

## SELECTING A DECISION-MAKER ON APPEAL

- A. Neither the Title IX Coordinator, the investigator, nor the responsibility decision-maker may serve as the appeal decision-maker.
- B. The district shall require that any individual designated by a district as an appeal decision-maker not have a conflict of interest or a bias for or against complainants or respondents generally or an individual complainant or respondent.
- C. The district must review its policy to determine whether the policy requires an individual to be identified as the appeal decision-maker and the qualifications of any such decision-maker in policy.
- D. In addition to any requirements in policy, the district should consider various qualities in an appeal decision-maker.
  - 1. The legal complexities of the appeal decision-making
  - 2. The competency and training of the appeal decision-maker
  - 3. The political aspects of who makes the decision on appeal
  - 4. The potential of the appeal decision-maker serving as a witness in a future proceeding (arbitration, court, etc.).

## THE DECISION-MAKING ON APPEAL

- A. The district must offer **both** parties an appeal (1) from a determination regarding responsibility or (2) from a dismissal of a formal complaint.
- B. An appeal must be filed within any deadline specified in the local grievance process. An appeal that is not filed by the deadline may be dismissed.
- C. To the extent required by the Title IX regulations, disciplinary sanctions for Title IX sexual harassment and any remedies that could not be offered as supportive measures shall not be enforced until the determination of the complaint becomes final. The determination regarding responsibility becomes final either:

1. If no appeal is filed, on the date on which an appeal would no longer be considered timely; or
  2. If an appeal is filed, on the date that the district provides the parties with the written determination of the result of the appeal.
- D. An appeal may be based upon any of the following:
1. A procedural irregularity that affected the outcome of the matter;
  2. New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter; and,
  3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent, that affected the outcome of the matter.
  4. Any other grounds for appeal that are specified in the local Title IX grievance process at the discretion of the school district. P
- E. As to all appeals, a school district must notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
- F. The district must give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
- G. After allowing both parties to submit a written statement, the appeal decision-maker must issue a written decision describing (1) the result of the appeal and (2) the rationale for the result. P
1. The written decision must be issued within any timeline specified in the local Title IX grievance process, unless the appeal decision-maker notifies the parties that additional time is needed.
  2. The appeal decision-maker must provide the written decision on appeal simultaneously to both parties.
- H. What happens if the appeal decision-maker determines one of the above grounds for appeal is satisfied? Under most local grievance processes, the likely options include the following:
1. The appeal-decision maker may adjust the determination directly.

2. If the error or other basis for granting the appeal related only to the decision-making step, the matter may be returned for further review of the investigative report by a new decision-maker(s).
3. If the grounds for appeal relate to the investigation, or warrant additional investigation, the appeal decision-maker(s) may either re-open the record or refer the matter for further investigation before proceeding.

## **ADDITIONAL REQUIREMENTS AND CONSIDERATIONS.**

### **A. Required Notices.**

1. School districts must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the school district of all of the following:
  - a. The name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator.
  - b. That the school district does not discriminate on the basis of sex in the education program or activity that it operates, and that the school district is required by Title IX and Part 106 of Title 34 of the Code of Federal Regulations not to discriminate in such a manner. Such notification must state that the requirement not to discriminate in the education program or activity extends to admission and employment, and that inquiries about the application of Title IX and Part 106 to the school district may be referred to the school district's Title IX Coordinator, to the Assistant Secretary at the U.S. Department of Education, or both.
  - c. The school district's Title IX grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the school district will respond.
2. In addition, each school district must prominently display the contact information for the Title IX Coordinator (as identified above) and the district's Title IX nondiscrimination policy on its website, if any, and in each handbook or catalog that it makes available to the persons who are entitled to receive the notifications listed above.
3. Many school districts will elect to coordinate the above-identified notice requirements with other nondiscrimination notice requirements established under state or federal law.