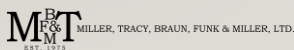


UNDERSTANDING THE 2024 TITLE IX REGULATIONS

TIER 2 & 3: TRAINING REQUIREMENTS FOR **INVESTIGATORS, DECISION-MAKERS**, AND OTHER PERSONS RESPONSIBLE FOR IMPLEMENTING GRIEVANCE PROCEDURES OR WITH THE AUTHORITY TO MODIFY OR TERMINATE SUPPORTIVE MEASURES & **INFORMAL RESOLUTION FACILITATORS**



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INVESTIGATORS, DECISION-MAKERS, AND OTHER PERSONS RESPONSIBLE FOR IMPLEMENTING GRIEVANCE PROCEDURES OR WITH THE AUTHORITY TO MODIFY OR TERMINATE SUPPORTIVE MEASURES MUST BE TRAINED ON:

1. The District's obligations under § 106.44
2. The District's grievance procedures under § 106.45
3. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
4. The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance
5. Completion of the training module required for All K-12 Employees (Tier 1).



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THE DISTRICT'S OBLIGATIONS UNDER § 106.44 (a-l)

PROMPT AND EFFECTIVE RESPONSE TO SEX DISCRIMINATION



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(a) GENERAL OBLIGATIONS

The District must respond promptly and effectively and the District's response must be compliant with Section 106.44's requirements for addressing sex discrimination in its education program or activity.



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“PROMPT”

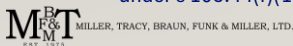
A reasonably prompt response to sex discrimination “is judged in the context of the recipient’s obligation to provide students and employees with education programs and activities free from sex discrimination.” 87 FR 41434 (quoting 85 FR 30269 (discussing a recipient’s grievance process)). The Department continues to believe that “prompt” action to end sex discrimination in a recipient’s education program or activity is necessary to further Title IX’s nondiscrimination mandate, including with respect to alleged sex discrimination that is addressed outside of a recipient’s Title IX grievance procedures. *Id.* Therefore, an unreasonable delay by a recipient’s Title IX Coordinator to take the required action under § 106.44(f)(1) to end sex discrimination in a recipient’s education program or activity, prevent its recurrence, and remedy its effects, would not meet Title IX’s obligation.



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“EFFECTIVE”

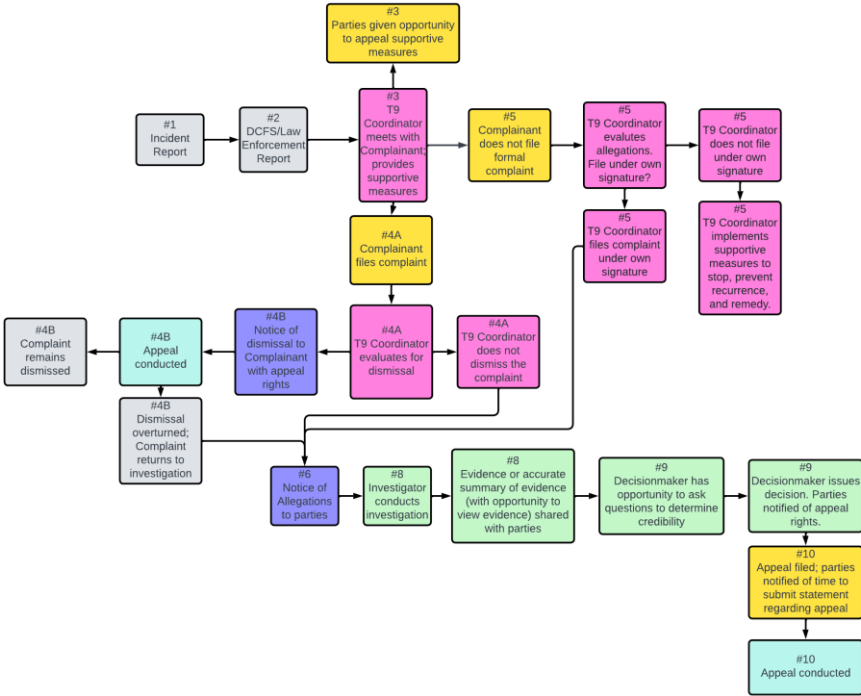
With respect to effective action, the Department considers effective action to mean that a Title IX Coordinator, upon learning of conduct that reasonably may constitute sex discrimination, takes reasonable steps calibrated to address possible sex discrimination based on all available information. And when a Title IX Coordinator’s oversight and coordination of a recipient’s response through the specific actions required under § 106.44(f)(1)(i)–(vii) are not effective at ending sex discrimination and preventing its recurrence, the prompt and effective response requirement means that the Title IX Coordinator must reevaluate the response and take additional steps to end sex discrimination in the recipient’s education program or activity.³⁶ If a Title IX Coordinator fails to do so, the recipient fails to meet its obligations under § 106.44(a) and (f) and does not demonstrate compliance with the requirements of Title IX and this part. The Department describes the effective actions a Title IX Coordinator is required to take in the discussion of § 106.44(f)(1), below. Additional discussion of “other appropriate prompt and effective steps” that a Title IX Coordinator is required to take under § 106.44(f)(1)(vii) that are outside of a recipient’s grievance procedures is provided below.



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(b) BARRIERS TO REPORTING

- The District’s Title IX Coordinator must monitor the District’s education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX; and
- Take steps reasonably calculated to address such barriers.



(c) NOTIFICATION REQUIREMENTS

An elementary school or secondary school recipient must require all of its employees who are not confidential employees to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX.

(d) CONFIDENTIAL EMPLOYEES

A District must notify all participants in the recipient's education program or activity of how to contact its confidential employees, **if any**.

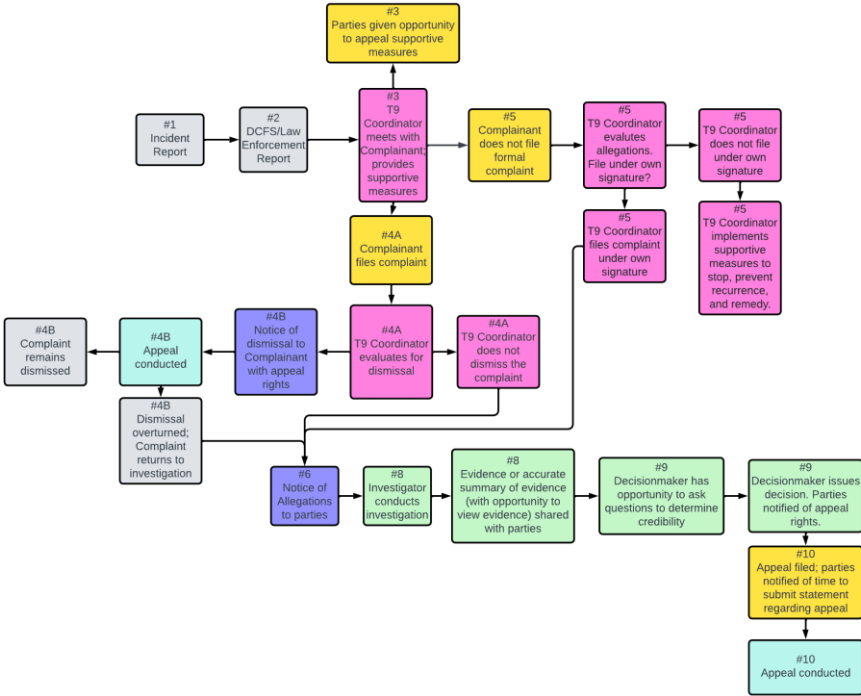
(d) CONFIDENTIAL EMPLOYEES

If a District has confidential employees and that confidential employee is notified of conduct which may reasonably constitute sex discrimination, the confidential employee must:

- Disclose their status as a confidential employee;
- Inform the person how to contact the Title IX Coordinator and how to make a complaint of sex discrimination;
- That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate informal resolution or an investigation under the grievance procedures.

REVIEW INCIDENT REPORT

- Any contact with DCFS or law enforcement should be made at this point, as necessary, depending on the allegations.



(h) EMERGENCY REMOVAL

Nothing in Title IX precludes a District from removing a respondent from the recipient’s education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

(h) EMERGENCY REMOVAL

- Emergency removal under Title IX is subject to the requirements of the *Illinois School Code* at Section 10-22.6.
- The emergency removal provision must not be construed to modify any rights under IDEA or Section 504.

(i) EMPLOYEE ADMINISTRATIVE LEAVE

Nothing in Title IX precludes a District from placing an employee respondent on administrative leave from employment responsibilities during the pendency of the recipient's grievance procedures.

(i) EMPLOYEE ADMINISTRATIVE LEAVE

“First, if administrative leave is used as a supportive measure under § 106.44(g), the recipient must comply with the procedural protections in that provision. Because § 106.44(g)(2) requires recipients to ensure that supportive measures do not unreasonably burden a party, administrative leave as a supportive measure would generally be paid. Second, if a recipient seeks an emergency removal under § 106.44(h), then those procedural protections apply.”



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(f) TITLE IX COORDINATOR REQUIREMENTS

When notified of conduct which may reasonably constitute sex discrimination, the Title IX Coordinator must take the following actions to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects:

1. Treat the complainant and respondent equitably



#3

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(f) TITLE IX COORDINATOR REQUIREMENTS

2. Offer and coordinate supportive measures for the complainant. If the grievance process has been initiated, or if informal resolution has been initiated, then the Title IX Coordinator must also offer and coordinate supportive measures for the respondent.

(f) TITLE IX COORDINATOR REQUIREMENTS

3. Notify the complainant, or the reporter of the conduct, if the complainant is unknown of the grievance process and informal resolution process, if available and appropriate.
4. If a complaint is made, notify the respondent of the grievance procedures and the informal resolution process, if available and appropriate.

(f) TITLE IX COORDINATOR REQUIREMENTS

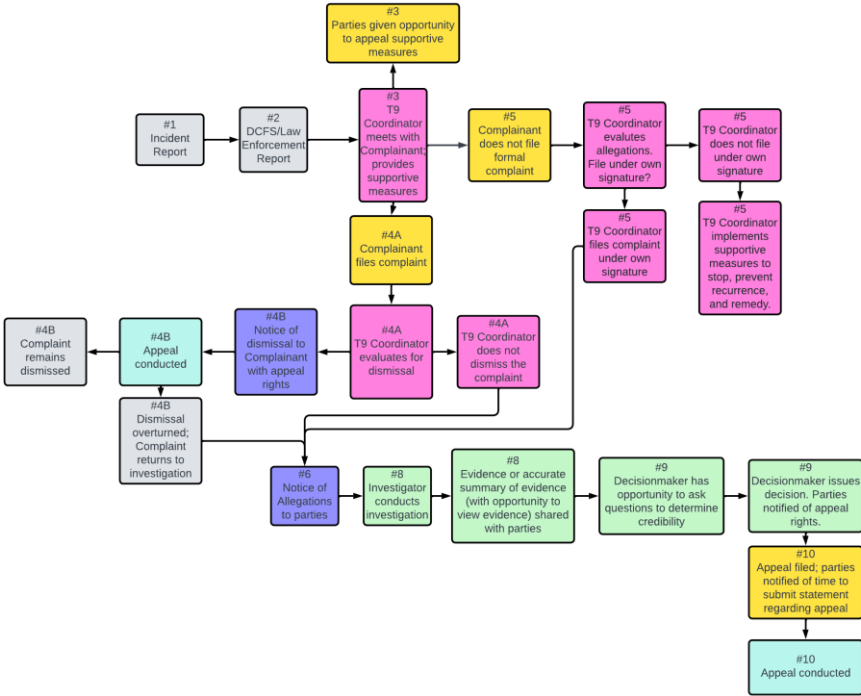
5. Initiate the grievance process or informal resolution process.
6. In the absence of a complaint, or if any or all allegations are withdrawn from a complaint, or if informal resolution fails, determine whether to initiate a sex discrimination complaint by considering specific factors.
7. If initiating a complaint, notify the complainant prior to doing so and address reasonable concerns and provide supportive measures.

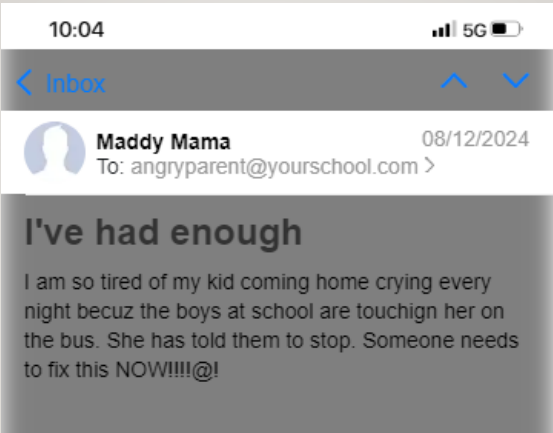
(f) TITLE IX COORDINATOR REQUIREMENTS

8. Regardless of whether a complaint is initiated, take appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur and take steps to effectuate remedies to the affected complainant.

COMPLAINT

- Complaint means an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or this part.





Is this a complaint?

IS THIS A COMPLAINT?

Student attends the school board meeting and during public comment she says that the high baseball team has a field all to itself while the high school softball team has to share with junior high girls and the community city league. She also notes that the exclusive baseball field has a two-story press box with a concession stand in the bottom of it, and a closet behind the concession stand where the boys can store equipment. She says the girls high school softball team has to carry things from the school, from down in the basement, and about 600 yards away. She says that there is no press box and that there is no concession stand—spectators have to walk across the street to the baseball field concession stand to get snacks and drinks. She requests the school board look into this.

IS THIS A COMPLAINT?

Student A comes into class and tells the music teacher that Student B had started a rumor that Student A had sex in her car in the parking lot at school during the football game the prior Friday night. Other students perpetuated the rumor. Student A is in tears and begs the music teacher to help her make it stop.



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IS THIS A COMPLAINT?

Employee emails the Superintendent and copies the entire school board, saying that the Principal evaluated him more harshly than others because he would not agree to go on a date with the Principal. He says that the board cannot keep allowing the Principal to treat employees like this.

The Superintendent knows that the employee has been late to work six times just this semester and that his lesson plans have been late twice. Superintendent tells the board not to worry about it and to just let it go—the employee is just mad because he got a poor evaluation and the Principal would never do anything like that.

Was the employee's email a complaint?



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(g) SUPPORTIVE MEASURES

- The District must offer and coordinate supportive measures, as appropriate.
- Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties **or the educational environment** or to provide support during the District's grievance process or informal resolution process.
- Supportive measures may not be disciplinary.

(g) SUPPORTIVE MEASURE EXAMPLES

- Counseling
- Extensions of deadlines and other course-related adjustments
- Campus escort services
- Increased security or monitoring of certain areas
- Restrictions on contact applied to one or more parties
- Leaves of absence
- Changes in class, work, housing, or extracurricular or other activity, regardless of whether there is or is not a comparable alternative
- Training and education programs related to sex-based harassment

(g) SUPPORTIVE MEASURES

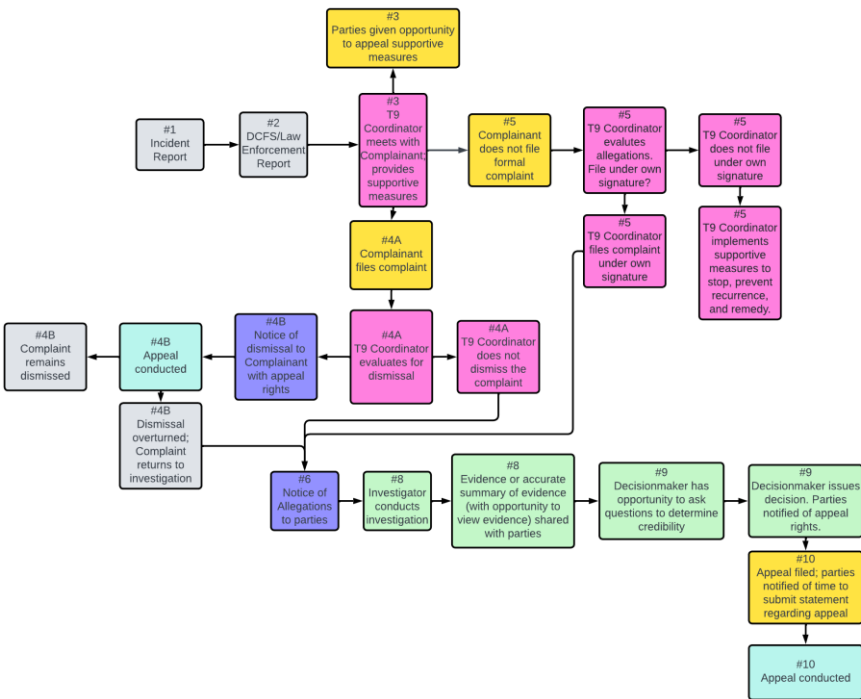
- The District may, as appropriate, modify or terminate supportive measures at the conclusion of the grievance procedures or at the conclusion of informal resolution. Or, the District may continue the supportive measures after the completion of the processes.

(g) TERMINATION OF SUPPORTIVE MEASURES

A District must provide a complainant or respondent with a timely opportunity to seek, from an appropriate or impartial employee, modification or reversal of the recipient's decision to provide, deny, modify, or terminate supportive measures applicable to them.

The impartial employee must be someone other than the employee who made the challenged decision and must have the authority to modify or reverse the decision, if the impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the definition of supportive measures.

A recipient must also provide a party with the opportunity to seek additional modification or termination of a supportive measure applicable to them if circumstances change materially.

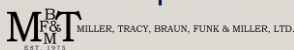


(g) CONFIDENTIALITY OF SUPPORTIVE MEASURES

A District must not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party’s access to the education program or activity, or when an exception .44(J)(1-5) applies.

(g) SUPPORTIVE MEASURES FOR STUDENTS WITH DISABILITIES

If the complainant or respondent is a K-12 student with a disability, the District must require the Title IX Coordinator to consult with one or more members, as appropriate, of the student's IEP team, or one or more members, as appropriate, of the persons responsible for the student's placement decision to determine how to comply with the requirements of IDEA and Section 504 in the implementation of supportive measures.



#3

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(j) PROHIBITED DISCLOSURES OF PERSONALLY IDENTIFIABLE INFORMATION

A recipient must not disclose personally identifiable information obtained in the course of complying with this part, except when it has:

1. Obtained prior written consent from a person with the legal right to consent.
2. When the information is disclosed to a parent, guardian, or other legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue.
3. To carry out the purposes of the rules, including taking action to address conduct that reasonably may constitute sex discrimination in the education program or activity;
4. As required by federal law; and
5. As required by state or local law or when permitted pursuant to FERPA.



#8

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GAG ORDERS ARE BACK?

“Access to the evidence in some format, whether through access to the underlying evidence or access to an accurate description of the evidence, is necessary for fair grievance procedures and required under these regulations. But in order to minimize these impacts, the Department is persuaded that the final regulations must require recipients to **take reasonable steps to prevent and address the parties’ unauthorized disclosure of information**, so as to prevent a chilling effect on reporting, fear of retaliation, harassment, or other harmful consequences. The unauthorized disclosure of sensitive information could threaten the fairness of the grievance procedures by deterring parties or witnesses from participating, affecting the reliability of witness testimony, leading to retaliatory harassment, and other consequences. The Department is not proposing specific steps that a recipient must take, as what is reasonable to prevent unauthorized disclosure may vary depending on the circumstances.”



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(i) DISCRETION TO OFFER INFORMAL RESOLUTION

At any time prior to determination under the grievance process, a recipient may offer informal resolution to a complainant and respondent, unless the complaint includes an allegation that an employee engaged in **sex-based harassment of a K-12 student** or such a process would conflict with federal, state, or local law.



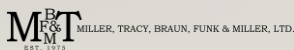
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(i) DISCRETION TO OFFER INFORMAL RESOLUTION

A district also has discretion to decline to offer informal resolution—such as when the alleged conduct would present a future risk of harm to others.

A district cannot pressure or require the parties to participate in informal resolution.



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(i) DISCRETION TO OFFER INFORMAL RESOLUTION

Before initiation of the informal resolution process, the district must provide to the parties notice that explains:

1. The allegations;
2. The requirements of the informal resolution process;
3. Notice that prior to agreement to resolution, any party has the right to withdraw from informal resolution and to initiate or resume the recipient's grievance process;



#7

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(i) DISCRETION TO OFFER INFORMAL RESOLUTION

Before initiation of the informal resolution process, the district must provide to the parties notice that explains:

4. Notice that agreement to resolution at the conclusion precludes the parties from initiating or resuming the grievance process;
5. Potential terms that may be offered or requested in an informal resolution agreement (including notice that an informal resolution agreement is only binding on the parties; and
6. What information the recipient will maintain and whether and how the recipient could disclose such information for use in grievance procedures. If resumed or initiated.

(i) DISCRETION TO OFFER INFORMAL RESOLUTION

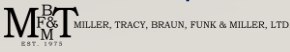
Informal resolution facilitator cannot be the same person as the decisionmaker or investigator.

(i) DISCRETION TO OFFER INFORMAL RESOLUTION

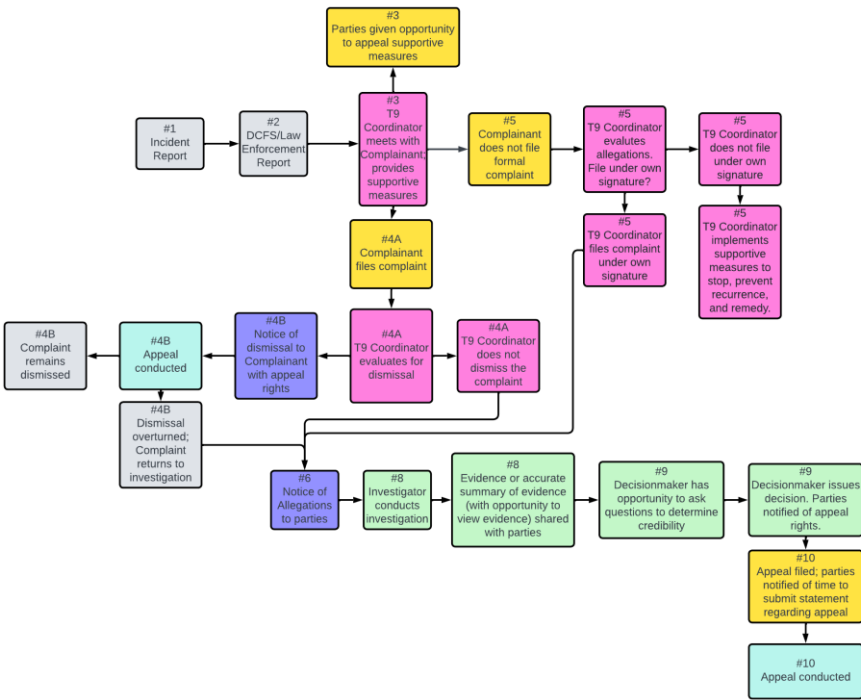
Potential terms to include in an informal resolution agreement include, but are not limited to:

- Restrictions on contact; and
- Restrictions on the respondent’s participation in one or more of the recipient’s programs or activities or attendance at specific events, including restrictions the recipient could have imposed as remedies or disciplinary sanctions had the recipient determined the respondent was responsible for sex discrimination.

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THE GRIEVANCE PROCESS, GENERALLY

- The grievance process must be in writing (2:265 AP-1 and AP-2)
- The requirements related to a respondent apply only when a person is alleged to have violated the prohibition on sex discrimination.
- When the complaint alleges it is the district’s practice or policy that discriminates, the district is not considered a respondent.



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WHO CAN MAKE COMPLAINTS?

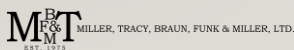
Sex Discrimination	Sex-based Harassment
A complainant	A complainant
A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant	A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant
The Title IX Coordinator	The Title IX Coordinator
Any student or employee	
Any person other than a student or employee	



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BASIC REQUIREMENTS

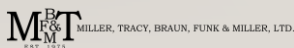
1. Treat complainants and respondents equitably;
2. Title IX personnel may not have a conflict of interest or bias for or against complainants or respondents generally or for or against any individual complainant or respondent;
3. A presumption of non-responsibility until a determination is made at the conclusion of the recipient's grievance procedures;



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BASIC REQUIREMENTS

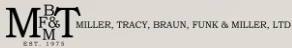
4. Establish reasonably prompt timeframes for major stages (evaluation—whether to dismiss or investigate, investigations, determination, appeal) of the grievance process, including for reasonable extensions for good cause, with notice to the parties that includes notice for the reason for delay;



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PRESS 2:265

- PRESS is drafted to include a 90 school business day grievance process.
 - 10 school business days to evaluate the complaint (as to whether to dismiss or proceed)
 - The investigator/decisionmaker shall make all reasonable efforts to complete the investigation and issue a written determination regarding whether sex discrimination occurred within 30 school business days.
 - 5 school business days for the parties to appeal the determination (or dismissal).
 - 5 school business days for the parties to file statements in support of or challenging the appeal.



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BASIC REQUIREMENTS

5. Districts must take reasonable steps to protect the privacy of the parties and witnesses during the process, provided the steps do not restrict the ability of the parties to obtain and present evidence, consult with family members, confidential resources, or advisors, or otherwise prepare for or participate in the grievance process;



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BASIC REQUIREMENTS

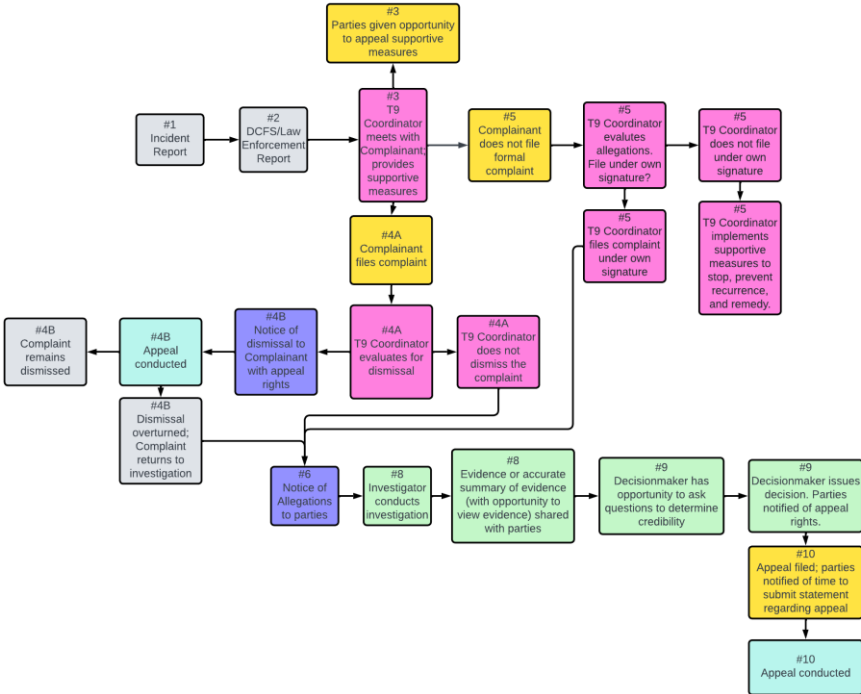
6. A requirement for an objective evaluation of all relevant evidence—both exculpatory and inculpatory—that is not otherwise impermissible. Credibility determinations must not be based on a person's status as a complainant, respondent, or witness;

BASIC REQUIREMENTS

7. Exclude evidence and questions seeking evidence that is impermissible that:
 - i. Is privileged and the privilege has not been waived
 - ii. A party's or witness's medical records unless there is voluntary, written consent
 - iii. Evidence that relates to complainant's sexual interests or prior sexual conduct unless offered to prove that the alleged conduct was committed by someone other than the respondent or is offered to prove consent, but the fact of prior sexual conduct between complainant and respondent does not alone demonstrate or imply consent or preclude a finding of responsibility.

BASIC REQUIREMENTS

8. Articulation of how the district will apply the grievance procedures if they apply to some but not all of the allegations.



NOTICE OF ALLEGATIONS

Upon initiation of the grievance procedures, a district must provide notice of allegations to the known parties.

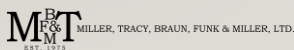
NOTICE OF ALLEGATIONS

Notice must include:

- Grievance procedures and any informal process offered
- Sufficient information available at the time to allow the parties to respond to the allegations (identities, conduct alleged to constitute sex discrimination, date, time, location, to the extent known)
- A prohibition on retaliation
- A statement that the parties are entitled to an equal opportunity to access relevant evidence or an accurate description of this evidence. If only providing a description, then the parties are entitled to an equal opportunity to access the relevant evidence upon request.

UPDATING NOTICE OF ALLEGATIONS

If, during the course of the investigation, the District decides to investigate additional allegations not included in the initial notice of allegations, it must provide notice of the additional allegations to the parties whose identities are known.

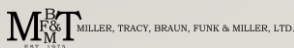


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PERMISSIBLE REASONS FOR DISMISSAL

1. The district is unable to identify the respondent after taking reasonable steps to do so;
2. The respondent is not participating in the district's education program or activity and is not employed by the district;
3. The complainant voluntarily withdraws either the complaint or allegations in the complaint and the Title IX Coordinator evaluates and determines not to file a complaint under their own signature;
4. The conduct alleged, even if proven true, would not constitute sex discrimination. Prior to dismissal, the district must make reasonable efforts to clarify allegations with the complainant.



#4A

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DISMISSAL PROCEDURE

1. If dismissing a complaint or allegations therein, the district must notify the complainant of the basis for dismissal. If respondent has received notice of allegations, respondent must also receive the notice of dismissal, including the basis for dismissal. **If in writing**, it must be simultaneous. If verbal, complainant first, then respondent.
2. Dismissals must provide the parties with notice that the dismissal can be appealed. If prior to notice to respondent, only need to notify complainant. If respondent has been notified of complaint, then also need to provide notice to respondent.

DISMISSAL APPEAL PROCEDURE

If appeal is filed:

1. Notify the parties of the appeal;
2. Implement appeal procedures equally for parties;
3. Ensure the appeal decisionmaker did not take part in investigation of the allegations or dismissal of the complaint;
4. Ensure the appeal decisionmaker is compliant with training;

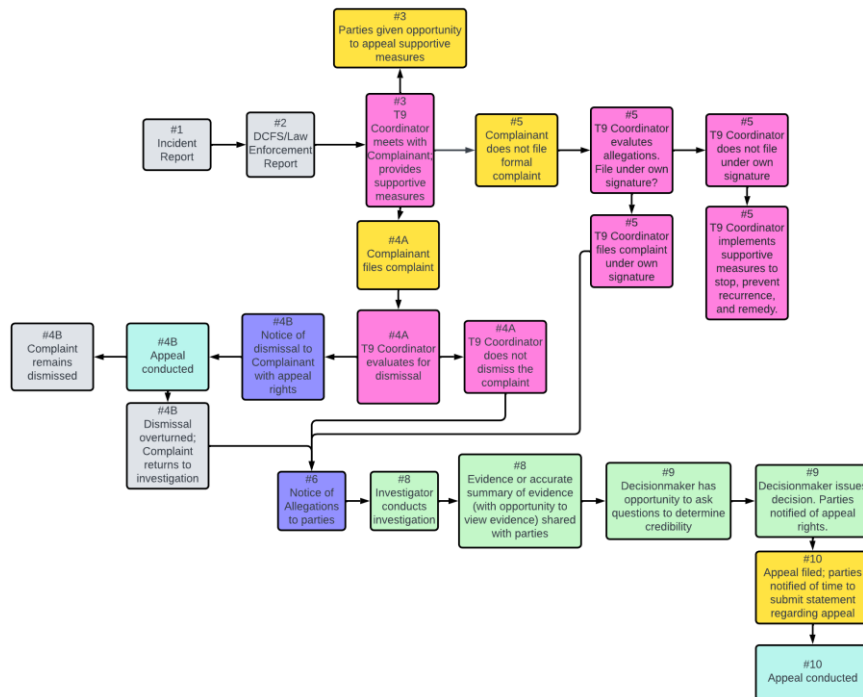
DISMISSAL APPEAL PROCEDURE

If appeal is filed:

5. Provide the parties with a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome;
6. Notify the parties of the result of the appeal and rationale;

IF DISMISSED, STILL NEED TO:

- Offer supportive measures to the complainant, as appropriate;
- Offer supportive measures to the respondent, if the respondent has been notified of the allegations;
- Require the Title IX Coordinator to take other “appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient’s education program or activity.”



CONSOLIDATION OF COMPLAINTS

A district may consolidate complaints of sex discrimination:

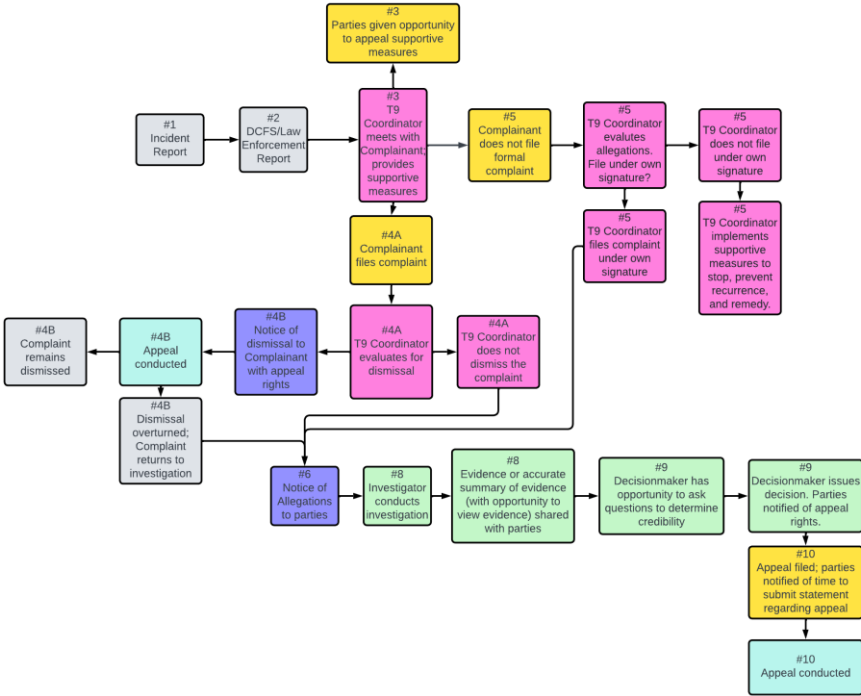
- Against more than one respondent;
- By more than one complainant against one or more respondents;
- By one party against another party;
- When the allegations of sex discrimination arise out of the same facts or circumstances.

HOW TO SERVE IMPARTIALLY, INCLUDING BY AVOIDING PREJUDGMENT OF THE FACTS AT ISSUE, CONFLICTS OF INTEREST, AND BIAS



MILLER, TRACY, BRAUN, FUNK & MILLER, LTD.
EST. 1973

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INVESTIGATION

A district must provide for adequate, reliable, and impartial investigation of complaints by:

1. Ensuring the burden is on the district, not the parties, to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred;
2. Provide an equal opportunity for the parties to present fact witnesses and other inculpatory or exculpatory evidence that is relevant and not otherwise impermissible;

INVESTIGATION

A district must provide for adequate, reliable, and impartial investigation of complaints by:

3. Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance;
4. Provide each party with an equal opportunity to access the relevant evidence to the allegations, that is not otherwise impermissible;

INVESTIGATION

A district must provide for adequate, reliable, and impartial investigation of complaints by:

5. When providing parties an equal opportunity to access the relevant and not otherwise impermissible evidence, can provide an accurate description of the evidence, but must also then provide the opportunity for parties to access the actual relevant evidence that is not otherwise impermissible;

INVESTIGATION

A district must provide for adequate, reliable, and impartial investigation of complaints by:

6. Providing a reasonable opportunity for the parties to respond to the evidence or to the accurate description of the evidence;
7. Take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence **obtained solely through the grievance process.**

INVESTIGATION

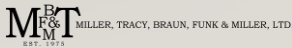
- Understand and use trauma-informed techniques
 - Understand and be mindful of re-traumatization.
 - Promote safety and support.
 - Provide choice:
 - “What can you tell me about what happened?”
 - “Can you tell me more?”
 - “Can you help me understand?”

INVESTIGATION

- Considerations: Potential responses to trauma:
 - Delayed reporting
 - Difficulty remembering specifics
 - Reluctant reporting
 - Remaining in a relationship or living arrangement with an alleged abuser
 - Failure to identify the accused

INVESTIGATION

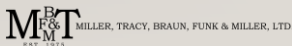
- Do **not** assume that because there are signs of trauma that the respondent caused trauma or violated the policy.
- Do **not** assume that because there are not signs of trauma that nothing happened.



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INVESTIGATION TONE

- Maintain a non-judgmental tone in interviews and summaries of evidence.
- Stay away from charged words of advocacy:
 - *Clearly/obviously*
 - *Innocent/guilty*
 - *Victim/perpetrator*
- Watch adjective and adverb use unless they are in quotes.



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IMPARTIALITY

Impartiality is integral to the Title IX formal grievance process.

- Serving impartially includes avoiding the following:
 - Prejudgment of the facts at issue
 - Conflicts of interest
 - Bias
- But what do each of these things mean (and how do you avoid them)?



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IMPARTIALITY

Prejudgment refers to passing judgment prematurely or without sufficient reflection or investigation. For example:

A Complainant was crying while making a sexual harassment report. You conclude that because the Complainant was crying when describing the conduct at issue, the Complainant must be telling the truth and the Respondent must be responsible for the actions alleged.

Neither Complainants reporting sexual harassment, nor Respondents defending against allegations of sexual harassment, should be met with prejudgment throughout the Title IX process.



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Prejudgment often occurs when allegations involve sexual conduct, sexual history, drugs, and/or alcohol use. Examples of prejudging the facts:

- *The Complainant was drinking at the time of the incident so the investigator presumes his/her recollection of an event is not accurate.*
- *The Respondent and Complainant were in a consensual relationship previously so the Title IX coordinator assumes consent to particular conduct was given.*



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Sex stereotypes also often lead to prejudgment – for example:

- *Men are sexually aggressive and/or likely to perpetrate sexual assault.*
- *Women have regret about sexual experiences and are likely lying about sexual assault.*
- *Men cannot be sexually assaulted.*
- *Women complaining about sex harassment are just jumping on the "#MeToo" bandwagon*



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How do you avoid prejudging facts?

- ✓ Keep an open mind throughout the investigation process.
- ✓ Wait to hear all of the facts (there are two or more) sides to every story.
- ✓ Seek out additional facts and/or witnesses if you feel yourself jumping to conclusions – facts matter, assumptions do not!



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Ms. Jones is an investigator who conducts Title IX investigations for the school district. Ms. Jones frequently makes statements to her colleagues regarding how provocatively female students on campus dress and that they are “asking” for others to catcall and give them attention. In the case at hand, a female Complainant, who was wearing a crop top during class, reported that her lab partner made sexually harassing comments to her during a lab.

- In terms of prejudgment of the facts, would you be concerned about Ms. Jones impartiality?



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- The decision-maker(s) should not be the subordinates of the Title IX Coordinator.
 - This stems from a concern about pressure to accept investigator recommendations because of the inherent authority of the employment relationship.



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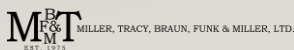
- A “conflict of interest” occurs if, within a particular decision-making context, an individual is subject to two coexisting interests that are in direct conflict with each other and the decision-making process is disrupted or compromised in a manner that affects the integrity or the reliability of the outcomes.



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- Conflict of interests may arise from family, friendships, employment relationships, financial investments, or other social factors.
 - Let's discuss if the following potential conflicts may affect impartiality:



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- *The Title IX Coordinator is close family friends with a Complainant's parents.*
- *The Investigator and Respondent attend the same church.*
- *The Decision-Maker is on the Board of the local SAFE (Sexual Assault and Family Emergencies) Board of Directors.*
- *The Investigator shares news articles on their personal social media with their own commentary that women lie for attention about sexual assault.*



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- An **actual** conflict of interest is a direct conflict between one's official duties and responsibilities, and a competing personal interest or obligation.
- A **perceived** conflict of interest is a situation where it could reasonably be perceived that a competing interest could improperly influence the performance of one's official duties and responsibilities.
- A **potential** conflict of interest arises where a personal interest or obligation could conflict with one's official duties and responsibilities in the future.



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- **Actual Conflict:** *The Title IX Decision-maker's daughter is the Respondent in a sexual assault case.*
- **Perceived Conflict:** *The Title IX investigator previously had a relationship with the family member of the Respondent.*
- **Potential Conflict:** *The Title IX Coordinator and Complainant co-chair a community organization and socialize outside of work on occasion.*



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- A **bias** is a tendency, inclination, or prejudice toward/against someone.
 - Biases are often based on stereotypes, rather than actual knowledge of an individual or a particular circumstance.
 - They are frequently based on a person's gender, race, or sexual orientation.
- In effect, biases are “shortcuts” our mind makes that can result in prejudgments, which lead to improper decisions or potentially discriminatory practices.



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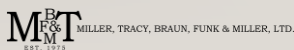
- Examples of Bias:
 - *When talking with Title IX Complainants, the Title IX Coordinator begins each initial meeting by asking who the Respondent is and what “he” did to the Complainant (assuming the Respondent is a male).*
 - *A Title IX Decision-maker finds a Respondent in a case more credible than a Complainant because the Respondent speaks “perfect English” while the Complainant, who only knows English as a second language, does not.*



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- Ways to combat bias:
 - Pay attention to your language
 - Avoid generalizations
 - Question your thinking and challenge your assumptions
 - Listen!



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- Understanding bias is particularly important in the Title IX context because:
 - Most evidence is circumstantial rather than direct
 - There are social stigmas associated with sex, alcohol, and drugs
 - Improper sex-based bias is prevalent and prevents reliable outcomes
 - There are also potential biases related to economic status, gender, race/ethnicity, and academic standing



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- Illinois “Sample” Jury Instructions:
- *It is your duty to resolve this case by determining the facts based on the evidence and following the law. Your decision must not be based upon speculation, prejudice, or sympathy. Each party should receive your same fair consideration.*



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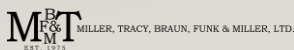
- Illinois “Sample” Jury Instructions:
- *Facts may be proven by evidence or reasonable inferences drawn from the evidence. Evidence consists of the testimony of witnesses you will hear and of exhibits you will read. You should consider all the evidence without regard to which party produced it. You may use common sense gained from your experiences in life, in evaluating what you see and hear during the investigation.*



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- Illinois “Sample” Jury Instructions:
- *In evaluating the credibility of a witness, you may consider that witness' ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case.*



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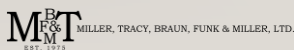
- Illinois “Sample” Jury Instructions:
- *You should not do any independent investigation or research on any subject relating to the case. What you may see or hear outside the investigation is not evidence.*



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- Treat all informal reports of sexual harassment equally, regardless of the form of the report or the demographics of the Complainant or Respondent.
- Make no assumptions about the allegations based on the demographics of the Complainant or Respondent.
- Offer supportive measures to Complainants and Respondents equally.



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- Keep an open mind and actively listen to all the facts presented.
- View all relevant evidence objectively.
- Remember that each case is unique.



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IMPARTIALITY

John, a Title IX Coordinator, is a self-professed feminist, a former victim advocate, and regularly blogs about issues of sexual assault. His Twitter bio includes the phrase “Believe all women.” He has supported organizations that work to prevent sexual assault for years.

- Issue?



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Betty is an assistant principal who conducts informal resolution for parties that elect it under the formal grievance process. Betty also serves as the school’s athletic director, and was previously the school’s volleyball coach for 15 years. Betty remains an active fundraiser and supporter of the volleyball team. A student (who is a current volleyball player) made a formal complaint alleging that a classmate (the high school starting quarterback with a major scholarship) sexually harassed them in the school library while completing work on a group assignment. The two elect informal resolution.



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CONDUCTING A GOOD INVESTIGATION

- DOWNLOAD video camera footage that might be relevant IMMEDIATELY upon receiving a report (even if it has not turned into a complaint yet).
- Interview Complainant first—sometimes they start adding items, sometimes they share information that is directly contradictory to their complaint causing dismissal to be available.
- Ask parties for copies of relevant messages.
- Ask parties for names of potential witnesses and what those witnesses are likely to know.



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CONDUCTING A GOOD INVESTIGATION

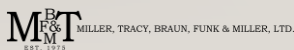
- Approach investigative interviews with an outline of information that individual may have that you want to discuss. But, do not approach it with a script only.
 - Ask follow up questions, rephrase the questions in other ways, and re-ask questions later in the interview to see if the responses change.
 - If you notice inconsistency—"Earlier, I believe you said X and now I hear you saying Y. Can you reconcile those for me?"



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CONDUCTING A GOOD INVESTIGATION

- Start with open-ended questions:
 - Do you know why I asked to speak with you?
 - Are you aware that I'm conducting an investigation?
 - Who made you aware? What do you know about my investigation?
 - Did any person ask you to make sure you shared any particular information with me?
- Narrow the questions as you move through the interview.
 - Avoid disclosing new information to the witnesses unless necessary to get answers.



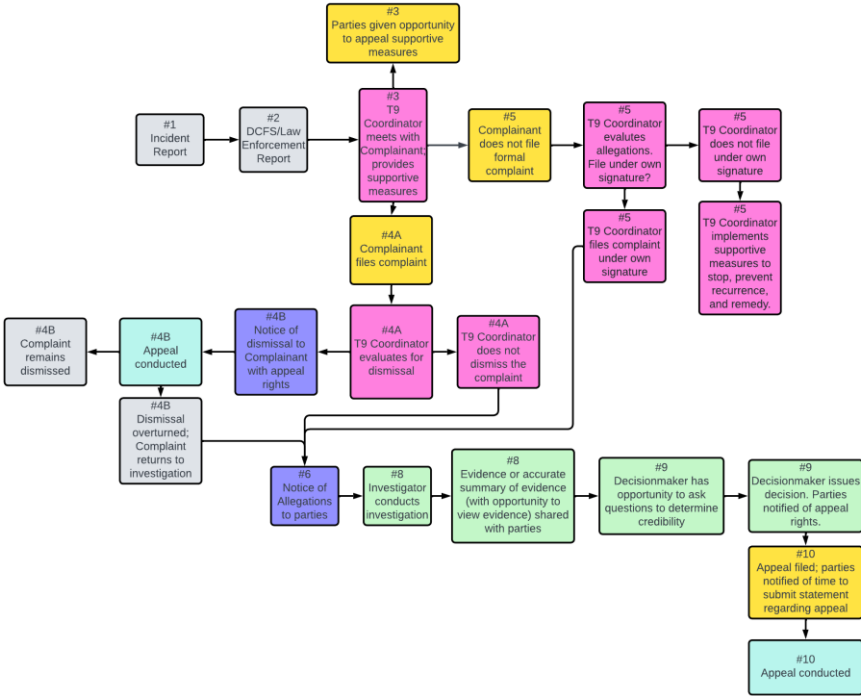
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§106.45(g) QUESTIONING PARTIES AND WITNESSES TO AID IN EVALUATING ALLEGATIONS AND ASSESSING CREDIBILITY

A recipient must provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.



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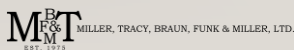


CREDIBILITY ASSESSMENT

A district must provide a process that enables the decisionmaker to question the parties and witnesses to adequately assess a party’s or witness’s credibility, to the extent credibility is in dispute and relevant to evaluating one or more allegations of sex discrimination.

CREDIBILITY ASSESSMENT

Credibility assessment is the process of weighing the accuracy and veracity of evidence. To assess credibility, evaluate the source, content, and plausibility of what is offered in light of other evidence.



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CREDIBILITY ASSESSMENT

A decision can (and should) still be made when the evidence is credible, even if there was no eyewitness or video of the incident.

Put another way, **the preponderance of the evidence can be established simply because you believe one party and not the other based on the assessment of the credibility of the parties and the evidence provided.**



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CREDIBILITY ASSESSMENT

Corroboration is not merely a second witness who agrees with a party or another witness because, for instance, they could be lying to support each other. Rather, it is evidentiary support for what a witness contends after evaluating source, content, and plausibility.



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CREDIBILITY ASSESSMENT

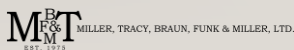
Major inconsistencies in testimony would likely detract from credibility. Minor inconsistencies might not, and may even be the result of trauma or self-protection. The job, as an investigator, is to determine if someone is lying, why? Lying about alcohol consumption to avoid an alcohol violation does not prove or disprove an underlying interpersonal violence allegation.



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CREDIBILITY ASSESSMENT

Major inconsistencies in testimony would likely detract from credibility. Minor inconsistencies might not, and may even be the result of trauma or self-protection. The job, as an investigator, is to determine if someone is lying, why? Lying about alcohol consumption to avoid an alcohol violation does not prove or disprove an underlying interpersonal violence allegation.



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CREDIBILITY ASSESSMENT

A delay in reporting harassment does not detract from credibility. Individuals may delay reporting over fear of retaliation, because they don't know or trust the policy or administration, over fear of being blamed for causing the harassment or incident, or due to a lack of understanding that it was harassment.

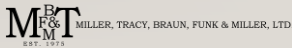


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CREDIBILITY ASSESSMENT

Changes in behavior of the reporting party after an incident might add to credibility. For example, after being harassed, the reporting party cried, was visibly upset, avoided a class (or meetings, certain areas) that they normally enjoyed or spent time, or their academic performance deteriorated.

But, absence of these does not mean that the allegation is not credible.

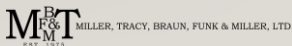


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CREDIBILITY ASSESSMENT

The following are likely **irrelevant** to credibility:

- Character witnesses (*He's such a good guy; I know he would never do that.*)
- Popularity with staff and other students (*Everybody likes her; I just don't believe she would do that.*)
- No history of past problems (*She's never been in trouble before.*)
- Academic performance (*He's a really good student. His teachers like him a lot.*)

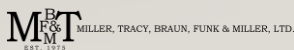


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CREDIBILITY ASSESSMENT

Factors to consider:

- Cooperation
- Level of detail
- Reliability of recollections
- Plausibility of accounts
- Motive to falsify information
- Consistency of account over times and with other available evidence
- Corroboration of information, including where it is lacking and should logically exist
- Demeanor



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DETERMINATION

Following investigation and evaluation of the relevant and not otherwise impermissible evidence, the recipient must:

1. Use the preponderance of the evidence standard to determine whether sex discrimination occurred (unless the district uses the clear and convincing standard for comparable proceedings).
2. Notify the parties **in writing** of the determination, including **the rationale**, and the **permissible bases for appeal**.



#9

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DETERMINATION

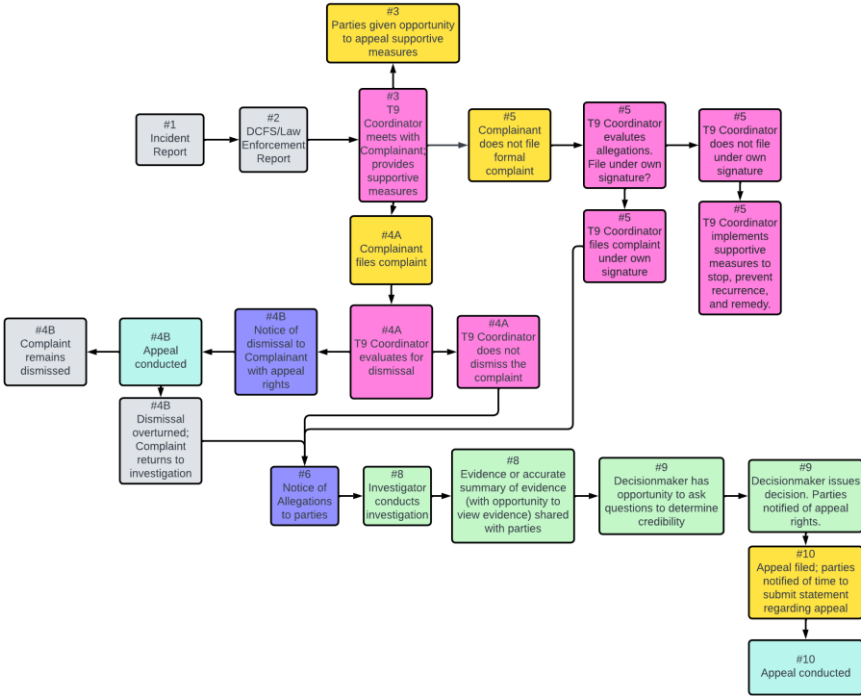
Following investigation and evaluation of the relevant and not otherwise impermissible evidence, the recipient must:

3. If there is a finding that sex discrimination occurred, the Title IX Coordinator must coordinate the provision of and **implementation of remedies to complainant and other persons whose equal access was limited or denied**, coordinate the imposition of any disciplinary sanctions on a respondent **including notification to the complainant of any such disciplinary sanctions** and require the Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur.

DETERMINATION

Following investigation and evaluation of the relevant and not otherwise impermissible evidence, the recipient must:

4. Use the grievance process before imposing disciplinary sanctions against a respondent.
5. Not discipline a party, witness, or others participating in a recipient's grievance process for making a false statement or for engaging in consensual sexual conduct based solely on the recipient's determination whether sex discrimination occurred.



RECITING THE EVIDENCE IS NOT A DETERMINATION

Complainant said Respondent groped his butt, over his pants twice in one week when entering science class. Respondent said she did not remember doing that. Complainant suggested two witnesses who saw him immediately after and both testified he was upset and that he told them immediately upon entering the classroom what happened with Complainant. The science teacher also identified that Complainant looked upset when coming into class but stated she did not see any touch. Respondent suggested one witness who testified that Respondent is a good person and would never do that. The hallway cameras aren't angled to record the area where the incident allegedly occurred.

RECITING THE EVIDENCE IS NOT A DETERMINATION

- Make a finding and explain how you got there!
- It is rare for something to be truly inconclusive.
- No video and no adult witness is not a reason to not make a finding.
- If you don't make a finding (and conclude the grievance process), you risk OCR or a court doing so for you.

OCR ON FAILURE TO DISCIPLINE IN ACCORDANCE WITH STUDENT CODES OF CONDUCT

- “Although the record indicated the District completed its investigation within nine days, the District took no disciplinary action until 35 days after the complaining parties made their reports[...]” *Garland Independent School District*, OCR Compliance Review No. 06205001, July 26, 2023.
- “Similarly, the District also failed to put in place a safety plan at MS 2, where Student N was involved in several incidents of sexual harassment during the time period under review, including Incident 10. While the information provided to OCR indicated that the District explored options for increased discipline and other interventions specific to Student N, OCR did not find evidence that the District took steps to prevent further harassment from occurring through, for example, increased monitoring of Student N or coordination with Student N's teachers, or other reasonable steps that could have prevented the repeated incidents.” *Val Verde Unified School District*, OCR 09-15-5001, June 8, 2023.

OCR ON FAILURE TO DISCIPLINE IN ACCORDANCE WITH STUDENT CODES OF CONDUCT

- “In addition, OCR’s review of the District’s responses to findings of sexual harassment by students raises a concern that the District may not have made individualized determinations about what action was needed to prevent further harassment. Specifically, the records and interviews indicated that the District typically imposed a four-day suspension for incidents of confirmed sexual harassment despite differences in their nature, severity, and frequency; and staff were unable to explain why that disciplinary sanction was imposed despite the differences in circumstances of the incidents...OCR determined that on multiple occasions the District issued disciplinary sanctions that appeared inconsistent with its Code of Conduct, including that the District did not impose any suspension of five or more days for sexual harassment across three school years of data, regardless of the severity of the incident.” *Newark Public Schools*, OCR Case No 02-20-5001, August 28, 2023.

APPEALS

In addition to appeals on dismissals, the district must also offer parties appeals as to determinations that are consistent with that which it offers in other comparable proceedings.

PRESS 2:265 states that when an appeal is filed, notice of appeal and an opportunity for the parties to provide a statement in support of or challenging the appeal must be given.

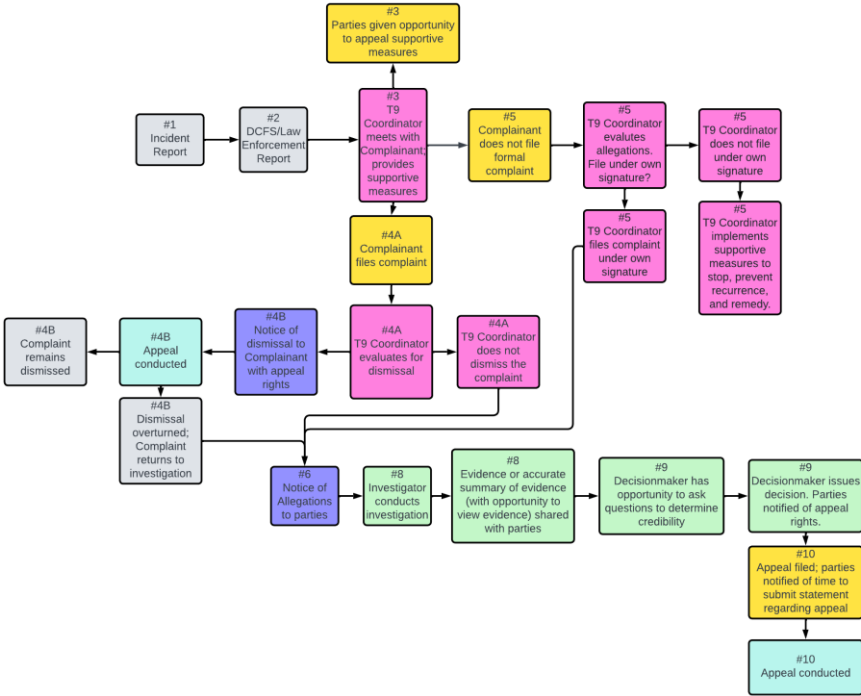
APPEALS

PRESS 2:265 provides that the Appellate Decisionmaker must make a decision within 30 school business days and issue the determination to affirm, reverse, or amend the determination within 5 school business days of that.

#10

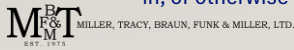
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RETALIATION

- *Retaliation* means intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process under § 106.44(k), in grievance procedures under § 106.45, and if applicable § 106.46, and in any other actions taken by a recipient under § 106.44(f)(1). Nothing in this definition or this part precludes a recipient from requiring an employee or other person authorized by a recipient to provide aid, benefit, or service under the recipient's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this part.



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PEER RETALIATION

- *Peer retaliation* means retaliation by a student against another student.



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PROCESSING RETALIATION COMPLAINTS

- Retaliation complaints use the Title IX grievance procedures.

THE MEANING AND APPLICATION OF THE TERM “RELEVANT” IN RELATION TO QUESTIONS AND EVIDENCE, AND THE TYPES OF EVIDENCE THAT ARE IMPERMISSIBLE REGARDLESS OF RELEVANCE

“RELEVANT”

Relevant means related to the allegations of sex discrimination under investigation as part of the grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.



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IMPERMISSIBLE EVIDENCE

Impermissible evidence is evidence which must not be access or considered:

1. Evidence protected under a privilege recognized by state or federal law or is evidence provided to a confidential employee.
2. Medical records unless voluntary written consent is given.
3. Evidence that related to the Complainant's sexual interest or prior sexual conduct, unless evidence about prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent. But, the fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate consent to or preclude determination that sex-based harassment occurred.



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REMINDERS

- Obligations under Title IX may interact with other state law obligations and other policies:
 - If a minor student alleges sexual harassment/grooming behavior by an adult, you have obligations to report to DCFS and law enforcement.
 - The student must be informed that you're contacting their parents, in an age-appropriate manner under Faith's law.
 - The Child Advocacy Center gets the first opportunity to conduct a forensic interview, so you should hold on any questioning until that has occurred, which will mean some coordination with the agency.
 - You have an obligation under Faith's law to conduct EHR reviews and to respond to others' EHR requests.



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2024 TITLE IX REGULATIONS

FOR FACILITATORS OF THE INFORMAL RESOLUTION PROCESS



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FACILITATORS OF THE INFORMAL RESOLUTION PROCESS MUST BE TRAINED ON:

1. The District's rules and practices associated with the recipient's informal resolution process and how to serve impartially, including by avoiding conflicts of interest and bias.



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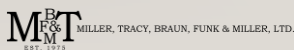
THE DISTRICT'S RULES ON INFORMAL RESOLUTION



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SUPPORTIVE MEASURES

Districts must provide supportive measures during the informal resolution process.



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WHAT IS REQUIRED TO ENTER INTO INFORMAL RESOLUTION?

- Written, voluntary consent to participate in informal resolution is required.
- Notice (not required to be written) to the parties that includes:
 - The allegations,
 - The requirements of the informal resolution process,
 - That a party can withdraw from informal resolution at any time and resume or initiate the grievance process
 - Agreement to an informal resolution agreement precludes resuming or initiating the grievance process,
 - Potential terms of agreement (like that the agreement is not binding on third parties),
 - What information from informal resolution will be maintained and how it could or will be disclosed in the grievance process if initiated or resumed.



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WHAT IS REQUIRED TO ENTER INTO INFORMAL RESOLUTION?

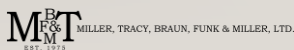
- Cannot be used for employee on student complaints.
- Written complaint is not required.

BEST PRACTICE

- Keep detailed records of the informal resolution process.
 - Offers made and responses to those offers;
 - Times and dates of meetings or communications;
 - Email communications;
 - Notes from phone calls.

WHAT DOES INFORMAL RESOLUTION LOOK LIKE?

- Synchronous or asynchronous?
- Shuttle diplomacy or bringing parties together?
 - (Do not require the parties to come together in the same room.)
- How much evidentiary discussion?



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INFORMAL RESOLUTION AGREEMENTS

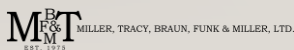
- No contact orders
- Any discipline or suspensions from extracurriculars that could have been available if respondent was found responsible for the conduct alleged



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INFORMAL RESOLUTION AGREEMENTS

- Both parties have to agree—reduce to writing and get the signatures.



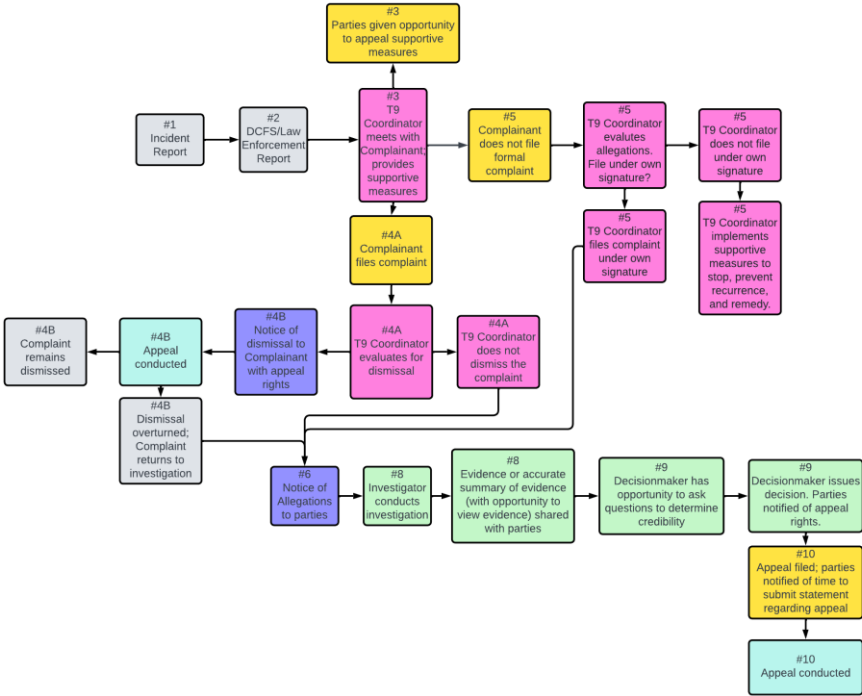
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INFORMAL RESOLUTION AGREEMENTS

- Districts should not agree to language that binds them unless willing to own the administrative burden and cost:
 - That Respondent will not be placed in any of Complainant's classes
 - That Respondent will not be in Complainant's lunch hour
 - That Respondent will not be in Complainant's presence
 - That Respondent must receive counseling services from the District



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TITLE IX OBLIGATIONS

The District must respond promptly and effectively and the District’s response must be compliant with Section 106.44’s requirements for addressing sex discrimination in its education program or activity.

“PROMPT”

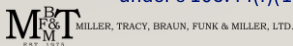
A reasonably prompt response to sex discrimination “is judged in the context of the recipient’s obligation to provide students and employees with education programs and activities free from sex discrimination.” 87 FR 41434 (quoting 85 FR 30269 (discussing a recipient’s grievance process)). The Department continues to believe that “prompt” action to end sex discrimination in a recipient’s education program or activity is necessary to further Title IX’s nondiscrimination mandate, including with respect to alleged sex discrimination that is addressed outside of a recipient’s Title IX grievance procedures. *Id.* Therefore, an unreasonable delay by a recipient’s Title IX Coordinator to take the required action under § 106.44(f)(1) to end sex discrimination in a recipient’s education program or activity, prevent its recurrence, and remedy its effects, would not meet Title IX’s obligation.



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“EFFECTIVE”

With respect to effective action, the Department considers effective action to mean that a Title IX Coordinator, upon learning of conduct that reasonably may constitute sex discrimination, takes reasonable steps calibrated to address possible sex discrimination based on all available information. And when a Title IX Coordinator’s oversight and coordination of a recipient’s response through the specific actions required under § 106.44(f)(1)(i)–(vii) are not effective at ending sex discrimination and preventing its recurrence, the prompt and effective response requirement means that the Title IX Coordinator must reevaluate the response and take additional steps to end sex discrimination in the recipient’s education program or activity.³⁶ If a Title IX Coordinator fails to do so, the recipient fails to meet its obligations under § 106.44(a) and (f) and does not demonstrate compliance with the requirements of Title IX and this part. The Department describes the effective actions a Title IX Coordinator is required to take in the discussion of § 106.44(f)(1), below. Additional discussion of “other appropriate prompt and effective steps” that a Title IX Coordinator is required to take under § 106.44(f)(1)(vii) that are outside of a recipient’s grievance procedures is provided below.



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