EducationAdminWebAdvisor
Online Training for Educational Professionals

Title IX Boot Camp for Higher Education (With Updates)

Session 3: Finalizing the Investigation and Making Decisions on Responsibility Under Title IX

Presented by

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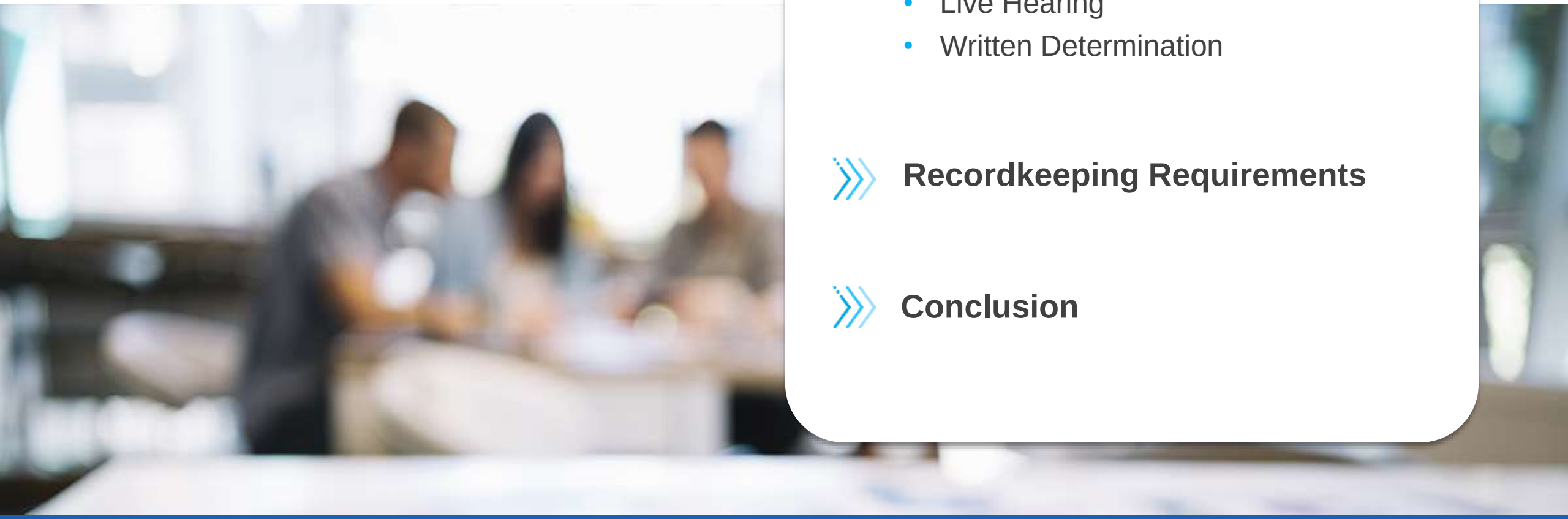
Overview

Grievance Process

- Investigation
- Responsibility Decision-Maker
- Live Hearing
- Written Determination

Recordkeeping Requirements

Conclusion



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Harassment Scenarios

Student-on-student harassment

- Male student is accused of trying to kiss and grabbing the breast of a female student in a dormitory on campus. Friend of female student reports the conduct.

Employee-on-employee harassment

- Director of Admissions is accused of sending an inappropriate email to an office administrative assistant and also making suggestive comments to her. Administrative assistant reports this conduct to Title IX Coordinator.

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Formal Complaints

Formal complaint

- Complainant must be participating or attempting to participate in the education program or activity of the institution with which the formal complaint is filed.
- Complaints may be filed with Title IX Coordinator in person, by mail, or by email, by using contact information, or by another method designated by the institution.
- Institution must follow the grievance process.
- Supportive measures must be offered as appropriate.

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Grievance Process

Grievance process components

- Basic requirements
- Notice of allegations
- Dismissal of formal complaint
- Consolidation
- Informal resolution
- Investigation
- Hearing
- Determination regarding responsibility
- Appeals
- Recordkeeping

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Grievance Process- Investigations

An institution must:

- Create an investigation report that fairly summarizes relevant evidence.
- Have an investigator able to assess credibility and identify relevant evidence.
- Include relevant evidence as evidence and testimony that directly relates to the issues disputed or discussed.

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Grievance Process- Investigations

Institution requirements:

- Prior to the completion of the investigative report, the recipient must send to each party and the party's advisor, the evidence subject to review and inspection in an electronic format or a hard copy.

- The parties must have 10 days to submit a written response, which the investigator must consider prior to completing the investigation report.

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Grievance Process- Investigations

Institution requirements:

- At least 10 days prior to a hearing (if a hearing is required) or other time of determination regarding responsibility, send to each party and the party's advisor the investigation report in an electronic format or hard copy, for their review and written response.

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Grievance Process- Investigations

Possible investigation report contents

- Summary of the complainant's allegations and response of the accused
- Summary of the persons interviewed and a statement about their credibility
- Presentation of the findings of fact
- Summary of relevant standards and other statements concerning process
- Careful consideration should be given concerning whether the report should include conclusions about the allegations and recommendation for disciplinary or other corrective action.

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Responsibility Decision- Maker

- Not Title IX Coordinator or investigator
- Must issue written determination regarding responsibility
- Determination must apply evidence standard.

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Grievance Process- Live Hearings

Post-secondary institutions must provide a live hearing.

- The decision-maker must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

- Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally (notwithstanding the discretion of the institution to otherwise restrict the extent to which advisors may participation in the proceedings).

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Grievance Process- Live Hearings

Post-secondary institutions must provide a live hearing.

- Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location, or, at the institution's discretion, any or all parties, witnesses and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

- At the request of either party, the institution must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party or the witness answer questions.

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Grievance Process- Live Hearings

Post-secondary institutions must provide a live hearing.

- Technology may be virtual in nature. The Department recognizes that such technology can provide both parties' meaningful opportunity to advance their own interests in a case.
- Decisionmakers are obligated to serve impartially and thus should not endeavor to "develop a personal relationship" with one party over another regardless of whether one party is located in a separate room or not.

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Grievance Process- Live Hearings

Post-secondary institutions must provide a live hearing.

- Only relevant cross-examination and other questions may be asked of a party or witness.
- Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

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Grievance Process- Live Hearings

Post-secondary institutions must provide a live hearing.

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

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Grievance Process- Live Hearings

Post-secondary institutions must provide a live hearing.

- 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 provide consent.

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Grievance Process- Live Hearings

Post-secondary institutions must provide a live hearing.

- If a party or witness does not submit to cross-examination at the live hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility (provided, however, that the decision-maker cannot craw an inference about the determination regarding responsibility based solely on the party's or witnesses absence from the live hearing or refusal to answer cross-examination or other questions).

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Grievance Process- Live Hearings

Post-secondary institutions must provide a live hearing.

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

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Determination

Written determination must include:

- Identification of the allegations potentially constituting sexual harassment
- A description of the procedural steps taken from the receipt of the formal complaint to the determination, including any notifications to the parties, interviews, site visits, methods used to gather other evidence, and hearings held
- Findings of fact supporting the determination
- Conclusions regarding the application of the recipient's code of conduct to the facts

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Determination

Written determination must include:

- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the institution imposes on the respondent, and whether remedies designed to restore or preserve equal access to the education program or activity will be provided by the institution to the complainant; **and**
- The institution's procedures and permissible bases for the complainant and respondent to appeal.

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Determination

Written determination

- The institution must provide the written determination to the parties simultaneously.
- The Title IX Coordinator is responsible for effective implementation of any remedies.

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Determination

- Possible sanctions include discipline, suspension, expulsion, no contact orders, or other action.
- Possible remedies for any complainants include counseling, monitoring, or other action.

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Recordkeeping Requirements

An institution must maintain for a period of seven years the following records.

- Each sexual harassment investigation including (1) any determination regarding responsibility and any audio or audiovisual recording or transcript, (2) any disciplinary sanctions imposed on the respondent, and (3) any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
- Any appeal and the result therefrom; **and**
- Any informal resolution and the result therefrom.

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Conclusion

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Conclusion

- Need to follow process for finalizing the investigation report
- Need to identify decision-maker and requirements with a hearing
- Need to ensure final written determination includes all necessary contents

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