



Title IX Decision-Maker Add-On Training

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This training is a supplemental training, and does not meet all of your training requirements as Title IX Decision-Maker under Title IX.



Question and Answer Period

- Before reaching a determination regarding responsibility, the decision-maker(s) must afford each party five (5) business days to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
- However, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.



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- However, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.



Consider Dismissal

- If a formal complaint is filed, the school must investigate the allegations within it
- Mandatory Dismissal
 - Within the scope of the educational program or activity?
 - Outside the US?
 - Sexual harassment definition?
- Permissive Dismissal
 - Respondent still a student or employed by the school?
 - Does Complainant want to withdraw?
 - Any other specific circumstances preventing the school from gathering evidence sufficient to reach a determination?
- Promptly send written notice and reason(s) with ability to appeal if dismissed



Decision-Maker Written Determination

Section 106.45(b)(7)

- The decision-maker (who cannot be the same person as the Title IX Coordinator or the investigator) must issue a written determination regarding responsibility, including:
 1. Identification of the allegations potentially constituting sexual harassment
 2. A description of the procedural steps taken from the receipt of the formal complaint through the determination
 3. Findings of fact
 4. Conclusions
 5. A statement of and rationale for the result as to each allegation
 1. Determination regarding responsibility
 2. Any disciplinary sanctions imposed on the respondent
 3. whether remedies will be provided to the complainant
 6. Procedures and permissible bases for appeal
- The written determination must be sent simultaneously to the parties along with information about how to file an appeal.



Decision In Sum

- What were the allegations?
- What has been the chronology of events during the grievance procedure?
- What facts did you use to reach your determination?
- Based on standard of proof was Title IX violated?
- What is the rationale?
- Should there be disciplinary sanctions applied?
- Should there be remedies given to the Complainant?
- What is the process for an appeal?

Only when the decision is final may the sanction or remedy be issued.



Tips for Review

- Separate out the elements of the policy
- Review undisputed and disputed facts
- Consider inaccuracy, inconsistency, implausibility, unreliability, ulterior motives, and lack of credibility
- Begin with a presumption of no Responsibility
- Consider potential responses to trauma (for example delayed reporting)

Tips for Writing Decision

- Write for someone who knows nothing about what happened
- Use quotes when you can
- Be consistent
- Be clear as to where the information came from
- Be careful in language chosen (be empathetic, avoid adjectives, watch pronouns)
- Do not include information you are prohibited to use
- Have organization and use headings (is there a template?)
- Include all required components



DETERMINATION OF RESPONSIBILITY [DATE] ISSUED BY: _____

A. Allegations

Identify the allegations potentially constituting sexual harassment under the Title IX regulations.

B. Procedural Steps

Describe the procedural steps taken from receipt of Formal Complaint through Determination of Responsibility, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used collect evidence, and any hearings held.

C. Findings and Conclusions

Describe each finding of fact supporting the determination. State conclusions about the application of any relevant code of conduct, policy, law, or rule to the facts.

D. Determination of Responsibility

As to each allegation of sexual harassment, state whether you have determined the Respondent to be or not to be responsible. Include a statement of and rationale for that determination as to each allegation.

E. Disciplinary Action Taken Against Respondent [if any].

State whether there will be any disciplinary action taken against the respondent (consistent with applicable policies, codes of conduct, handbooks, or individual employee contracts)

F. Remedies [if any]

State whether remedies designed to restore and preserve equal access to the District's education program or activity will be provided to the Complainant. Do not state actual remedies, just state whether remedies will be provided. If a respondent is found to be responsible for sexual harassment, remedies must be provided to the complainant.

G. Appeal Rights

Any party may appeal this determination of responsibility [or the decision to dismiss a Formal Complaint] in whole or in part for the following reasons only:

- A procedural irregularity that affected the outcome.
- New evidence that was not reasonably available at the time the determination of responsibility or dismissal decision was made that could affect the outcome.
- The Title IX coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against the Complainant or Respondent, generally or individually, that affected the outcome.

An appeal must be filed with the Decision-Maker or Title IX Coordinator within five calendar days of the date of the determination of responsibility [or dismissal decision].

Upon receipt of an appeal, the Appeals Decision-Maker will provide both parties written notice of the appeal and an equal opportunity to submit a written statement in support of, or challenging, the determination or dismissal decision. The determination of responsibility is final upon the date the parties receive the Appeal Decision-Maker's written decision, if an appeal is filed, or on the date on which an appeal is no longer timely.



Lawyerly Disclaimer . . .

- These training materials are informational in nature and should not be construed as legal advice and are not provided to address specific grievance situations.
- Consult with your legal counsel as necessary to address specific Title IX report and grievance situations and investigations.
- Or email your school law attorney, or Adam Schira or Chelsea Canaday at:
- aschira@dickinsonwright.com
- ccanaday@dickinsonwright.com

