assessment necessary?
- How can we move the process forward?



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# TITLE IX INVESTIGATIONS



# IN THIS CHAPTER



CONDUCTING  
COMPLIANT TITLE IX  
INVESTIGATIONS



UNDERSTANDING THE  
COORDINATOR'S ROLE IN  
TITLE IX INVESTIGATIONS



# SPEAKER

## SUSANNA MURPHY

LEAD INVESTIGATOR

TITLE IX SOLUTIONS

# CONDUCTING COMPLIANT TITLE IX INVESTIGATIONS



# GRIEVANCE PROCESS



INTAKE &  
REVIEW

FORMAL  
COMPLAINT

NOTICE OF  
ALLEGATIONS

**INVESTIGATION**

DECISION-  
MAKING  
PROCESS

WRITTEN  
DETERMINATION

APPEAL



**WE ARE HERE**



# PURPOSE OF INVESTIGATIONS

Gather statements from Parties and witnesses and for the official record

Collect evidence that is directly related to the allegations in the formal complaint

Allow Parties to inspect and review all directly related evidence as it relates to the allegations

Summarize relevant evidence in an investigative report to be provided to the Title IX Decision-Maker

# INITIATING THE INVESTIGATION

## A SCHOOL MUST INVESTIGATE A FORMAL COMPLAINT

- The burden of proof and gathering of evidence sufficient to reach a determination regarding responsibility rests on the school - not on the Parties

*“The Recipient cannot access, consider, disclose, or otherwise use a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional which are made and maintained in connection with the provision of treatment to the party, unless the Recipient obtains the party's written, voluntary consent to do so for the grievance process”*

§106.45 (b)(5)(i)



**KEY DOCUMENT: WAIVER OF PRIVILEGED INFORMATION**

# TITLE IX REQUIREMENTS

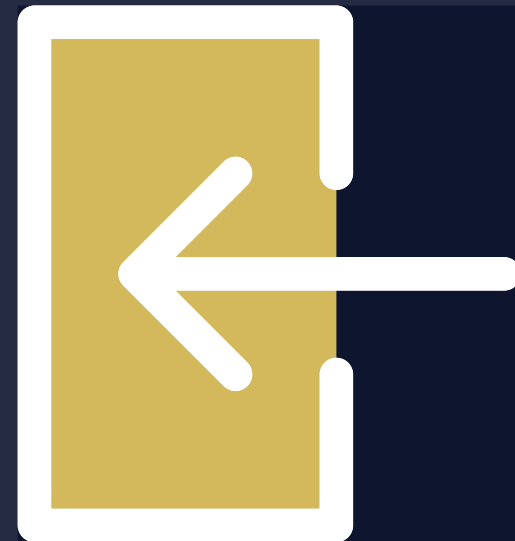
## DURING THE INVESTIGATION, THE SCHOOL MUST:

*“Provide an equal opportunity for the parties to present witnesses (including fact and expert witnesses), and other inculpatory and exculpatory evidence;”*

§106.45 (b)(5)(ii)

- Do not restrict the ability of the Parties to present evidence!
  - The Investigator should be open to receiving any and all evidence provided by Parties and/or witnesses.
  - A relevance determination can be made at a later time to determine what will be included in the investigation report.
- Ensure school policy clearly outlines what type of witnesses are permitted.

# **INCULPATORY VS. EXCULPATORY**



## **INCULPATORY**

Evidence which tends to corroborate the allegations



## **EXCULPATORY**

Evidence which tends to contradict the allegations

# TITLE IX REQUIREMENTS

## DURING THE INVESTIGATION, THE SCHOOL MUST:

*“Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;”*

§106.45 (b)(5)(iii)

- Gag orders are not allowed!
- A school may place restrictions on discussing specific evidence or sharing the investigation report.



# TITLE IX REQUIREMENTS

## DURING THE INVESTIGATION, THE SCHOOL MUST:

*“Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;”*

§106.45 (b)(5)(i)



**KEY DOCUMENT: ADVISOR PARTICIPATION AGREEMENT**

# TITLE IX REQUIREMENTS

## DURING THE INVESTIGATION, THE SCHOOL MUST:

- Keep all notices in writing and provide parties ample time to prepare!

*“Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;”*

§106.45 (b)(5)(v)



**KEY DOCUMENT: NOTICE OF MEETING/NOTICE OF INTERVIEW**

# TITLE IX REQUIREMENTS

## DURING THE INVESTIGATION, THE SCHOOL MUST:

- Save everything collected as a part of the investigation!
- The entire investigation file will be provided to the parties and their Advisors.

*“Provide both parties 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, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.”*

§106.45 (b)(5)(vi)

# TITLE IX REQUIREMENTS

## DURING THE INVESTIGATION, THE SCHOOL MUST:

- Ensure your communicated timelines are compliant with this requirement.

*“Prior to completion of the investigative report, the recipient must send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties’ inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination;”*

§106.45 (b)(5)(vi)

# TITLE IX REQUIREMENTS

## DURING THE INVESTIGATION, THE SCHOOL MUST:

- Ensure you follow this timeline.
- Allow ample time for the parties to review and respond to the report.

*“Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, send to each party and the party’s advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.”*



**KEY DOCUMENT: INVESTIGATION REPORT TEMPLATE**

# ELEMENTS OF INVESTIGATION REPORT

**AT THE CONCLUSION OF THE INVESTIGATION, THE INVESTIGATOR WILL PREPARE A WRITTEN REPORT WHICH WILL:**

- ✓ Identify the allegations
- ✓ Identify relevant policies, guidelines, and other standards
- ✓ Explain the procedural steps taken between receipt of the formal complaint and the conclusion of the investigation, including all notifications to the Parties, interviews with the Parties, interviews with other Witnesses, dates of all interviews, any site visits, and the methods used to gather evidence
- ✓ Fairly summarize relevant evidence



# UNDERSTANDING THE COORDINATOR'S ROLE IN TITLE IX INVESTIGATIONS



# SELECTING THE INVESTIGATOR

## FACTORS TO CONSIDER:

- Levels of training

*“A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence...”*

- Conflicts of interest and/or actual and perceived biases
- Experience with Title IX investigations, specific forms of sexual harassment, student or employee cases, etc.
- Availability to conduct an investigation
- Gender balance
- Native language of the parties
- Rapport



# SHARING KNOWN INFORMATION WITH THE INVESTIGATOR



Initial Report



Formal Complaint



Notice of Allegations



Any meeting notes from interactions  
with Complainant, Respondent, or  
Witnesses

# SENDING REQUIRED COMMUNICATION



Notice of Meeting/Notice of Interview



Notice of Delays for Good Cause



Investigation file



Investigation report

# MONITORING TIMELINE

- Assisting Investigator(s) in investigation interview preparation
  - Order of interviews
  - Creating a cursory timeline
  - Drafting questions
- Being made aware of delays for good cause
- Ensuring required response periods are being observed
  - 10 days for response to investigation file
  - Provision of investigation report 10 days prior to decision-making process



# PROVIDING SUPPORT

- Provide administrative support for the Investigator(s)
  - Secure rooms
  - Assist with technology
  - Order transcripts
- Review documents
  - Questioning scripts/playbooks
    - May consider having bookend meetings with the Investigator(s) to determine if questions have yielded the necessary information
  - Investigation file
  - Investigation report
- Serve as a resource for parties and Advisors
  - Provide information regarding process-related issues or questions
  - Coordinate and monitor supportive measures



# KEY CONSIDERATIONS

## AS THE INVESTIGATOR PREPARES TO INTERVIEW PARTIES AND WITNESSES, KEEP IN MIND THE FOLLOWING:

- Title IX is an administrative, not a criminal or even civil, process
- Investigators must remain impartial
  - Impartiality does not mean you cannot have empathy
- Challenging process for all individuals involved can be emotional and time-consuming
- Consistent Communication can alleviate challenges
  - Build in moments for self-care and reflection for you and your Investigation team

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# TITLE IX DECISION- MAKING PROCESSES



# IN THIS CHAPTER



CONDUCTING  
COMPLIANT TITLE IX  
DECISION-MAKING  
PROCESSES



SANCTIONS AND  
REMEDIES



UNDERSTANDING THE  
COORDINATOR'S ROLE  
IN DECISION-MAKING  
PROCESSES



# SPEAKER

**ADRIENNE MATHIS**

EXECUTIVE DIRECTOR  
TITLE IX SOLUTIONS



# CONDUCTING COMPLIANT DECISION-MAKING PROCESSES





# GRIEVANCE PROCESS



INTAKE &  
REVIEW

FORMAL  
COMPLAINT

NOTICE OF  
ALLEGATIONS

INVESTIGATION

**DECISION-  
MAKING  
PROCESS**

WRITTEN  
DETERMINATION

APPEAL



**WE ARE HERE**

# PURPOSE OF DECISION-MAKING PROCESS

Review the investigative report, evidence, and parties' responses to the report provided by the investigators

Provide an opportunity for Parties' Advisors to ask relevant cross-examination questions of Parties and Witnesses

Provide an opportunity for the Decision-Maker to ask relevant questions of Parties and Witnesses

Provides an opportunity for Parties and Witnesses to answer questions

Provides an opportunity for the Parties to share additional information before a determination regarding responsibility

# TITLE IX REQUIREMENTS

*“The decision-maker(s)...cannot be the same person(s) as the Title IX Coordinator or the Investigator(s)...”*

§106.45 (b)(7)(i)

- Title IX Decision-Makers must also be free of conflict of interest and bias!
- You may have more than one Decision-Maker, such as a panel.

# TITLE IX REQUIREMENTS

*“For postsecondary institutions, the recipient’s grievance process must provide for a live hearing. At the live hearing, the decision-maker(s) must permit each Party’s advisor to ask the other Party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.”*

§106.45 (b)(5)(i)

- This is a non-negotiable aspect of the decision-making process in higher ed.
- Advisors play their most critical role in this portion of the grievance process.



# TITLE IX REQUIREMENTS

*“If a Party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that Party, an Advisor of the recipient’s choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that Party.”*

§106.45 (b)(6)(i)

- Does your school have a pool of trained Advisors?
- A Party may choose to utilize a school-provided Advisor much earlier than at the live hearing.
- This individual may be a parent, friend, coach, or other non-attorney individual.

# TITLE IX REQUIREMENTS

*“Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the Party’s advisor of choice and never by a Party personally, notwithstanding the discretion of the recipient under paragraph (b)(5)(iv) of this section to otherwise restrict the extent to which advisors may participate in the proceedings.”*

§106.45 (b)(6)(i)

- Never allow a Party to question or speak to the other Party in the live hearing.
- You may establish rules for the Advisor, however, they must be applied to both Parties’ Advisors.

# TITLE IX REQUIREMENTS

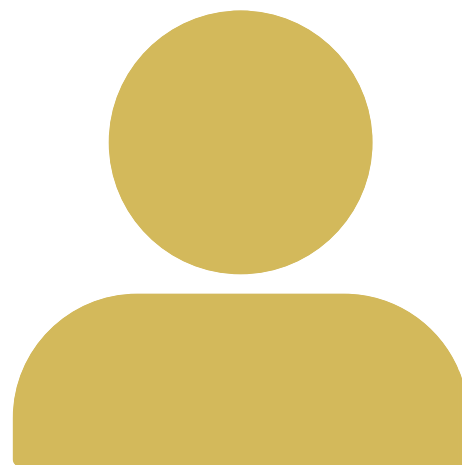
*“Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision-Maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.”*

§106.45 (b)(5)(i)



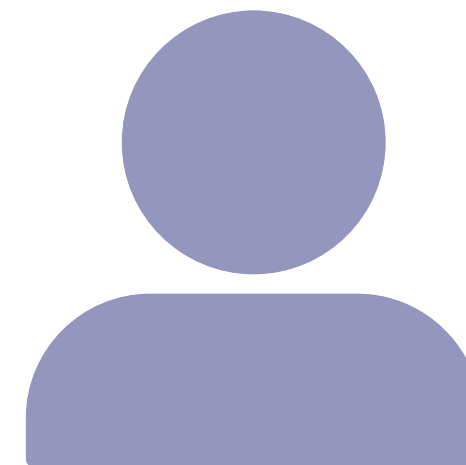
RESPONDENT'S  
ADVISOR

How many drinks  
did you consume  
at the party?



DECISION-MAKER

Relevant. Please  
answer.



COMPLAINANT

Three.

# TITLE IX REQUIREMENTS

*“At the request of either Party, the recipient must provide for the live hearing to occur with the Parties located in separate rooms with technology enabling the decision-maker(s) and Parties to simultaneously see and hear the Party or the witness answering questions.”*

§106.45 (b)(5)(i)

- Parties can be, but are not required to be in the same room.
- Videoconferencing and remote technology is permitted, as long as the hearing is live and in real time.

# TITLE IX REQUIREMENTS

*“Recipients must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the Parties for inspection and review.”*

§106.45 (b)(7)(i)

- This recording and/or transcript must be kept for seven years as required by Title IX Regulations regarding recordkeeping.
- Your school policy may dictate which format is provided to Parties for inspection and review.





# TRAINING POINT

**LET'S DISCUSS RELEVANCE AS  
IT RELATES TO THE TITLE IX  
GRIEVANCE PROCESS.**

# DIRECTLY RELATED VS. RELEVANT

Neither term is explicitly defined in the Title IX Regulations.

## DIRECTLY RELATED

Evidence that is connected to the complaint but **does not** tend to prove or tend to disprove the complaint or allegations.

**Example:** A receipt from a lunch date at the campus dining hall between the Complainant and Respondent.

- Provided by the Complainant at their investigative interview

## RELEVANT

Evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true.

**Example:** An email with attached nude images the Respondent allegedly sent to the Complainant later that evening via the Respondent's campus email account.

- Provided by the Complainant at their investigative interview

# WHAT IS NEVER RELEVANT?

AS OUTLINED IN THE TITLE IX REGULATIONS, THE FOLLOWING EVIDENCE IS NEVER RELEVANT:

- Evidence about a Complainant's prior sexual behavior, except when:

1

Questions and evidence are offered to prove someone other than Respondent committed alleged conduct

2

Questions and evidence concerning specific incidents of the Complainant's prior sexual behavior with respect to the Respondent are offered to prove consent

# WHAT IS NEVER RELEVANT?

## AS OUTLINED IN THE TITLE IX REGULATIONS, THE FOLLOWING EVIDENCE IS NEVER RELEVANT:

- Additionally, a school's grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### EXAMPLES:



- Medical records
- Academic records protected under FERPA
- Conversations with privileged individuals such as counselors or clergy



Consider creating a waiver of rights to privacy of these records for Parties who wish to submit privileged information as evidence.

# REFUSAL TO PARTICIPATE

- It is the right of each Party and Witness not to attend the hearing. They also have the right to refuse answering any or all questions asked during the hearing.
- If the Party refuses to submit to cross-examination, the Decision-Maker:

"must not rely on any statement of that Party or Witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a Party's or Witness's absence from the live hearing or refusal to answer cross-examination or other questions"

§106.45 (b)(6)(i)





A federal court vacated regulatory language in the 2020 amendments that prohibited decision-makers in postsecondary schools from relying on statements by individuals who did not submit to cross-examination during a live hearing. As a result, postsecondary schools are no longer subject to this language.

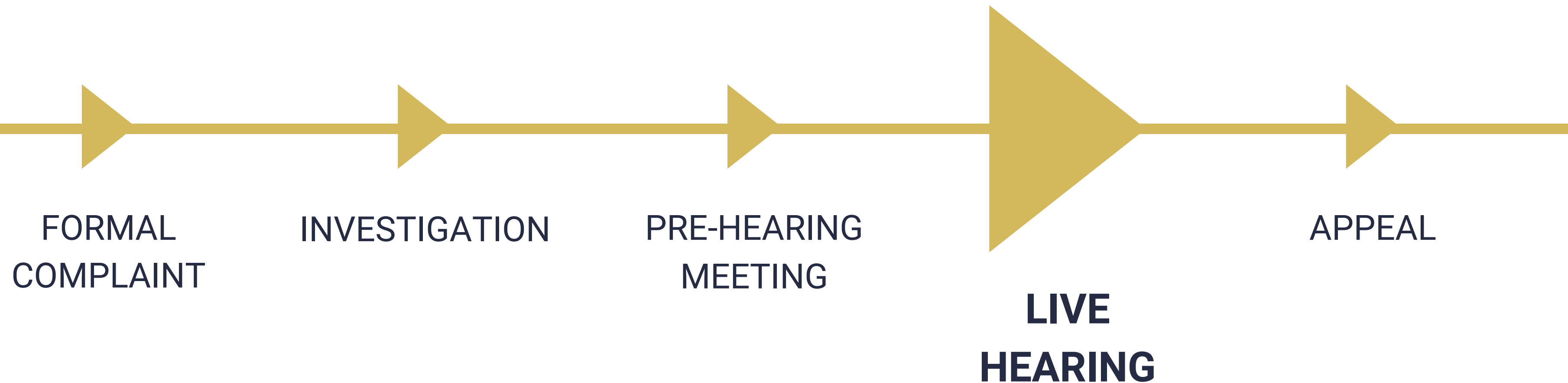
**A DECISION-MAKER CAN RELY ON PREVIOUS STATEMENTS OF A PARTY OR WITNESS, EVEN IF THEY CHOOSE NOT TO PARTICIPATE IN THE HEARING.**

# PRE-HEARING MEETING



- Meeting before the hearing to walk through guidelines, expectations, and more for Parties, Advisors, and the Decision-Maker
- Led by the Title IX Coordinator and/or Decision-Maker(s)
- Not mandated by Title IX regulations, but permitted
- Prepares all Parties (and the Decision-Maker) for the live hearing
- If allegations involve staff or faculty, pre-hearing meetings are particularly important

# LIVE HEARING



- This will be the formal opportunity for the Parties to be cross-examined via Advisors
- The Decision-Maker will preside over the hearing, while the Title IX Coordinator may be present to assist with facilitation

# HEARING AGENDA

- ➊ Opening of the Hearing
- ➋ Opening Statements
- ➌ Introduction of Testimonial Evidence
- ➍ Closing Statements
- ➎ Closing of the Hearing

# GRIEVANCE PROCESS



INTAKE &  
REVIEW

FORMAL  
COMPLAINT

NOTICE OF  
ALLEGATIONS

INVESTIGATION

DECISION-  
MAKING  
PROCESS

WRITTEN  
DETERMINATION

APPEAL



WE ARE HERE



# DETERMINATION REGARDING RESPONSIBILITY

- Drafted and issued by the Decision-Maker after the credibility assessment process
- Based upon relevant evidence and testimony obtained during the grievance process applied to the school's standard of proof
- Contains various sections, notably a statement of, and rationale for, the result of each alleged policy violation (i.e., "responsible" or "not responsible" for violating the policy)
- Also referred to as the "Written Determination"

# KEY ELEMENTS

## TITLE IX STATES THAT THE WRITTEN DETERMINATION MUST INCLUDE:

- 1 Identification of the allegations potentially constituting sexual harassment as defined under Title IX
- 2 Description of the procedural steps taken from receipt of formal complaint through the determination
- 3 Findings of fact supporting the determination
- 4 Conclusions regarding the application of school's code of conduct to the facts

# KEY ELEMENTS

## TITLE IX STATES THAT THE WRITTEN DETERMINATION MUST INCLUDE:

- 5 A statement of, and rationale for, the result as to each allegation, including:
  - A determination regarding responsibility;
  - Any disciplinary sanctions the school imposes on the Respondent;
  - Whether remedies designed to restore or preserve equal access to the school's education program or activity will be provided by the school to the Complainant; and
- 6 The school's procedures and permissible bases for the Complainant and Respondent to appeal.

# TITLE IX REQUIREMENTS

*“The recipient must provide the written determination to the Parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.”*

§106.45 (b)(5)(i)

- Send these at the same time and document!

# SANCTIONS AND REMEDIES





# OUTCOMES

## WRITTEN DETERMINATION IS ISSUED

### RESPONDENT IS NOT FOUND RESPONSIBLE

- School may continue to offer supportive measures to the Complainant where practical.
- Engage in a conversation with the Complainant to determine what is needed and for what length of time.

### RESPONDENT IS FOUND RESPONSIBLE

- Sanctions and remedies will be put into place by the school

# WHAT ARE SANCTIONS?

- Disciplinary sanctions are punitive measures implemented for the Respondent following a determination of responsibility
- Refer to the school policy for a list or range of possible disciplinary sanctions
- Title IX does not prescribe specific sanctions for each type of conduct
  - Discretion is left to schools to determine sanctions on a case by case basis
  - Some schools may have specific guidelines or matrices for sanctioning according to each policy violation
- All sanctions must be included in and issued with the final written determination

# TITLE IX REQUIREMENTS

*"Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility."*

§106.45(b)(1)(vi)

*"A 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"*

§106.45(b)(7)(ii)(E)



# SANCTIONS

- Verbal or written warning
- Mandatory education or counseling
- Community service
- Removal from campus housing
- Removal from extracurricular activity or sports team
- Disciplinary probation
- Withholding of diploma
- Expulsion
- Termination from employment
- Loss of faculty tenure

# WHAT ARE REMEDIES?

- Implemented following the determination that the Respondent was responsible.
- Intended to restore Complainant's access to the educational program or activity.
- Unlike supportive measures, remedies can burden the Respondent.

*"The details of remedies provided to the Complainant remain part of the Complainant's education record and not the Respondent's education record, unless the remedy also imposes requirements on the Respondent."*

(p. 1458 Preamble to the Title IX Regulations)





# REMEDIES

- Academic accommodations or adjustments
- Housing adjustments
- Increased security or safety measures
- Education and prevention efforts
- Changes in work assignment or role
- No-contact orders
- Medical or counseling services

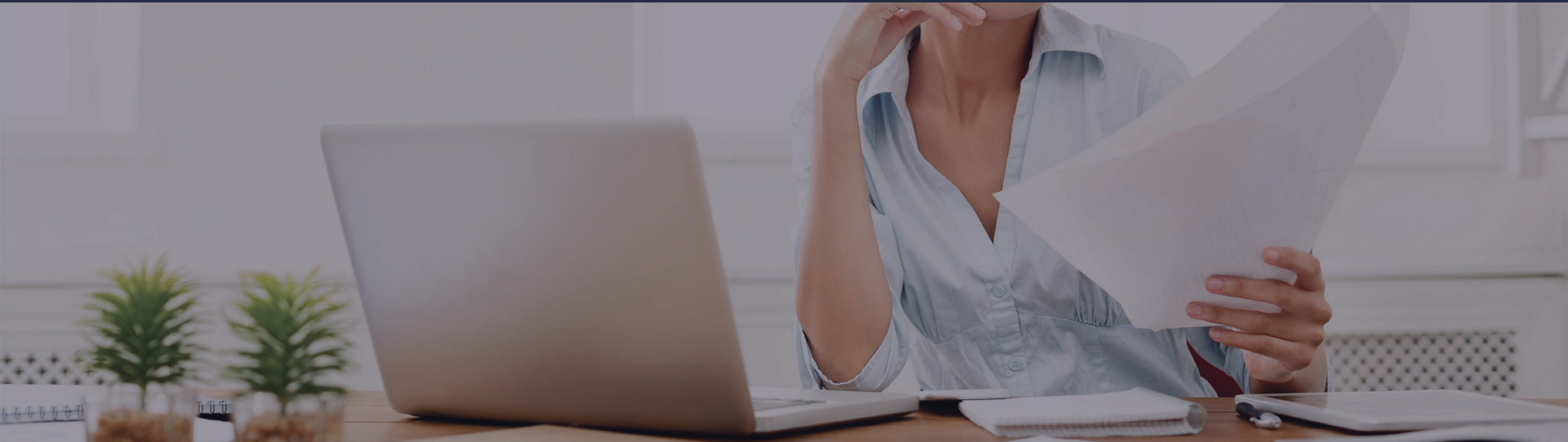


# TRAINING POINT

**WHO WILL ULTIMATELY BE RESPONSIBLE FOR  
DETERMINING STUDENT SANCTIONS IF THE  
RESPONDENT IS FOUND RESPONSIBLE?**

**WHAT IF THE RESPONDENT IS AN EMPLOYEE?**

# UNDERSTANDING THE COORDINATOR'S ROLE IN THE DECISION-MAKING PROCESS



# SELECTING THE DECISION- MAKER

## FACTORS TO CONSIDER:

- Levels of training

*“A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant...”*

- Conflicts of interest and/or actual and perceived biases
- Availability to conduct the decision-making process, including the live hearing

# SHARING KNOWN INFORMATION WITH THE DECISION- MAKERS



Formal Complaint



Notice of Allegations



Investigation Report



Investigation File (Evidence)



# SENDING REQUIRED COMMUNICATION



Notice of Meeting (pre-hearings)



Notice of Hearing



Procedural requirements regarding the credibility assessment process



Written Determination Regarding Responsibility

# MONITORING TIMELINE

- Pre-hearing meetings
- Assisting Decision-Maker(s) in live hearing preparation
  - Reviewing policy for specific procedural requirements
  - Creating a cursory script or agenda
- Timeline for drafting written determination
- Being made aware of delays for good cause
- Monitoring the duration of the live hearing
- Monitoring for appeal submission following the issuance of the determination

# PROVIDING SUPPORT

- Provide administrative support for Decision-Maker(s)
  - Secure rooms
  - Assist with set-up of technology and troubleshoot
  - Creating record of hearing
  - Order transcripts (if needed)
  - Facilitate the hearing
  - Provide evidence to Decision-Maker, parties, and Advisors upon request
  - Coordinate witnesses (if needed)
- Review documents
  - Written determination regarding responsibility
- Serve as a resource for Parties and Advisors
  - Provide information regarding process-related issues or questions
  - Coordinate and monitor supportive measures



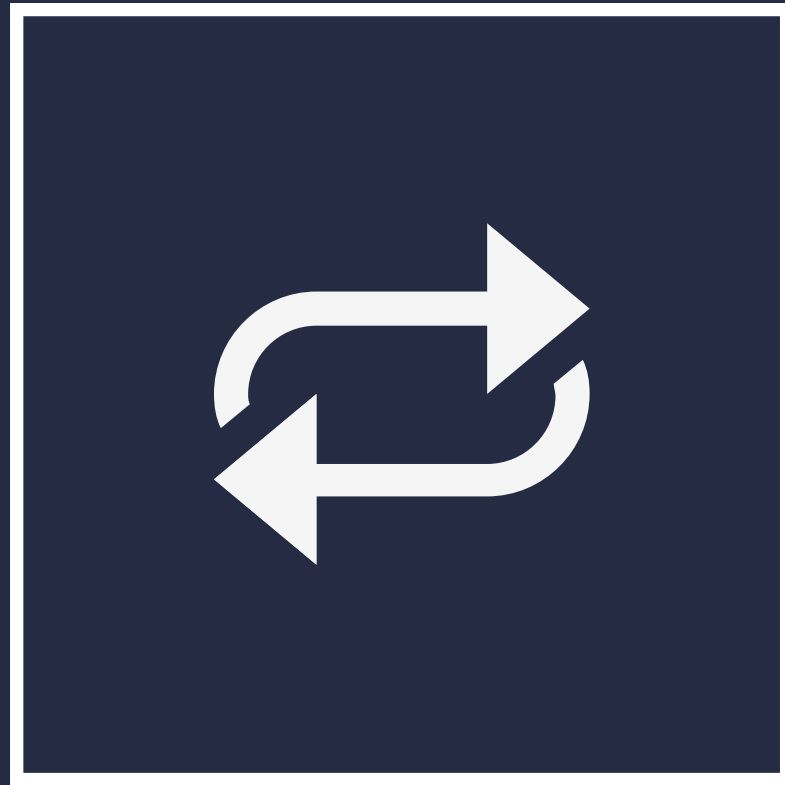
TITLE IX SOLUTIONS, LLC

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# THE APPEAL PROCESS



# IN THIS CHAPTER



THE APPEAL PROCESS



UNDERSTANDING THE  
COORDINATOR'S ROLE IN  
TITLE IX APPEALS





# SPEAKER

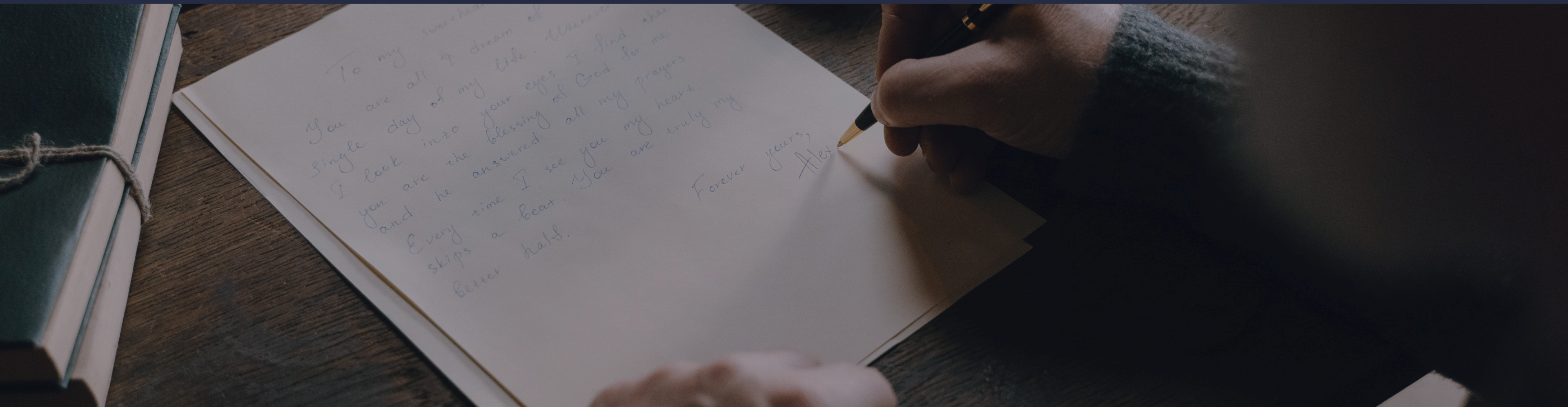
## CARA KUHN

TRAINING COORDINATOR

TITLE IX SOLUTIONS



# THE APPEAL PROCESS





# GRIEVANCE PROCESS



INTAKE &  
REVIEW

FORMAL  
COMPLAINT

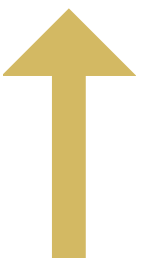
NOTICE OF  
ALLEGATIONS

INVESTIGATION

DECISION-  
MAKING  
PROCESS

WRITTEN  
DETERMINATION

**APPEAL**



**WE ARE HERE**

# PURPOSE OF APPEAL PROCESS

Provide an opportunity for parties to appeal the determination on limited grounds

Determine whether a party has a valid basis for appeal

If valid, conduct a review to determine whether the concern requires a return to a previous stage of the grievance process, the decision stands, or the decision is overturned

Provide finality to the grievance process

# 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

# 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 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)

# 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)

# 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)

# 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



# APPEAL OUTCOMES

**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 OUTCOMES

**IF A REQUEST FOR APPEAL IS ACCEPTED, THE APPELLATE DECISION-MAKER WILL REVIEW AND CONSIDER THE INFORMATION.**

**AT THE CONCLUSION OF THEIR REVIEW, THE FOLLOWING ARE POSSIBLE:**

Appellate Decision-Maker  
upholds original determination

- Title IX grievance process ends

Appellate Decision-Maker  
determines the appeal was valid  
under one of the listed bases

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

# UNDERSTANDING THE COORDINATOR'S ROLE IN TITLE IX APPEALS



# SELECTING THE APPELLEATE DECISION- MAKER(S)

## FACTORS TO CONSIDER:

- Levels of training

*“A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant...”*

- Conflicts of interest and/or actual and perceived biases
- Availability to conduct the appellate decision-making process



# SHARING KNOWN INFORMATION WITH THE APPELLATE DECISION- MAKER(S)



Written Determination Regarding Responsibility



Appeal Basis



Investigation Report & File



New Evidence (if shared)



# SENDING REQUIRED COMMUNICATION



Notice of Appeal



Procedural requirements regarding  
the appeal process



Appellate determination

# MONITORING TIMELINE

- Deadline for submitting appeal
- Deadline for response to appeal
- Other appellate timelines specified in institutional policy
  - Timeline for appellate determinations

# PROVIDING SUPPORT

- Provide administrative support for Appellate Decision-Maker(s)
- Review documents
  - Appellate determination
- Serve as a resource for Parties and Advisors
- Provide information regarding process-related issues or questions
- Coordinate and monitor supportive measures