

Title IX Decisionmakers: Determining Responsibility

Presented by Brittany Reiner | Udall Shumway PLC | August 27, 2026

Learning Objectives

Title IX Overview

Review the law's scope and key definitions

Decision Maker Role

Understand your responsibilities in the grievance process

Writing a Decision

Learn how to issue a compliant, well-reasoned determination





What Is Title IX?

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."

— U.S. Congress, 1972

3 Types of Title IX Sexual Harassment

1

Quid Pro Quo

An employee conditions a benefit on participation in unwelcome sexual conduct

2

Severe, Pervasive & Objectively Offensive

Conduct a reasonable person would find denies equal access to education

3

Sexual Assault or Violence

Includes sexual assault, dating/domestic violence, and stalking

The Decision Maker's Role

Your responsibility in the Title IX grievance process is to receive the investigation report and issue a fair, compliant determination.



Your Job Starts Here

1

Receive the Report

Decision makers receive the
Investigation Report with Evidence
from the Title IX Investigator

2

Question Submission

Facilitate Questions Submitted from
Each Party.

3

Decision

Analyze all evidence and the report,
and draft a decision for the outcome
and discipline, if warranted.

STANDARD OF PROOF



Objectivity & Standard of Proof

Decision makers must evaluate all evidence with an open mind — considering both inculpatory and exculpatory information equally.

Two Recognized Standards

Apply whichever standard your **district has adopted**.

Preponderance of the Evidence

More likely than not the respondent is responsible

Clear and Convincing

Highly probable the respondent is responsible

Avoiding Bias

Treat Each Case Uniquely

Prior cases should **not influence** your judgment — every complaint stands on its own facts

Actual Bias

Guard against personal prejudice toward either party, regardless of relationship or reputation

Perceived Impropriety

Avoid situations that **appear partial**, even if your judgment is sound

Implicit Bias

Recognize unconscious assumptions and keep an **open mind throughout** the entire process



The Investigation Report

The investigation report is the foundation of your decision-making process. It summarizes all relevant evidence and the investigator's observations.

- Provided **simultaneously** to both parties and their advisors, and to you
- Parties have the opportunity to submit a **written response** before the decision maker issues a determination
- Your determination must be grounded in the evidence contained in the report



Written Questions Process

01

No In-Person Hearings

Parties submit **written questions** to the decision maker in lieu of live cross-examination

02

Relevance Review

Decision maker reviews each question for relevance and must **explain in writing** why any question is excluded

03

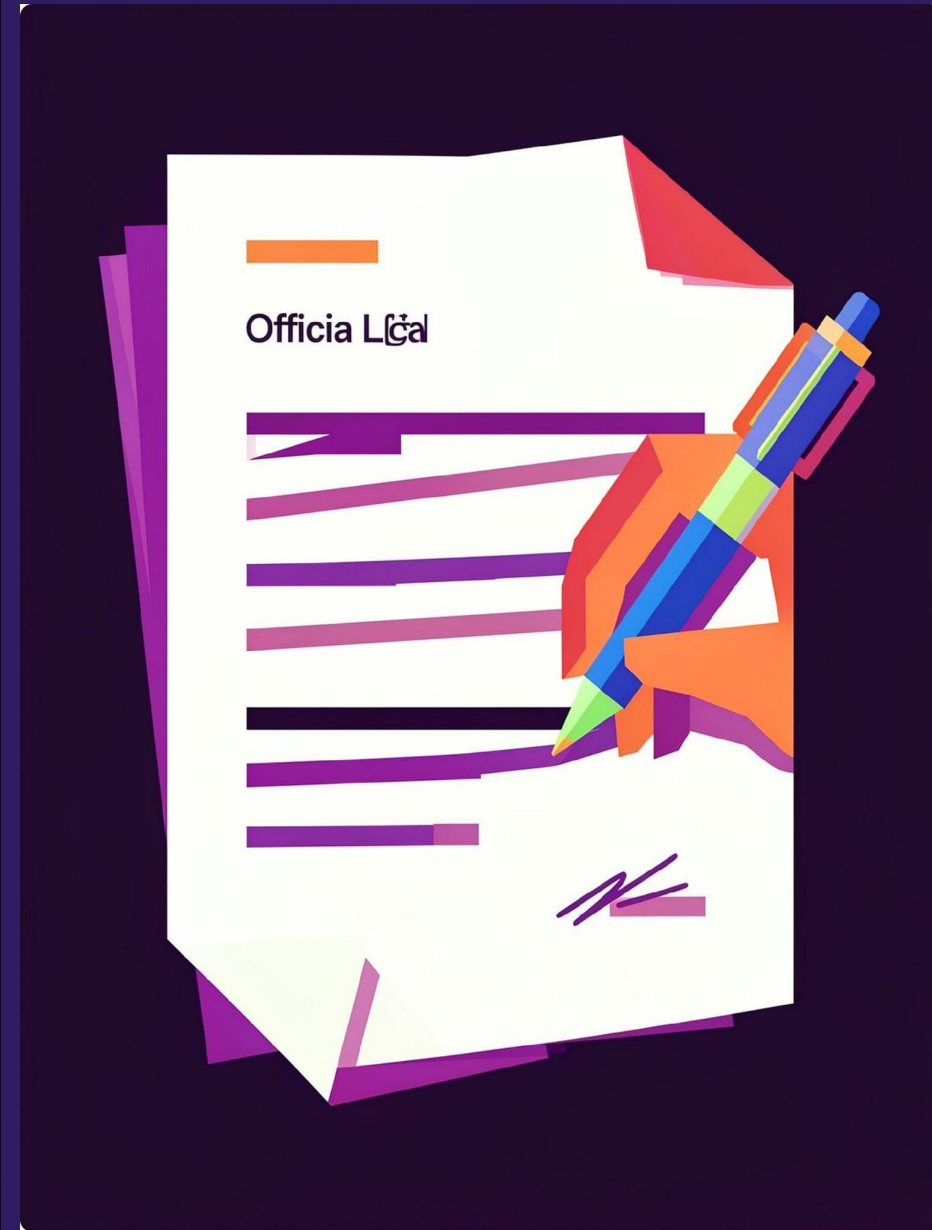
Answers & Follow-Up

Each party receives answers and may submit **limited follow-up questions**

📄 **Note on Sexual History:** A complainant's sexual history is generally not relevant unless it establishes another perpetrator or consent with the specific respondent.

Issuing the Determination

A legally sound, well-reasoned written decision is the cornerstone of a compliant Title IX grievance process.



8 Required Components of a Written Decision

- 1 Allegations of the Complaint
- 2 Applicable Legal Standard
- 3 Compliance with Grievance Procedures / Procedural Steps
- 4 Standard of Evidence Applied
- 5 Findings of Fact
- 6 Determination (Responsible or Not Responsible)
- 7 Disciplinary Consequences
- 8 Appeal Rights



Allegations of the Complaint

Clearly Identify Each Allegation

State the specific conduct alleged, the parties involved, and the relevant dates and locations.

Scope of the Decision

The written decision must address **every allegation** raised — no allegation may be left unresolved.

Avoid Prejudging

Allegations should be stated neutrally, reflecting what was reported rather than assumed facts.

Applicable Legal Standard



Governing Framework

Reference **Title IX of the Education Amendments of 1972**, applicable federal regulations (**34 C.F.R. Part 106**), and any relevant institutional policy.

Define the Conduct Standard

Identify the specific definition of sexual harassment or misconduct applied — e.g., *Hostile Environment* or *Quid Pro Quo*.

Jurisdiction Confirmation

Confirm the conduct occurred within the institution's Title IX jurisdiction: a program or activity at a U.S. location.

Compliance with Grievance Procedures

Every procedural step must be documented and defensible. Equal treatment of both parties is non-negotiable.



Notice of Allegations

Both parties received timely, written notice of all allegations prior to any interview or hearing.



Investigation & Evidence Review

Both parties had equal opportunity to review all evidence gathered and to respond before the hearing.



Opportunity to Submit Questions

Cross-examination rights and equal access to advisors were provided consistent with regulatory requirements.



Document Deviations

If any step was modified, explain the basis and confirm neither party was prejudiced by the deviation.

Standard of Evidence

Applied

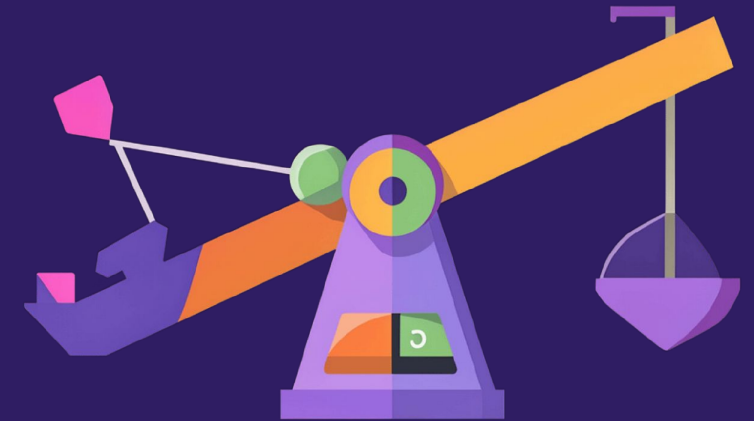
Preponderance of the Evidence

"More likely than not" — the evidence tips even slightly in favor of the finding. A lower threshold, widely used in civil proceedings.

Clear and Convincing Evidence

Highly probable or reasonably certain — a higher bar requiring substantially stronger evidence to support a finding of responsibility.

- **Consistency requirement:** The same standard must be applied across **all** Title IX cases, including cases involving employees.
- **Policy alignment:** Confirm the standard used matches the institution's published grievance policy exactly.



Findings of Fact

What Belongs in This Section



Evidence Summarized

Reference testimony, documents, and all other evidence reviewed during the investigation and hearing.



Credibility Determinations

Note any credibility assessments made and articulate the specific basis for each determination.



Facts Tied to Allegations

Each factual finding must directly correspond to one or more of the stated allegations in the complaint.



Determination: Responsible or Not Responsible

One Determination Per Allegation

State **Responsible** or **Not Responsible** explicitly for each alleged violation. A single combined conclusion is insufficient.

Explain the Rationale

Link factual findings to the applicable legal standard — show the logical path from evidence to outcome.

No Ambiguous Conclusions

The determination must be **definitive**. Avoid conditional, hedged, or inconclusive language in any finding.

 A determination that fails to resolve each allegation with a clear outcome may be legally insufficient and subject to challenge on appeal.

Analyzing Quid Pro Quo & Sexual Violence/Offenses

Each element of a definition should be analyzed

Quid Pro Quo

Easiest to analyze with the this for that analysis – may need to additionally analyze coercion or pressure.

Sexual Violence Offenses

The Title IX definition of Sexual Assault/Violence references other statutes from the FBI crime reporting manual. You need to analyze the specific elements within the relevant crime definition.

Dating Violence, Domestic Violence and Stalking

Must reference the specific definitions and analyze each element for the relevant offense.



Analyzing "Severe & Pervasive"

The more severe the conduct, the less pervasive it needs to be — and vice versa. These factors are weighed together, not in isolation.

Key Factors to Consider

- Impact on complainant's access to education
- Type, frequency, and duration of the conduct
- Ages and roles of the parties involved
- Location and context of the conduct
- Other sex-based harassment in the district

The Objectively Offensive Standard

The Test

Would a **reasonable person** in similar circumstances find the conduct offensive, hostile, or intimidating?

The Limit

Subjective feelings alone are **not sufficient** — the standard is objective, not personal



Signs a Student's Access Is Being Denied

Recognizing the impact of harassment on a student's educational experience is critical to understanding the severity of a complaint.

- Skipping classes or refusing to attend school
- Declining GPA or difficulty concentrating
- Quitting sports or extracurriculars to avoid the alleged perpetrator
- Behavioral changes



Activity

In your breakout groups
conduct an analysis as the
decisionmaker
for the severe, pervasive,
and objectively offensive
definition based
on the facts and
information you know.



Disciplinary Consequences



Sanctions Imposed

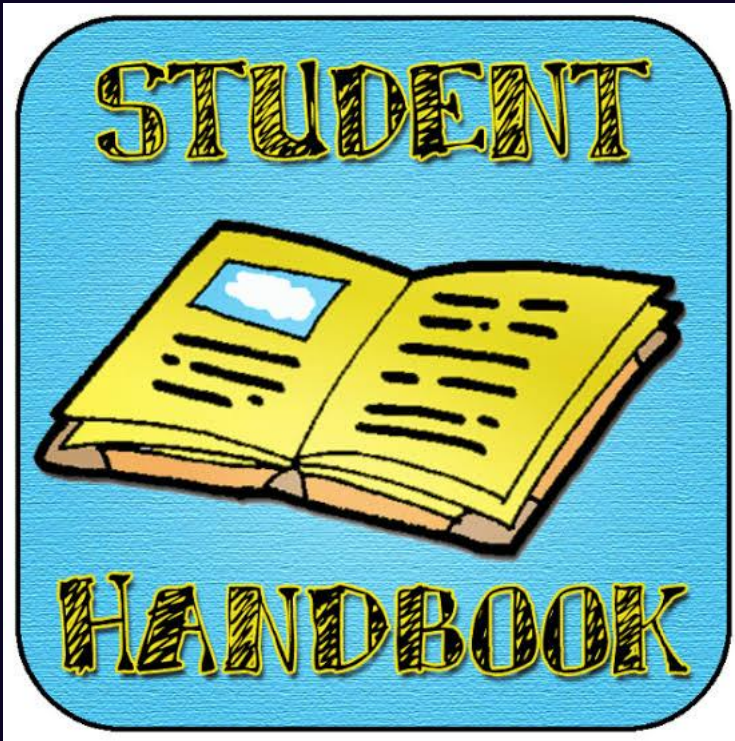
If a finding of **Responsible** is made, clearly state all disciplinary measures — suspension, expulsion, termination, required training, or other remedies.

Remedies for the Complainant

Address any supportive measures or remedies designed to **restore equal access to education**, regardless of the determination outcome.

Proportionality

Sanctions must be proportionate to the severity of the conduct and applied consistently with institutional precedent and policy.



Determining Sanctions

Sanctions must be grounded in district policy and calibrated to the specific circumstances of each case.

- Reference the **District Code of Conduct / Handbook Policies**
- Consider the student's age and disability status (SPED/504)
- Account for prior history, severity of conduct, and available district resources



If discipline exceeds **10 days** for a student with a disability, a **Manifestation Determination Review (MDR)** may be required.

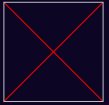
Remedies for the Complainant

When a respondent is found responsible, the decision maker must identify remedies designed to **restore the complainant's equal access** to the education program.

- Similar in nature to supportive measures, but may now be **punitive toward the respondent**
- Focused on remedying the harm caused and preventing recurrence
- Consult the district's **discipline matrix** for guidance on appropriate remedies

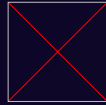


Sanction Options



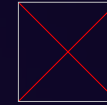
Counseling or Threat Assessment

Referral for professional evaluation and support services



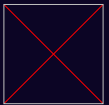
Community Service

Structured service requirement as a rehabilitative measure



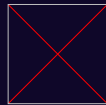
Short-Term Suspension

Temporary removal from the educational environment



School Reassignment

Placement in an alternative school or online program



Long-Term Suspension or Expulsion

Referral for formal extended removal proceedings

Appeal Rights



Notify Parties

State Grounds

Provide Deadlines

Both Parties Must Be Notified

Both the complainant and respondent must receive written notice of their equal right to appeal.

Permissible Grounds

Procedural irregularity, newly discovered evidence, or a conflict of interest involving the decision maker.

Deadlines & Process

State the filing timeframe clearly and identify who will serve as the appellate decision maker.



Questions?

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