

**TITLE IX COMPLIANCE TRAINING:
NAVIGATING THE TITLE IX FINAL RULE**


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OUTLINE OF TODAY'S TRAINING

- What Everyone Needs to Know about the Title IX Final Rule
- Step One – Role of the Title IX Coordinator
- Step Two – Role of the Title IX Investigator
- Step Three – Role of the Title IX Decisionmaker
- Step Four – Implementation of the Decision and the Appeals Process
- Step Five – Aftermath of Title IX Grievance Process



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**WHAT EVERYONE NEEDS
TO KNOW ABOUT THE
TITLE IX FINAL RULE**



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THE TITLE IX FINAL RULE

In April 2024, the U.S. Department of Education released the Title IX Final Rule, which took effect on August 1, 2024. The Final Rule expands school districts' obligations to provide training to staff, includes new definitions, and expands the definition of sex discrimination. However, the Final Rule has removed many of the previous requirements throughout the grievance process.

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TRAINING



ALL EMPLOYEES



TITLE IX PERSONNEL



ADDITIONAL REQUIREMENTS FOR TITLE IX COORDINATORS




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TRAINING FOR ALL EMPLOYEES

All Employees Must Be Trained On:

- Obligation to Address Sex Discrimination
- Scope of Conduct that Constitutes Sex Discrimination
- All applicable notification and information requirements under 34 C.F.R. 106.40(b)(2) and 106.44.




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TRAINING FOR TITLE IX PERSONNEL

Investigators, Decisionmakers, and Others Responsible for Implementing Grievance Procedures or with Authority to Modify or Termination Supportive Measures Must Be Trained On:

- Everything on the Previous Slide
- Grievance Procedures
- How to Serve Impartially
- Meaning of "Relevant"




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TRAINING FOR FACILITATORS OF INFORMAL RESOLUTION PROCESS

Facilitators of an Informal Resolution Process Must Be Trained On:

- Everything on Slide for All Employees
- Rules and Practices of Informal Resolution Process
- How to Serve Impartially, Including Avoiding Conflicts of Interest and Bias



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TRAINING FOR TITLE IX COORDINATOR AND DESIGNEES

Title IX Coordinators Must Be Trained On:

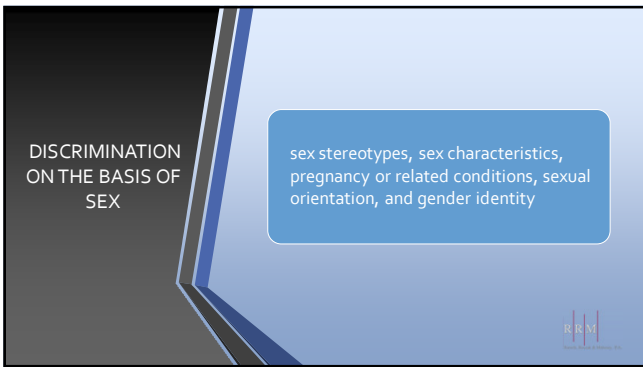
- Everything on the Previous Three Slides
- Specific Responsibilities of the Title IX Coordinator
- Recordkeeping Requirements
- Prevention of Discrimination
- Ensuring Equal Access
- Any Other Training Required to Comply with Title IX



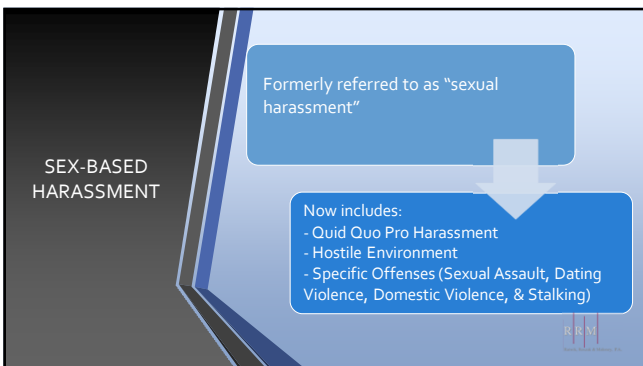
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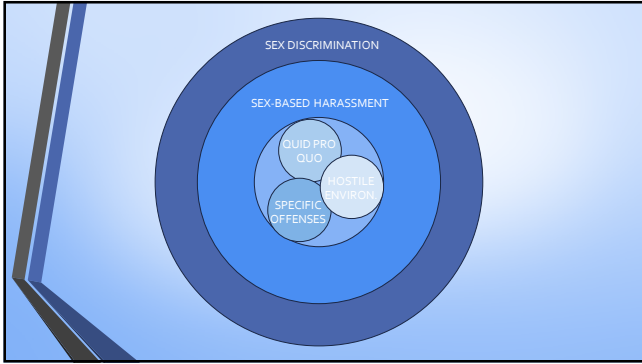
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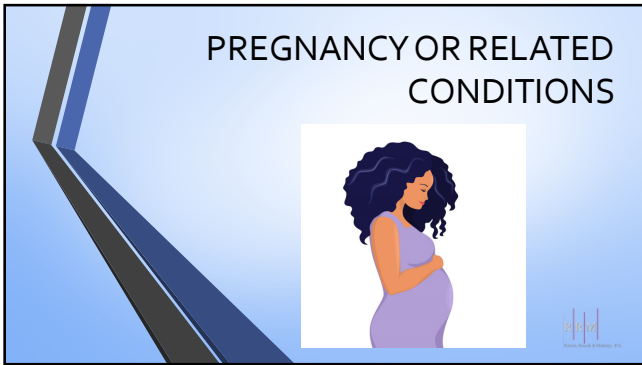
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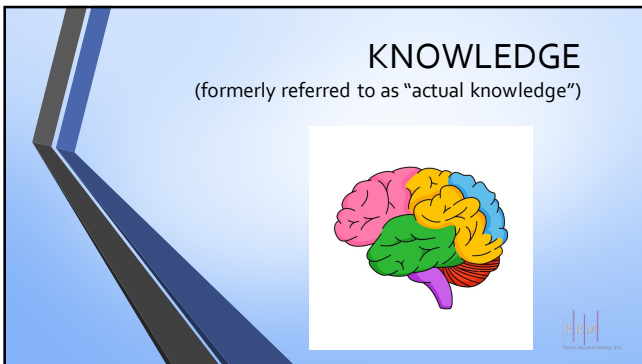
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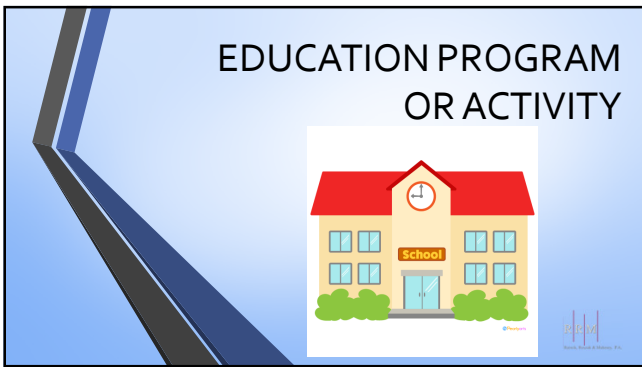
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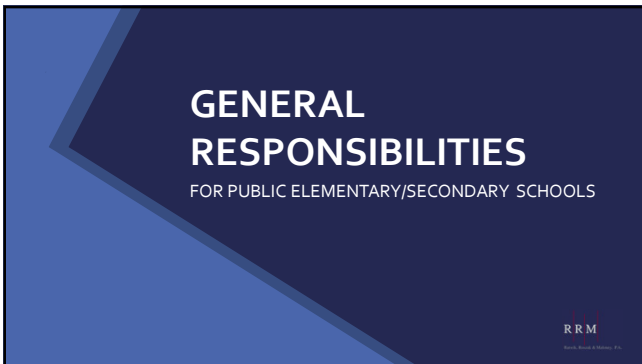
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School Districts Must:


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Adopt a Non-Discrimination Policy	Adopt Grievance Procedures	Identify Barriers in Reporting	Designate a Title IX Coordinator



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NOTICE OF NON-DISCRIMINATION


- Statement that school district does not discriminate on basis of sex
- Inquiries may be referred to Title IX Coordinator or Office of Civil Rights
- Contact information for Title IX Coordinator
- How to locate Title IX policy and grievance procedures
- How to report allegations




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PUBLICATION OF NOTICE OF NONDISCRIMINATION

Notice must be included on the school or school district's website, and in each handbook, catalog, announcement, bulletin, and application form that it makes available to students, parents, guardians, employees, applicants for employment or admission, and unions, or which are otherwise used in connection with the recruitment of students or employees.

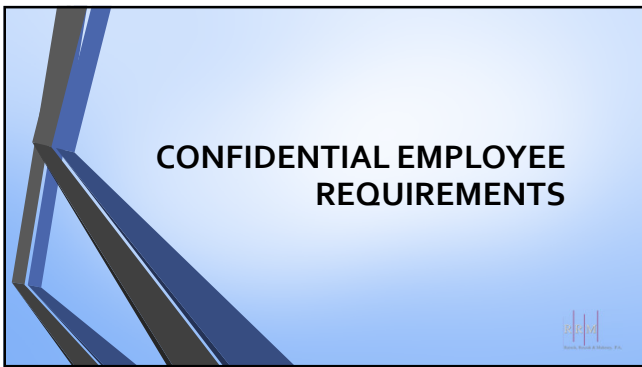




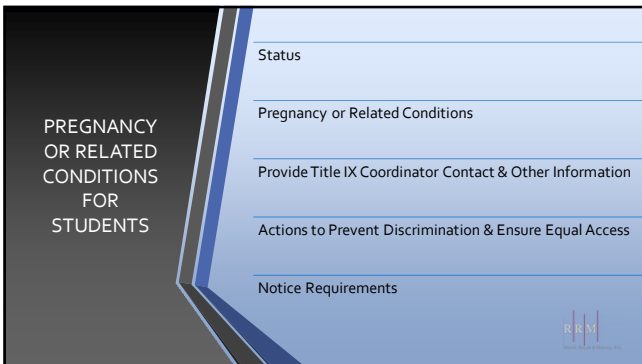
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PREGNANCY OR RELATED CONDITIONS FOR STUDENTS


- Reasonable Modifications
- Voluntary Leaves of Absence
- Lactation Space
- Limitation on Supporting Documentation
- Comparable Treatment
- Certification to Participate



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PARENTAL, FAMILY, MARITAL STATUS, PREGNANCY, OR RELATED CONDITIONS IN PRE-EMPLOYMENT AND EMPLOYMENT

- Status
- Pregnancy or Related Conditions
- Comparable Treatment
- Voluntary Leave of Absence
- Lactation Time and Space
- Pre-Employment Inquiries (Marital Status & Sex)



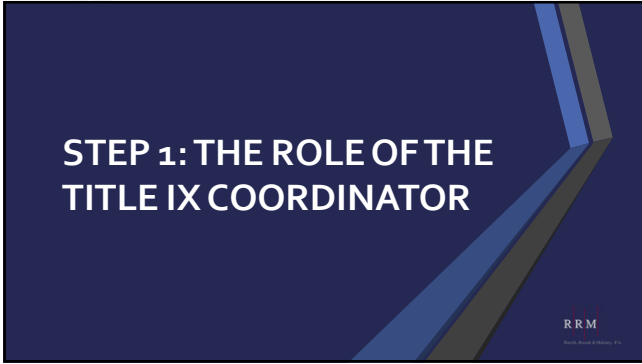
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GENERAL RULES FOR RESPONDING TO SEX-BASED HARASSMENT

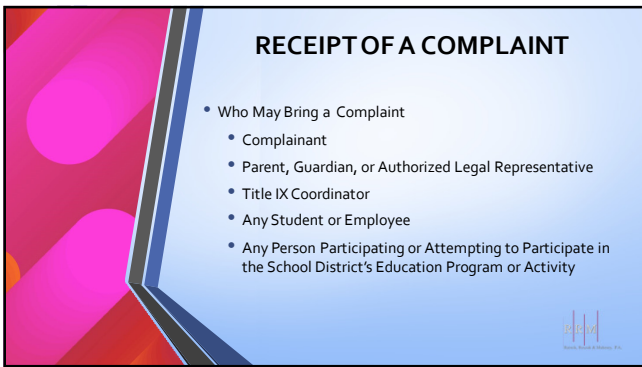
- "A school district with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must respond promptly and effectively."
34 C.F.R. § 106.44(a)(1) (as amended).
- KEY POINT: Treat the parties equitably




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RECEIPT OF A COMPLAINT CONTINUED...

- Consolidation of Complaints
 - KEY POINT: While consolidation is allowed under the Title IX Final Rule, the school or school district may want to consider the data privacy implications before consolidating complaints.
- Students with Disabilities





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INITIAL EVALUATION OF A COMPLAINT

The Title IX Final Rule eliminated mandatory dismissals.

Permissive Dismissal of Complaint:

- Unable to identify respondent
- Complainant voluntarily withdraws, Title IX Coordinator declines to initiate a complaint, and the school district determines does not rise to sex discrimination
- Respondent is not participating in school district or employed by school district
- Alleged conduct, even if proven, would not constitute sex discrimination

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RESPONSIBILITIES WHEN DISMISSING A COMPLAINT




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REFERRAL OF A COMPLAINT TO OTHER STAFF OR ENTITIES



- Referral of Allegations of Harassment Based on Protected Class
- Referral of Allegations of Bullying
- Referral of Allegations of Code of Conduct Violation
- Referral to Law Enforcement
- Maltreatment of Minors Reporting



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NOTICE OF ALLEGATIONS

- Who Must Receive the Notice of Allegations
 - All Known Parties
- Contents of the Notice
 - Grievance Process
 - Allegations
 - Retaliation is Prohibited
 - Equal Opportunity to Access Evidence

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NOTICE OF ALLEGATIONS CONTINUED...




- Timing
- Interim Supportive Measures
 - Modification of Supportive Measures



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EMERGENCY REMOVAL OF RESPONDENTS

<p>Student Respondents</p> <ul style="list-style-type: none"> • Presumption of Non-Removal • Standards for Immediate Removal • Procedural Requirements for Removal • Non-Applicability to Conduct Outside Title IX 	<p>Employee Respondents</p> <ul style="list-style-type: none"> • Permissible Removal of Non-Student Employee • Factors to Consider • Directives During Administrative Leave
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INFORMAL RESOLUTION




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ADVANCED MANEUVERS FOR RESPONDING TO COMPLAINTS

- Requests from Law Enforcement or Social Services Not to Investigate
- Public Comment at School Board Meetings
- Media Attention

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ADVANCED MANEUVERS FOR RESPONDING TO COMPLAINTS CONTINUED...

- Restraining Orders
- Complaints Against Title IX Personnel
- Investigating Complaints Under Another Policy

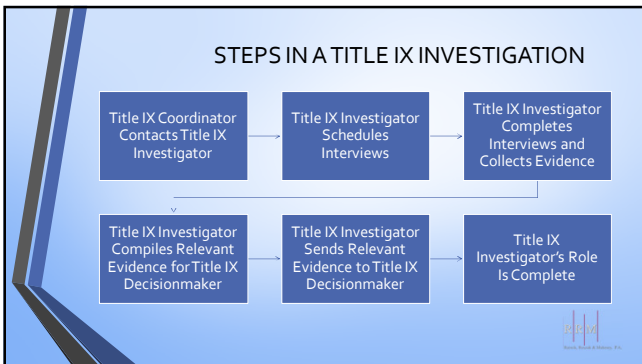
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STEP 2: THE ROLE OF THE TITLE IX INVESTIGATOR

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INDEPENDENT INVESTIGATORS

Under the Title IX Final Rule, the Title IX Investigator and the Title IX Decisionmaker may be the same person as long as the individual does not have a conflict of interest or bias. However, the Title IX Investigator and the Title IX Coordinator cannot be the same.



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BEFORE YOU BEGIN YOUR INVESTIGATION

Upfront Reporting


- Law Enforcement
- Maltreatment of Minors Reporting



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DATA PRIVACY CONSIDERATIONS


1. Must comply with state and federal law
2. Title IX trumps state law when in conflict
3. Data Practices/Tennessee Warnings



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PREPARING FOR AN INVESTIGATION

- Determine the Scope and Strategy
 - Review Policies
 - Identify Witnesses
 - Presentation of Evidence
- Determine Who Will Be Present for Interviews
 - Notices of Interview No Longer Required
 - Advisors No Longer Required
- Prepare Responses to Common Distractions





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INTERVIEW BASICS



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Review the *Tennessee* Warning with the Interviewee



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Explain the Purpose of the Interview



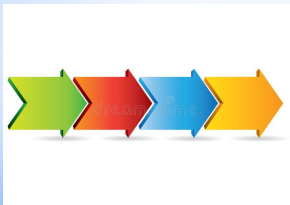
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Define Your Role



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Explain the Process



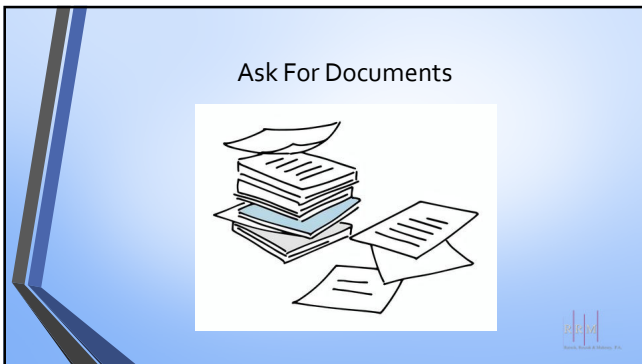
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Ask For Other Potential Witnesses



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Do Not Guarantee Results



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TIPS FOR INTERVIEWING COMPLAINANTS AND WITNESSES

- Ask Short, Open-Ended Questions
- Who, What, Where, When, Why, How
- Assume the Investigator Will Defend Interview Questions in Court or Administrative Appeal
- Keep Bias in Mind
- Observe Demeanor
- Follow Up
- Visual Representation



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TIPS FOR INTERVIEWING COMPLAINANTS AND WITNESSES CONTINUED...


- Disclose as Little as Possible
- As if Extent of Complaint Covered
- Impact
- Understand Concerns
- Take Appropriate Action
- Do Not Make Promises
- Retaliation
- Supportive Measures



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TIPS FOR INTERVIEWING RESPONDENTS


- Avoiding Bias
- Opening Remarks
- Refusals to Answer
- Follow-Up Questions



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TIPS FOR INTERVIEWING RESPONDENTS CONTINUED...

- Additional Tips for Interviewing Respondents
 - Be Prepared for Defensiveness
 - Insist on Details
 - Go Beyond Verifying
 - Do Not Threaten
 - Do Not Discuss Discipline
 - Do Not Make Promises
 - Do Not Reveal Names of Witnesses



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ASSESSING CREDIBILITY

- Eye Contact
- Hesitancies
- Change in Skin Color
- Pitch of Voice
- Affect Over Course of Interview
- Influencing Outcome of Investigation
- Skewed Reality
- Consistency

* Remember Caveat when Assessing Credibility*



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PRESERVING ELECTRONIC EVIDENCE


- Act Promptly
- Computer Evidence
- Video Surveillance
- Social Media




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RELEVANCE



The Title IX Final Rule defines “relevant” as related to the allegations of sex discrimination under investigation as part of the grievance procedures under 34 C.F.R. § 106.45. 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. 34 C.F.R. § 106.2 (as amended).



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IMPERMISSIBLE EVIDENCE

- Privileged Evidence
- Medical Records
- Prior Sexual Conduct




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EVIDENCE GATHERED

- Review of evidence
- Response to Evidence

Tips for Documenting the Evidence:


- Include Interview Specifics
- Include Relevant Information
- Reference Exhibits
- Write Objectively



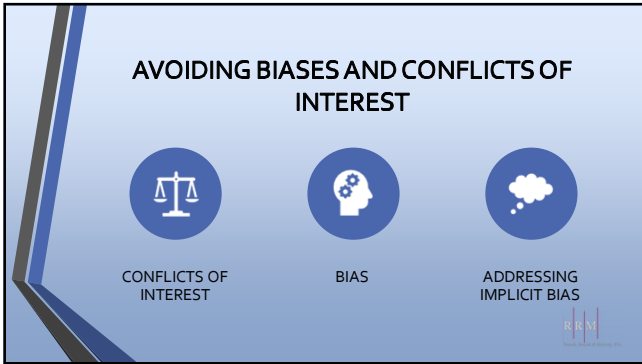
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INVESTIGATION REPORTS

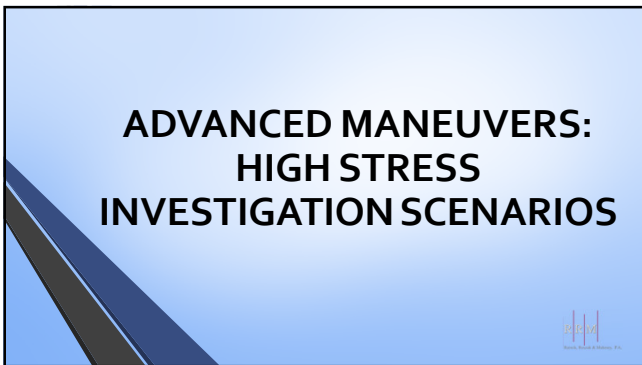
- Under the old Title IX Regulations, the investigator was required to create an investigative report that fairly summarized the relevant evidence.
- The new Title IX Final Rule does not mention an investigative report in the context of elementary and secondary education.



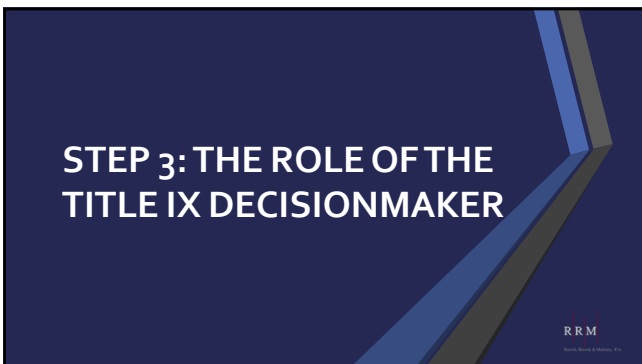
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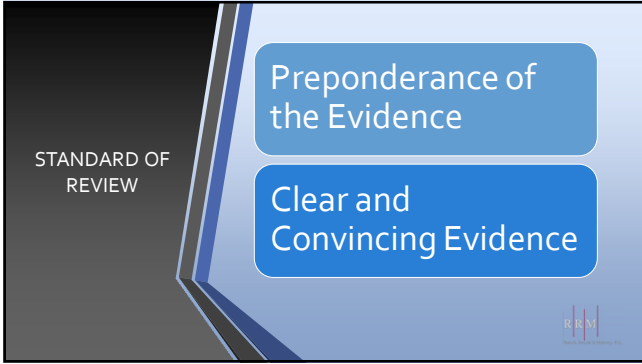


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STANDARD OF REVIEW

Preponderance of the Evidence

Clear and Convincing Evidence



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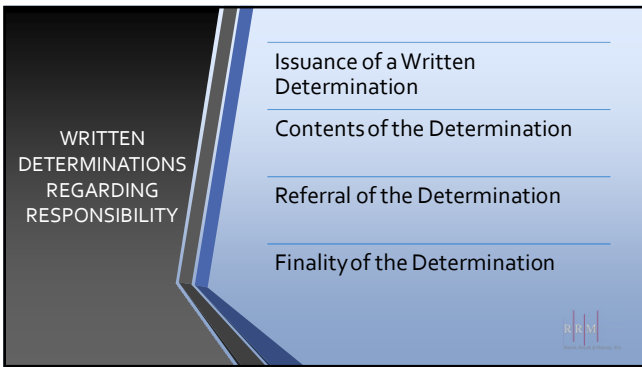
WRITTEN DETERMINATIONS REGARDING RESPONSIBILITY

Issuance of a Written Determination

Contents of the Determination

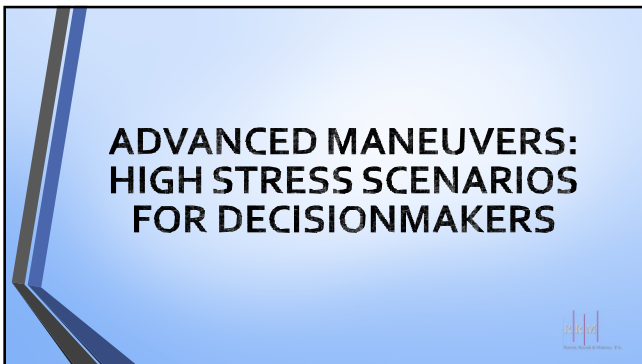
Referral of the Determination

Finality of the Determination



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ADVANCED MANEUVERS:
HIGH STRESS SCENARIOS
FOR DECISIONMAKERS



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STEP 4: IMPLEMENTATION OF THE DECISION AND THE APPEALS PROCESS

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REQUIRED APPEALS PROCESS


The Title IX Final Rule eliminated the specific grounds for appeal. Instead, it states the school or school district must offer the parties an appeal process that, at a minimum, is the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints. 34 C.F.R. § 106.45(i) (as amended).



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APPEAL PROCESS



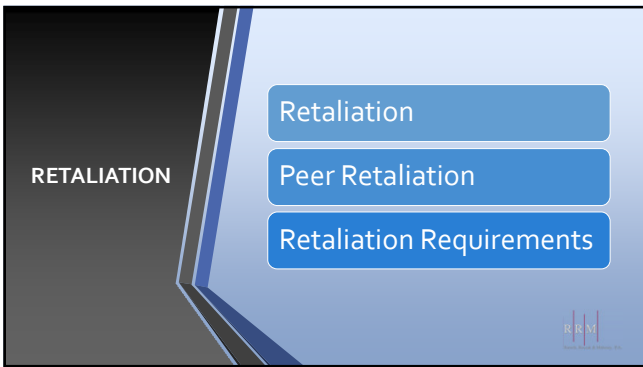
- Notify the parties in writing when an appeal is filed
- Appellate Decisionmaker should be someone different than the Title IX Coordinator, Title IX Investigator, and Title IX Decisionmaker
- Give both parties a reasonable opportunity to submit a written response
- Issue a written decision with rationale

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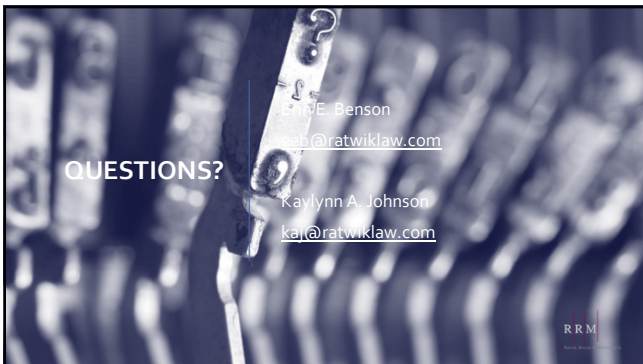
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