



## Title IX: Additional Information for Coordinators, Investigators and Decision-Makers

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## Overview

The first Title IX course you were assigned, **Title IX: Protecting Students and School Employees from Sexual Harassment**, defined sexual harassment, discussed school obligations and outlined the grievance procedure.

**This course** covers many of same topics in the first course, but takes an even deeper dive into them. The information presented herein comes from the [U.S. Department of Education](#).

This course should be taken prior to the course, "Title IX: How to Investigate and Adjudicate Formal Complaints." In addition to these courses, your district should provide training on the specific policies it has adopted to comply with Title IX regulations.



## Objectives

The chapters of this course are:

1. School Obligations under Title IX
2. Title IX Grievance Process



# 1 Chapter

## School Obligations under Title IX

### Topics in this chapter include:

- "Deliberate Indifference" Standard
- Title IX Personnel
- Notification
- Supportive Measures
- When Supportive Measures Cannot be Provided
- Unreasonable Burden
- Disciplinary or Punitive Prohibition

## "Deliberate Indifference" Standard

When considering sexual-harassment allegations, a school must employ the **deliberate indifference standard**. Alluded to in the first Title IX course, but not stated explicitly, this standard requires that a school treat complainants and respondents equitably during the grievance process. Furthermore, a school should not treat either party differently because of sex-based stereotypes.



## Title IX Personnel

As you learned in the first course, a school's **Title IX personnel** include:

- A **Title IX coordinator** who reports misconduct; contacts the complainant; and coordinates supportive measures and remedies;
- An **investigator** who collects evidence and writes the investigative report; and
- A **decision-maker** who evaluates relevant evidence; determines responsibility; and assigns remedies and sanctions.

Title IX personnel might also include:

- Deputy Title IX coordinators;
- People who facilitate informal resolution processes; and/or
- People who process the appeals process.

Districts have some flexibility regarding the number of Title IX personnel they have. For example, a district might have one Title IX coordinator for the entire school system, or a district could have a coordinator at each school building. Schools are also allowed to outsource Title IX investigation and adjudication responsibilities.



## Notification

A school must provide the Title IX coordinator's contact information to all students, parents and guardians, school employees, unions, applicants for admission and job applicants. Specifically, these people must be told the coordinator's:

- Name and/or title;
- Office address;
- E-mail address; and
- Telephone number.

The above information must be prominently displayed on the school's website and in each handbook and catalog.

A school must also disseminate its non-discrimination-on-the-basis-of-sex policy and sex-discrimination and sexual-harassment grievance procedures. Although Title IX does not prescribe how this information must be disseminated, it cannot only be posted on the school's website.



## Supportive Measures

As you learned previously, a Title IX coordinator must offer every complainant individualized services designed to restore or preserve equal access to education, protect safety and deter sexual harassment. These **supportive measures** must be offered even if the harassment is only alleged, even if the complainant is not the person who reported the sexual harassment, and even if an investigation does not occur.

Other important considerations about supportive measures are listed below:

- A school's grievance process must describe the **range** of supportive measures available to complainants and respondents.
- Because an elementary-school student may not be able to make appropriate decisions regarding supportive measures, her/his parent or guardian may need to be involved in the process.
- Although a Title IX coordinator is responsible for coordinating supportive measures, a school may authorize other officials to help implement those measures.
- A Title IX coordinator may modify supportive measures as circumstances change. For example, a supportive measure might initially prohibit a respondent from directly communicating with a complainant. However, a class-schedule change could then require both students to be in the same classroom. The coordinator might choose to modify the supportive measure so that the two students can be in the classroom at the same time, but require the teacher to seat the students far away from one another.
- At the conclusion of the grievance process, if a respondent is determined to be "not responsible," a school can choose to continue, modify or cease any supportive measures being offered to the complainant, to the respondent, or to both parties.



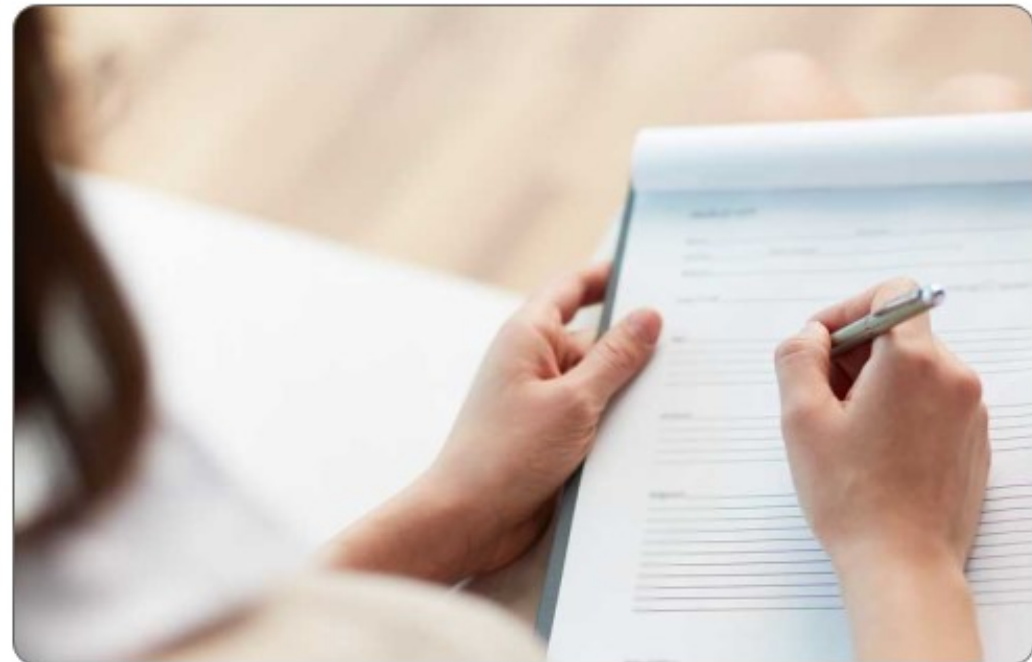


## When Supportive Measures Cannot be Provided

There may be a situation in which a school cannot provide supportive measures. For example:

- A complainant may request supportive measures that are unavailable or inappropriate; or
- A complainant may refuse to accept — or even discuss — the supportive measures offered by the Title IX coordinator.

In such situations, a school must document why it cannot provide supportive measures.



## Unreasonable Burden

Schools must carefully craft supportive measures so that they help a complainant, but do not impose an **unreasonable burden** upon the respondent. Supportive measures can impose a reasonable burden on the respondent, however.

For instance, a complainant may want to avoid contact with a respondent while a Title IX investigation is pending. The school should work to make this happen, but in a way that does not put an unreasonable burden on the respondent:

- **Scenario 1** — If the complainant and respondent are in the same section of a class, removing the respondent from the class would be considered an unreasonable burden, especially if the respondent needs the course for graduation. Instead, the school could transfer the respondent to a section of the class offered at a different time. If the class is not offered at any other time, the school could offer the complainant an approved withdrawal from the class, with permission to take it again in the future. If the complainant, like the respondent, cannot withdraw from the class without delaying progress toward graduation, the school could:
  - Implement a **no-contact order** that restricts the respondent from communicating directly with the complainant during class;
  - Counsel the respondent about the school's anti-sexual harassment policy and anti-retaliation policy; and
  - Instruct the teacher to enforce the no-contact order and monitor the situation for further harassment or retaliation.



## Unreasonable Burden, continued



- **Scenario 2** — If a complainant and respondent are members of the same team, club or extracurricular activity, removing the respondent from that group would likely be considered an unreasonable burden. Instead, the school could:
  - Implement a no-contact order that restricts the respondent from communicating directly with the complainant during team functions;
  - Counsel the respondent about the school's anti-sexual harassment policy and anti-retaliation policy; and
  - Instruct team coaches, trainers and staff to enforce the no-contact order and monitor the situation for further harassment or retaliation.

## Disciplinary or Punitive Prohibition

Supportive measures cannot be disciplinary or punitive to either party. Speaking with a respondent about the school's anti-sexual harassment policy and the school's code of conduct can help modify her/his behavior, but is not considered disciplinary, punitive or an unreasonable burden. Therefore, doing so is an appropriate supportive measure.

Examples of actions that are inherently disciplinary, punitive and/or unreasonably burdensome — so they cannot be used as supportive measures, but can be used as sanctions — include:

- Removing a student from a team, activity or extracurricular program
- Suspending or expelling a student
- Terminating an employee



# 2 Chapter

## Title IX Grievance Process

### Topics in this chapter include:

- Formal Complaints
- Written Notice
- Informal Resolutions
- Investigation
- Advisors
- Evidence
- False Statements
- Evidentiary Review
- Gag Order
- Evidentiary Standard
- Investigative Report
- Questions of Relevance
- Evaluating Relevant Evidence
- Determination of Responsibility
- Remedies and Sanctions
- The Appeals Process
- Retaliation
- Reasonable Time Frame
- Recordkeeping

## Formal Complaints

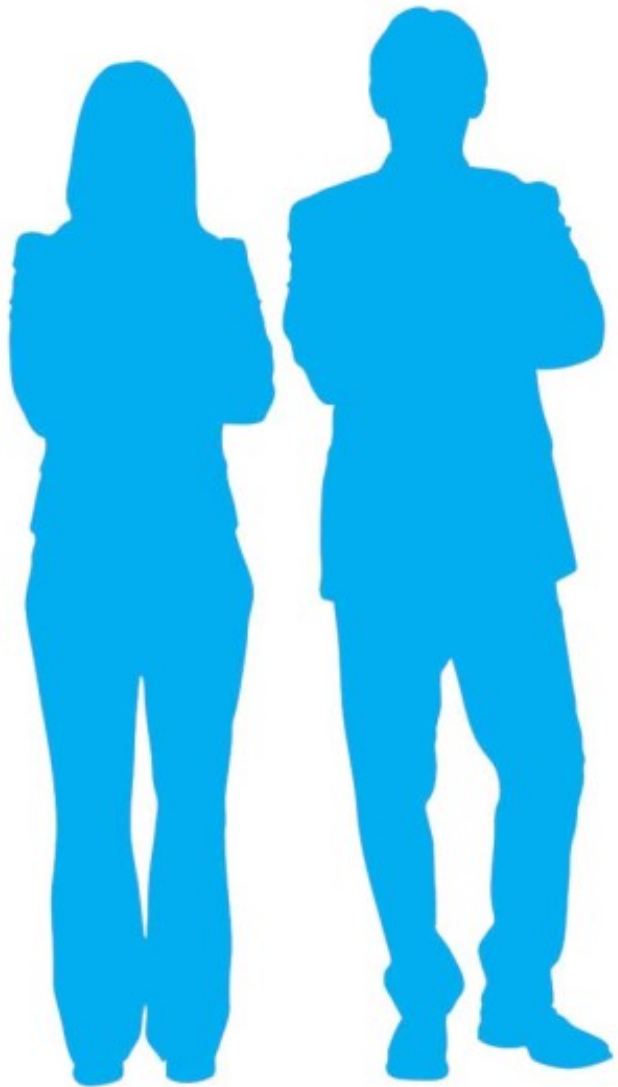
As discussed in the first Title IX course, a **formal complaint** is a written document requesting that the school investigate alleged sexual harassment. A school must investigate and adjudicate an allegation as soon as a formal complaint is filed.

Other important considerations regarding complaints are as follows:

- **The paperwork**
  - A student can only file a formal complaint with a school where s/he is participating in an education program or activity, or where s/he is attempting to participate in a program or activity.
  - A complaint must contain some details of the harassment allegations so that the school can prepare a written notice of allegations.
  - A complaint cannot be filed anonymously. However, a complaint can be filed about a respondent whose name is not known by the complainant.
  - A complaint must contain the complainant's physical or digital signature. If the complainant cannot provide a signature (e.g., because of her/his age or disability), the complaint must otherwise indicate the complainant is the person filing it.
  - A complaint can be filed electronically via email or an online portal. A complaint cannot be filed by telephone.
  - A school cannot refuse to investigate a complaint because of improperly filled-out paperwork. Instead, the school must seek out the complainant to correct any such errors.
  - There is no time limit or statute of limitations during which a complaint must be filed. However, the longer it takes for a sexual-harassment complaint to be filed, the harder it is to collect evidence about the incident in question.



## Formal Complaints, continued



- **The complainant's parent or guardian**
  - In an elementary school, a young student's decision about whether to file a formal complaint requires the involvement of a parent or legal guardian. A parent or legal guardian may file a formal complaint on behalf of their child; however, the child is still considered the complainant.
  - The extent to which a school must abide by the wishes of a parent (especially if/when the student and parent disagree) depends on the parent's legal right to act on behalf of the child.
- **The school**
  - A school cannot forgo a formal grievance process, even if it feels the allegations in a formal complaint are without merit or frivolous.
  - A school is expressly forbidden from threatening, intimidating, coercing or discriminating against any complainant for the purpose of interfering with or discouraging her/his right to file a complaint.
  - When there are multiple complainants and one respondent, a school may consolidate the complaints if the allegations result from the same facts or circumstances. However, the school must treat each party as an individual and not as a group.

## Formal Complaints, continued 2

- **The Title IX coordinator**
  - A Title IX coordinator may help a complainant complete a formal complaint, but may not pressure her/him to do so.
  - The only person who can file a complaint are a complainant and the Title IX coordinator; a third party cannot file.
  - A Title IX coordinator can decide to sign a complaint only after s/he has contacted the complainant to discuss the availability of supportive measures, considered the complainant's wishes with respect to supportive measures, and explained to the complainant the process for filing a complaint.
  - By signing a formal complaint, the Title IX coordinator does not become a party to the grievance process.
  - A complainant has the right to refuse to participate in a grievance process. If this is the case:
    - The Title IX coordinator may **decide to sign** a formal complaint against the wishes of the complainant. The school should document the reasons why doing so is not unreasonable and how the school is meeting its responsibility to provide the complainant with a non-deliberately indifferent response. Furthermore, the complainant should still be treated as a party throughout the grievance process and receive all required notifications.
    - The Title IX coordinator may **decide not to sign** a formal complaint because doing so is not in the best interest of the complainant and/or because doing so is not needed to provide a non-deliberately indifferent response.





## Dismissal of a Formal Complaint

In the first course, you learned about reasons why a complaint might be subject to **mandatory dismissal** or **discretionary dismissal**. When it comes to dismissals, you should also understand the following:

- School personnel should not dismiss a complaint just because they are unsure they will be able to uncover enough evidence to meet the burden of proof.
- A school may opt to proceed with an investigation even if a complainant asks to withdraw her/his formal complaint.
- If a complaint is dismissed, either party can appeal the dismissal. For example, if an investigation does not yield enough evidence to determine responsibility, a complainant can appeal the dismissal if new evidence is discovered that supports the allegation.



## Written Notice

As course 1 discussed, once a formal complaint has been filed, the school must provide both the complainant and respondent written notice, so that they can prepare to participate meaningfully in the grievance process. If the complainant and respondent are students, their parents should receive notice as well.

This written notice **must**:

- Specify the sexual-harassment allegations, including the alleged conduct, the date and time of the incident and the name(s) of the complainant(s). (The complainant's identity cannot be withheld from the respondent once a formal complaint is filed. However, a school is not required to provide the respondent the original complaint document.)
- Explain that each party may choose an advisor.
- Explain that parties are prohibited from knowingly making false statements or submitting false evidence during the investigation, and that making false statements violates the code of conduct. (If the code of conduct does not address submitting false information, then the written notice obviously would not say that doing so is a code violation.)
- Say that both parties will have equal opportunity to inspect and review relevant evidence obtained during the investigation.
- Explain the grievance process, including:
  - What supportive measures are being offered;
  - What standard of evidence will be used;
  - What the "presumption of non-responsibility" means; and
  - What disciplinary sanctions and remedies may be issued when the process concludes.
- Describe what an informal-resolution process is and offer it as an alternative to the grievance process.



## Written Notice, continued



A school may choose to provide all parties regularly scheduled case updates as well.

### The written notice **must not**:

- List personal information about the complainant or the respondent — e.g., birthdates, home addresses, social-security numbers, etc.
- Include any facts unrelated to the allegation.

There is no specific time frame for sending notice. However, the notice should be promptly, so that both parties have time to collect evidence and prepare for interviews.

**A school should also** provide additional written notice during the grievance process whenever there are significant case developments. For example, the school should notify parties if:

- New allegations and potential violations are uncovered during the investigation;
- Any allegations are dismissed; and/or
- The grievance process must be delayed or extended for any reason.

A school may choose what delivery method it uses when providing written notice.

## Informal Resolutions

You may recall that a school is allowed to craft an optional, informal-resolution process — e.g., mediation, arbitration or restorative justice — providing the process is administered by a well-trained facilitator. You may also recall that a school may offer an informal-resolution process to complainants and respondents as an alternative to Title IX's formal grievance process, or that a school may choose not to offer any informal-resolution process whatsoever.

If a school does offer an informal process, the school must carefully explain:

- What the allegations entail; and
- How the informal-resolution process will work, including:
  - What will be required of the parties;
  - What records will be maintained and shared; and
  - Possible outcomes (e.g., remedies, sanctions, a resolution that may require a confidentiality agreement, etc.)



## Informal Resolutions, continued

Neither party can be forced to participate in an informal-resolution process. A school must obtain the voluntary and written consent of both parties before the process begins. Additionally, a school cannot instruct parties to "work things out amongst themselves." The parties cannot be forced to confront one another, or to even be in the same room together.

As stated above, informal-resolution agreements may involve remedies and sanctions. If a party does not believe a proposed disciplinary action is appropriate, s/he can withdraw from the informal-resolution process and resume the formal grievance process.



A school may choose to allow an informal-resolution facilitator to serve as a witness as well. However, that allowance must be clearly disclosed to the parties in the written agreement.

## Investigation



Title IX personnel must carefully, thoughtfully, and reasonably evaluate every sexual-harassment complaint through a formal investigation. The steps of the investigative process are as follows:

- An investigator gathers evidence.
- Both parties can present inculpatory and exculpatory evidence and fact and expert witnesses.
- Parties are given the opportunity to review and respond to evidence.
- The investigator summarizes the evidence in an investigative report.
- The parties are given the opportunity to submit a written response to the investigative report.
- The decision-maker issues a written determination of responsibility.

This investigation process applies to all schools, regardless of their size, and to all sexual-harassment complaints, regardless their severity.

## Advisors

As you've learned, each party can choose her/his own advisor. An advisor:

- Provides support, advice and assistance throughout the grievance process.
- Can be anyone the party trusts — e.g., a parent, a guardian, a family member, a friend, a teacher, an advocacy-organization volunteer, a union representative, an attorney, etc.

If either party is disabled, s/he may have an advisor, as well as a second person to provide support and assistance throughout the grievance process.

A party's advisor should be fully informed throughout the investigation. Typically, a school should provide advisors evidence for inspection and the investigative report for review. However, a party may request that her/his advisor not receive such information.



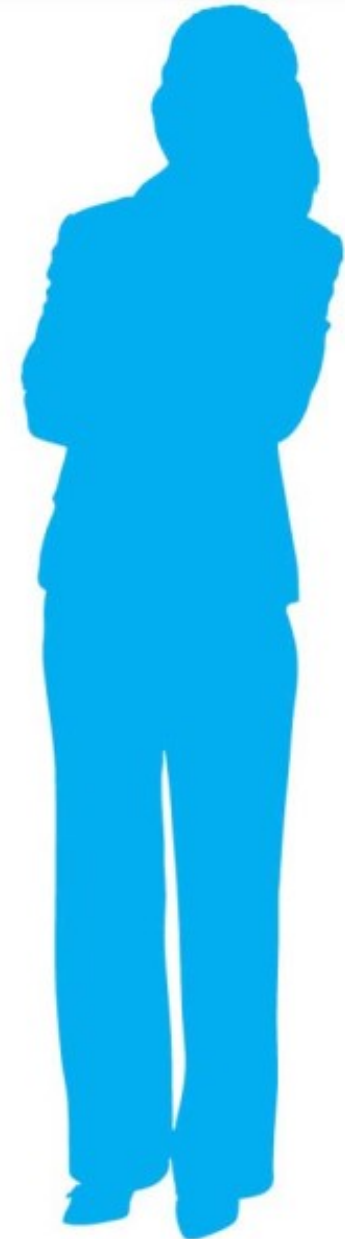
## Advisors, continued

A school may:

- Opt to copy advisors on all grievance-procedure-related correspondence. A school is not required to copy either advisor on all such correspondence, but if a school copies one advisor, it must copy the other.
- Require advisors to sign a non-disclosure agreement regarding the investigative report and any collected evidence.
- Establish standards of appropriate conduct for interviews, meetings, etc. — as long as the rules apply equally to all participants.

Although Title IX personnel are not allowed to have conflicts of interest with regard to the grievance process, advisors are allowed to have conflicts of interest. For example, an advisor might assist a student during the grievance process, and might also be called as a witness on her/his behalf. However, this conflict of interest may be taken into account by the decision-maker when s/he weighs the credibility and persuasiveness of the advisor's testimony.

**Parents and guardians have a legal right to act on behalf of a student in any Title IX procedure.** A student may select a parent or guardian as an advisor, or may use a parent or guardian in addition to an advisor. A parent or guardian must be allowed to accompany the student to meetings, interviews and hearings during the grievance process. Furthermore, a parent or guardian must be allowed to act on behalf of the student, just as the student's advisor does.





## Evidence



**Inculpatory evidence** points toward a respondent's guilt. **Exculpatory evidence** is used to prove a respondent's innocence, or to justify her/his actions.

As part of its investigation, a school must collect physical evidence, conduct witness interviews and gather expert testimony (if applicable), even if a complainant is not cooperating with the process. The school must give both parties written notice about evidence-collecting interviews and meetings, so that the parties have sufficient time to prepare and participate. This written notice should list the interview's date, time, location, participants and purpose. Also, the school must provide both parties the opportunity to inspect, review and respond to all evidence.

## Evidence, continued

In addition, a school must allow both parties equal opportunity to present their evidence. The school may determine the circumstances under which the parties can do so.

Examples of **admissible evidence** include, but are not limited to:

- Police-investigation files that directly relate to the investigation.
- Legally obtained social-media posts, profiles, videos, etc.
- Academic records relevant to the sexual-harassment allegation. (For example, if a complainant frequently missed classes because sexual harassment, her/his attendance records would be considered relevant.)

Title IX does not discuss standards for authentication of evidence. In addition, Title IX does not specifically reference the admissibility of hearsay, prior bad acts, character evidence, polygraph results, etc. A school may not exclude relevant evidence simply because the evidence may be unduly prejudicial, because it concerns previous bad behavior, or because it speaks to someone's character.

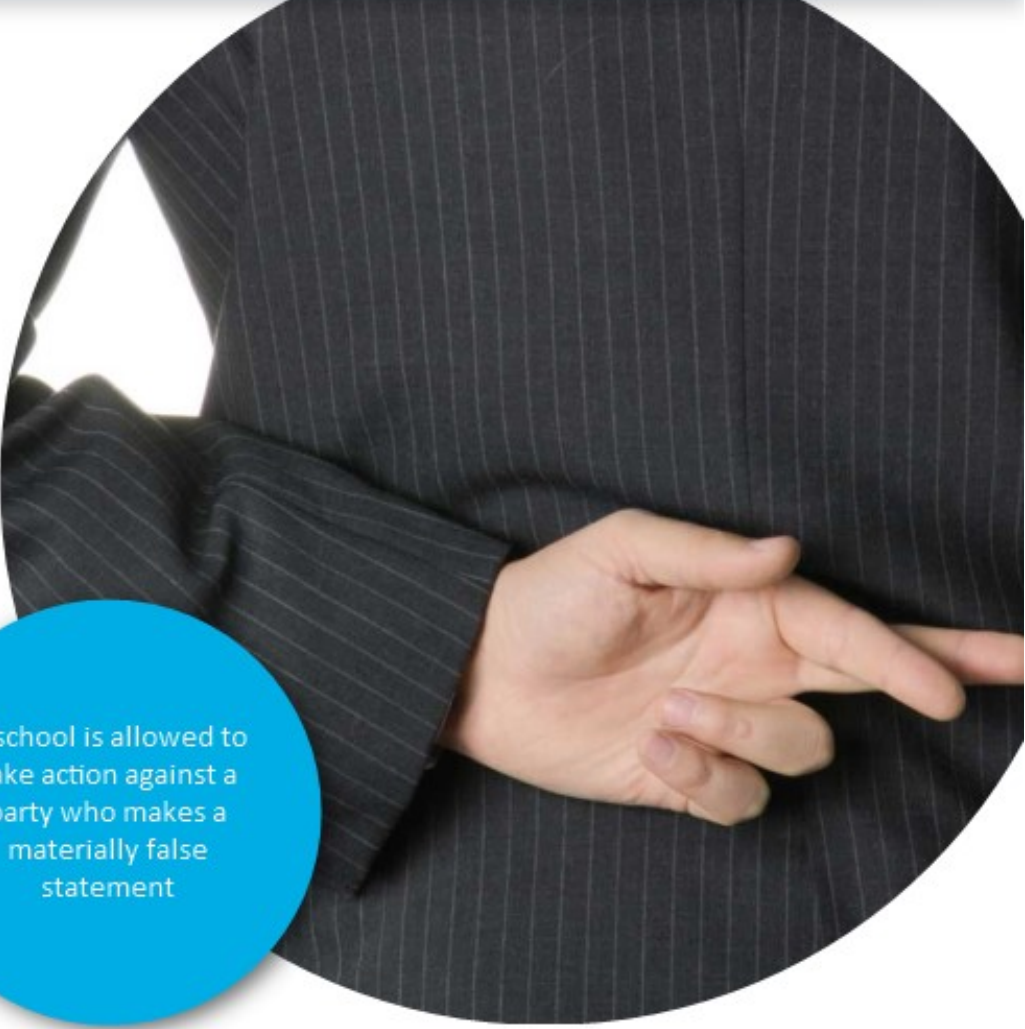


A school bears the burden of proof during the grievance process, but it does not have subpoena power.

## False Statements

A school is allowed to take action against a party who makes a materially false statement, in bad faith, during the course of a grievance proceeding. Before taking action, however, a school needs to examine the content, purpose and intent of the false statement, as well as the circumstances under which the statement was made.

Determination of responsibility against a respondent, in and of itself, is not enough to justify punishing the respondent for making a materially false statement, in bad faith.



A school is allowed to take action against a party who makes a materially false statement

## Evidentiary Review



As stated, both parties and their advisors must have time to review all evidence **directly related to allegations** so that they may prepare arguments and/or present additional facts and witnesses. In contrast, the investigative report (which will be discussed later in this course) should contain only **relevant** evidence.

"Directly related to the allegation" is a much broader term than "relevant." An investigator **cannot withhold** evidence directly related to the allegations from any party, even if the evidence includes information that is confidential, sensitive or private. However, an investigator **can redact** information from evidence if it is not directly related to the allegations — or if it is otherwise barred from use.

## Evidentiary Review, continued

When parties are presented evidence for review, the evidence can either be provided electronically or in hard copy. A school may opt to present evidence via a file-sharing platform that restricts parties and advisors from downloading or copying the information, but the school is not required to do so.

Both parties must be provided at least 10 days to review the evidence and submit a written response it. A school may opt to give the parties more than 10 days, providing that the grievance process can still conclude within the time frame chosen by the school.

If a grievance process involves multiple complainants or multiple respondents, a school must share the evidence with each person individually.



## Gag Order

A school cannot impose a gag order upon the complainant, the respondent or their advisors. This is because:

- A gag order could inhibit the parties' ability to gather and present evidence. And it is important that the parties, not the school, decide who knows about the allegations.
- A gag order could limit the parties' ability to seek emotional support. Emotional support is important because the grievance process stressful, difficult and isolating.
- A gag order could limit the parties' ability to critique the school's handling of the investigation or its general approach to Title IX.

That said, a school can warn both parties not to discuss or disseminate the allegations in a malicious manner that constitutes retaliation or unlawful conduct.

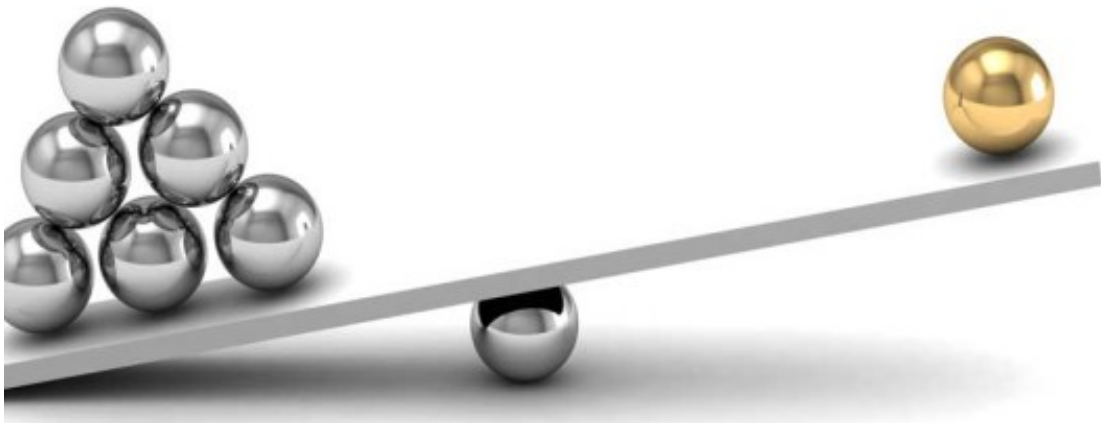
Furthermore, neither party is allowed to discuss the allegations in a way that might constitute evidence tampering (for instance, by attempting to alter or prevent a witness' testimony).



## Evidentiary Standard

As you learned in course 1, a school must notify students and employees in advance about which **evidentiary standard** it will always use for sexual-harassment grievances.

Typically, a school may choose whether to use a **clear and convincing evidence standard** or a **preponderance of evidence standard**. However, a school may have already bargained with unionized employees for a particular standard of evidence to be used in misconduct proceedings. Or state law may require that one standard or the other be used.



## Investigative Report

After an investigator has collected and reviewed all evidence, s/he must write an investigative report. The purpose of the investigative report is to summarize relevant evidence. An investigator should redact any information or evidence that is not relevant or not being used.

In the investigative report, the investigator may also opt to include:

- The procedural steps s/he took during the investigation
- Her/his recommendations and conclusions

The investigator must allow both parties and their advisors to review the investigate report; that way, they will know what evidence the decision-maker will be using to determine responsibility.





## Investigative Report, continued



! A school may opt to allow parties to present new evidence as part of their written responses. If this happens, the new evidence will be considered by the decision-maker when s/he determines responsibility, and cannot be considered grounds for an appeal.

When parties are presented the investigative report for review, the report can either be provided electronically or in hard copy. A school may opt to present the report via a file-sharing platform that restricts parties and advisors from downloading or copying the information, but the school is not required to do so. Per Title IX, the school may not limit parties or their advisors from accessing an investigative report. However, a school may prohibit parties from photographing, copying, saving or disseminating the report.

Parties and their advisors have 10 days to review the report and submit written responses to it. (This 10-day period is separate from the 10-day period they were granted earlier to review the evidence.)

A party's written response provides context for the information already in the investigative report. A school may choose whether to provide each party with the other party's written response. And a school may choose whether to give each party the opportunity to respond to any new evidence presented.

## Questions of Relevance

After the school sends the investigative report to both parties, but before a decision-maker determines responsibility, the decision-maker must give each party the chance to submit **questions of relevance**. These are:

- Questions the party wants the other party and/or witness to answer; and
- Challenges about which evidence the investigator classified as relevant and which evidence the investigator deemed irrelevant.

A minor (i.e., a student under the age of 18) has the right to have a parent help pose questions and craft answers. Title IX regulations do not specify whether a parent writing out questions and answers on behalf of her/his child must consult the student. However, there are other laws that stipulate to what extent a parent can legally act on behalf of her/his child.



## Questions of Relevance, continued

To ensure that questions of relevance are posed in a respectful manner, without profanity or ad-hominem attacks, a school may opt to adopt rules of decorum.

After reviewing the parties' questions of relevance, the decision-maker must determine whether s/he should consider any of this additional information when determining responsibility.



To avoid self-incrimination, a respondent may choose to remain silent when being asked a question. If a respondent chooses to remain silent and not answer questions, the decision-maker must not assume the silence implies guilt or responsibility.

## Evaluating Relevant Evidence



After an investigator sends her/his investigative report to the decision-maker, the investigator's job is done and the decision-maker's job begins. The decision-maker must:

- Objectively evaluate the relevant evidence.
- Decide whether the school has met its burden of proof.
- Determine whether the respondent is or is not responsible for the alleged sexual-harassment. (Although the Title IX coordinator and investigator are allowed to offer the decision-maker recommendations regarding responsibility, the decision-maker must base her/his determination on the evidence review and not on the recommendations.)

A school can adopt rules for how a decision-maker should weigh and evaluate evidence, providing those rules apply to both parties. Title IX does not require corroborating evidence. The law only requires that a decision-maker evaluate evidence relevant to the case.

## Evaluating Relevant Evidence, continued

One big challenge with Title IX proceedings is that they often involve allegations with competing plausible narratives and no eyewitnesses. In fact, in some cases, the only evidence that exists is the testimony of the parties themselves.

Neither decision-makers nor investigators should make assumptions about someone's credibility based solely on whether that person is a complainant or a respondent, or whether that person is a student or a teacher. Such assumptions can interfere with one's ability to evaluate a situation objectively.



## Determination of Responsibility



The decision-maker must prepare a written **determination of responsibility**. The written determination must include the following:

- A description of the initial sexual-harassment allegation.
- The procedural steps taken by Title IX personnel during the grievance process — from the receipt of the formal complaint to the determination of responsibility.
- The facts and evidentiary basis that led to the decision-maker's determination.
- How the school's code of conduct applies to the facts of the case.
- A determination of responsibility that finds the respondent responsible or non-responsible for the sexual harassment.
- A statement about whether remedies will be provided to the complainant, and an explanation about those remedies will restore or preserve equal educational access.
- A list of disciplinary sanctions that will be assigned to the respondent. A school may craft a unique sanction specifically designed to address the circumstances surrounding a particular complaint — as long as the unique sanction falls within the school's standard range of sanctions.
- A description of the appeals process and acceptable bases for filing an appeal.

## Determination of Responsibility, continued

The written determination must be sent simultaneously to both parties. If multiple complaints were consolidated into one formal complaint, a school can issue them the same written determination of responsibility. If there is more than one complainant and one respondent but the complaints were not consolidated, then each complainant should receive a written determination that addresses only that complainant's formal decision.

This written determination becomes final only after the time period to file an appeal has expired. (If an appeal is filed, the parties will receive a new written determination of responsibility.)



## Remedies and Sanctions

When a respondent is not found responsible for sexual harassment, remedies are not provided to the complainant.

However, when a respondent is found responsible for sexual harassment, the school must provide remedies to preserve or restore equal access to education. These remedies may include the same supportive measures provided throughout the grievance process. The complainant should communicate to the Title IX coordinator what remedies are needed, and the coordinator must ensure the remedies are implemented.

In addition, a school may issue sanctions (e.g., behavior-modification tools and/or punitive disciplinary measures) to a respondent found responsible for sexual harassment.

Sanctions assigned to the respondent may occasionally overlap with remedies provided to the complainant. For example, a school may impose a unilateral no-contact order on the respondent.

Title IX does not require any particular remedies or sanctions, and leaves such decisions to the school.





## The Appeals Process



The constitutional prohibition of double jeopardy does not apply in Title IX proceedings.

Course 1 cited three bases on which a party can appeal a decision-maker's determination of responsibility:

- A procedural irregularity that resulted in the failure to evaluate all relevant evidence objectively.
- New evidence that was not previously available.
- A Title IX official's bias or conflict of interest, which affected the outcome of the previous grievance process.

A school may opt to allow additional grounds for appeal. For example, a school could decide that the severity of sanctions is an appropriate basis for an appeal.

Supportive measures (e.g., mutual no-contact orders, academic course adjustments, etc.) may remain in place throughout the appeals process.

The appeals process should be completed in a reasonably prompt time frame. A school must provide both parties a new written determination of responsibility and explain why that decision was made.

## Retaliation

Title IX regulations expressly prohibit retaliation against anyone involved in a report, an investigation, a proceeding or a hearing. Using any means of communication a school deems appropriate, the school should let parties know that:

- Retaliation is prohibited.
- If they are retaliated against, they may file a complaint using the grievance procedures for sex discrimination.
- If they retaliate against someone else, they will be punished.

Examples of retaliation include:

- Charging someone with a code of conduct violation to interfere purposely with her/his rights under Title IX.
- Implementing "supportive measures" designed to penalize and discourage the complainant from exercising her/his Title IX rights.
- Threatening to take immigration action to interfere with any right or privilege under Title IX.
- Unnecessarily exposing the identity of — or leaking information about — anyone involved in Title IX proceedings.



Engaging in protected speech under the First Amendment does not constitute retaliation.

## Reasonable Time Frame



A school must respond to a sexual-harassment allegation within a **reasonable time frame**, and must ensure the grievance process takes place as quickly as possible. Forty-five (45) to 60 days is a realistic time frame for the entire process. A school can define a "day" as a calendar day, a school day, a business day, etc.

A short-term delay is only permissible if it is based on "good cause," such as concurrent law enforcement activity.

## Recordkeeping

Under Title IX, a school must maintain records about every sexual-harassment investigation — even investigations where no determination was made because the formal complaint was dismissed. A school must keep these records for at least seven years.



## Summary



Title IX is by no means the only remedy for addressing sexual conduct. Nothing in the law precludes a school from vigorously addressing misconduct that occurs outside the scope of Title IX. Similarly, nothing prevents a school from offering supportive measures to students and employees traumatized by sexual misconduct.

## End of Section

You have completed this section of the course. You must complete all sections and take the test to receive credit for this course.

Click on the next section in the left-hand navigation bar. If you've completed all sections, please click "Take Test."

