

# Session 4: Decisions and Appeals, Including Credibility Assessment

Making and Assessing Findings

OSPA Summer Retreat  
July 28-29, 2025



**Presented By**

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## About ECR Solutions

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- Most educational administrators lack the time, specialized expertise, and staff to fully meet their institutions' civil rights obligations.
- ECR Solutions PLLC fills those gaps through holistic legal guidance, strategic consulting partnerships, and interim or external civil rights staffing.
- This support helps institutions manage legal risk, reduce the likelihood of public scrutiny, and uphold the rights of their communities.



WELCOME

### Getting Education Civil Rights Right, The First Time

Expert services to help you  
understand civil rights laws and  
industry standards for K-12, higher  
ed, and beyond



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## Reminders!

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- This is not legal advice; contact me for specific help
- Training materials must be posted online
- Keep it hypothetical
- Ask questions
- Have fun!



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## Work Alike Groups

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- You should be seated with others **who serve in similar roles to you**
  - ✓ Title IX Coordinators/Deputy Coordinators (Intake & Coordination)
  - ✓ Investigators
  - ✓ Decision-Maker (Initial Decision)
  - ✓ Appeals Decision-Maker
  - ✓ Informal Resolution Facilitator
  - ✓ Other
- Each breakout group will examine the requirements covered **through the lens of their specific responsibilities**, allowing every attendee to understand how their role connects to the broader Title IX framework



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## Agenda

- Decision-Maker Training & Role in the Process
- Decision-Making Requirements & Best Practices
- The Written Determination & Relevant Evidence
- Recordkeeping



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## Training & Role in the Process



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## Required Training – Title IX

### “Title IX Team” Members

#### Must be trained on:

- Definition of sexual harassment under the 2020 Title IX Rule
- Scope of the education program or activity under the 2020 Title IX Rule
- Investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable, under the 2020 Title IX Rule
- How to serve impartially, including by avoiding prejudice, conflicts of interest, and bias

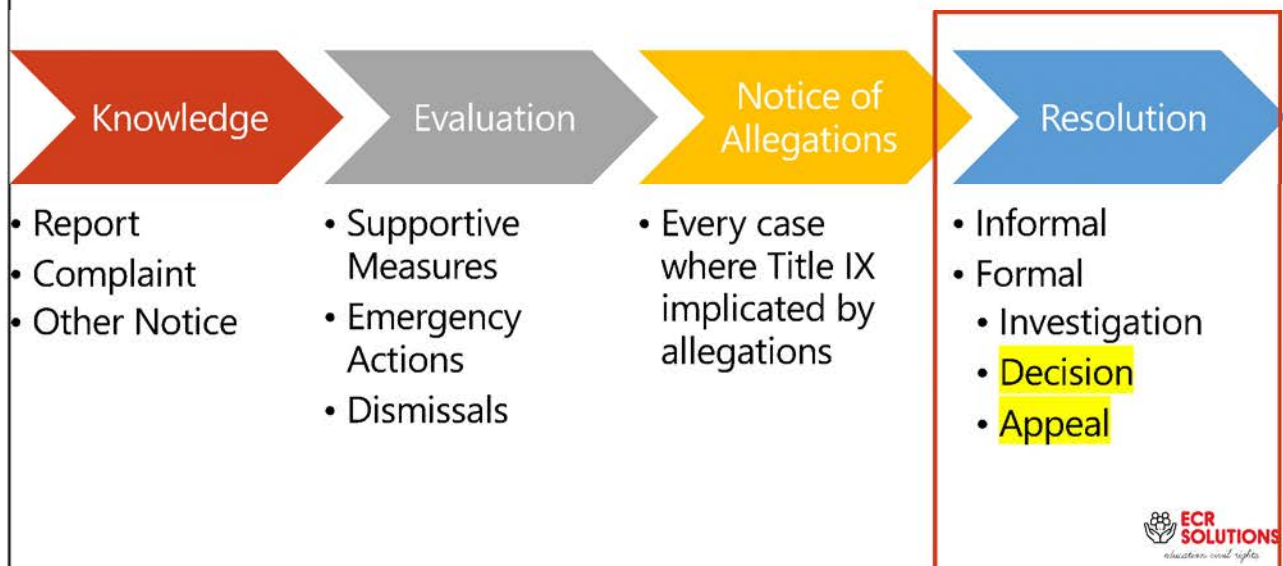
### Additional Training For:

- For **decision-makers**: issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant



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## Getting Into the Flow



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## The Decisionmaker's Role

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- The decisionmaker must do all of the following:
  - Review the evidence to determine what is relevant to and permissible to consider for each fact or issue in dispute
  - Analyze the relevant and not otherwise impermissible evidence to determine whether there is sufficient evidence to support each disputed fact
  - In completing that analysis, make decisions about the weight of the evidence based on credibility and other factors
  - Look at all facts for which there is sufficient evidence and determine if there is sufficient evidence of a policy violation, i.e., of sex discrimination

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## Decisionmakers

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## Requirements & Best Practices

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## Title IX Decision-Making Process

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- Each party must be allowed to submit **written, relevant questions** to any other party or witness through the decision-maker (the decision-maker can submit questions, too!)
- The parties and witnesses respond to the questions in writing to **the decision-maker**, who **shares the responses with all parties**
- Each party must be allowed to submit **written, relevant follow-up questions** to any other party or witness through the decision-maker
- Repeat questions and answers until no remaining relevant follow-up questions
- The decision-maker then writes a **lengthy written determination** with several specific, required elements
- The written determination is **shared with both parties** and their advisors simultaneously in writing



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## Written Decision

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- Written determination required for all Title IX sexual harassment cases
- Applies the standard of evidence (preponderance of the evidence)
- Must include:
  - Allegations
  - Procedural steps taken
  - Findings of fact
  - Conclusions regarding the application of the code of conduct to the facts
  - Statement and rationale for the result as to each allegation, including determination regarding responsibility
  - Any disciplinary sanctions imposed
  - Whether remedies will be provided
  - Appeal procedures



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## Relevance in Decisions

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- Objectively analyze **all relevant and permissible evidence**, including the credibility of the evidence
- Relevance in practice:
  - Does it relate to a fact or issue in dispute?
  - Does it make the fact or issue even a feather more or less likely to be true?
- Consider both **inculpatory and exculpatory evidence** (inculpatory → supports a fact or issue in dispute; exculpatory → refutes a fact or issue in dispute)
- The written determination must explain the **result and rationale** for the decision, which may include explanations about the analysis of relevance



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## Credibility

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What the Title IX rule says:

- Credibility determinations may not be based on a person's status as a complainant, respondent, or witness



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## Credibility Factors

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- **Inherent Plausibility** – Whether the account makes sense on its face and aligns with what typically occurs.
- **Demeanor and Manner** – The way the person presents themselves, including body language and tone during their report or testimony.
- **Motive to Falsify or Mislead** – Whether the person has any reason to lie, exaggerate, or misrepresent the facts.
- **Corroboration** – Support from other evidence or witnesses that aligns with the person's account.
- **Consistency and Specificity** – Whether the account is internally consistent and includes specific, verifiable details.
- **Past Record** – Relevant past behavior or conduct (not character evidence) that may impact credibility.
- **Opportunity and Perception** – Whether the witness had a clear opportunity to observe or experience the events in question.
- **Memory and Recall** – The reliability of the witness's memory regarding the details they shared.
- **Bias or Interest** – Any personal stake in the outcome or bias/prejudice toward a party or issue.
- **Contradictory or Conflicting Evidence** – Inconsistencies between this account and other known evidence.
- **Overall Reasonableness** – Whether the testimony fits within the broader factual context and what is reasonably expected.
- **Other Relevant Factors** – Any additional considerations that may help assess believability in the specific context.



**U.S. Equal Employment  
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## Excluded Evidence

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- Privileged information
- Medical and psychological records and information
- The complainant's sexual predisposition or prior sexual behavior, unless
  - To show that someone other than the respondent engaged in the alleged conduct
  - Evidence of past behavior between the parties to show consent



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## Remedies and Disciplinary Sanctions

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- Must be included in the written determination
  - This may not always be possible under state law
- The grievance procedures must describe the range of or list the possible disciplinary sanctions and remedies that may be implemented following any determination of responsibility



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## Work Alike: Night Shift

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Review the "Night Shift Part 1"  
document for Session 4

<https://tinyurl.com/OSPAT9Session1>

*See specific work alike group  
questions in the document*



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## Grievance Procedures – Appeals

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## Appeals

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The 2020 Title IX rule requires  
appeals for:

All dismissals of sexual  
harassment formal  
complaints and

All written determinations  
of formal complaints of  
sexual harassment



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## Specified Appeal Bases

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Under the 2020 Rule, appeals must be offered on three bases:

- Procedural irregularity + affected the outcome
- New evidence not reasonably available at the time of the determination + could affect the outcome
- Bias or conflict of interest of Title IX team member + affected the outcome

*Can offer appeals on other bases if do so equally between the parties*

- The appeal decision-maker cannot be the Title IX Coordinator, the investigator(s), or the decision-maker(s)



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## Appeal Steps

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Step 1: Notify parties of the right to appeal in the dismissal or written determination



Step 2: Notify parties when an appeal is filed (required to be in writing)



Step 3: Provide parties a reasonable and equal opportunity to make a statement in support of, or challenging, the dismissal or decision (required to be in writing)



Step 4: Notify parties of the result and rationale for the result (required to be in writing)



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## Evaluation of the Appeal for Validity

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Evaluation just considers whether a valid appeal basis is being raised



It does not address the "weight" of the argument (how persuasive it is)



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### Analyzing the Appeal

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This is where you consider the “weight” of the arguments made in the appeal



Make sure to consider arguments raised by both sides



SHOW YOUR WORK!



Include policy definitions and procedural requirements



Assess whether there is sufficient evidence of impact on the outcome



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### Dismissal Appeal Basis #1: Procedural Error

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Did the appealing party identify a procedural irregularity?

- Failure to follow policy/procedure steps
- Failure to analyze all relevant evidence
- Inappropriate disqualification of evidence or questions

Did the appealing party identify how they believe the error affected the outcome/decision made?



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## Dismissal Appeal Basis #2: New Evidence

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Did the appealing party identify new evidence that wasn't reasonably available at the time the decision being appealed was made?

Did the appealing party identify how they believe the new evidence could outcome/decision made?



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## Example

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During intake, the complainant, when asked whether the respondent touched the complainant's private body part "for purposes of sexual gratification," the complainant said they did not know. The Title IX Coordinator dismissed because there was no allegation that the conduct was for a sexual purpose and the specific conduct alleged was neither severe nor pervasive. After the dismissal, a friend of the respondent's told the complainant that the respondent was laughing after the dismissal that they got away with "copping a feel."



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## Dismissal Appeal Basis #3: Bias or Conflict

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DID THE APPEALING PARTY IDENTIFY AN  
ALLEGED BIAS OR CONFLICT OF INTEREST  
BY A TITLE IX TEAM MEMBER?



DID THE APPEALING PARTY IDENTIFY  
HOW THEY BELIEVE THE BIAS OR  
CONFLICT AFFECTED THE OUTCOME?



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## After the Appeal

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## Reverse vs. Remand

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Reversal: Where  
the appeal makes  
clear the decision  
was incorrect



Remand: Where  
more information  
is needed



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## Serving Impartially

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## Impartiality Concerns

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Having pre-formed opinions about the case or parties involved

Personal or professional conflicts (e.g., relationships)

Influences from board, supervisors, community members, etc.



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## Bias in Title IX Decisions

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- Reliance on evidence that is not relevant
- Reliance on evidence that is impermissible

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## Avoiding Impartiality Concerns

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Regularly participate  
in training on  
impartiality, conflict  
of interest, and bias.



Follow documented  
procedures and  
guidelines strictly.



Documenting  
reasons for all  
decisions (SHOW  
YOUR WORK!)



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## Trauma Informed Decisions

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- Science shows trauma can have a neurological effect, particularly on memory
- Trauma can impact either party
- There is a difference between being trauma-informed and trauma-lenient – do not use apparent existence of trauma as *evidence* of alleged conduct



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## Don't Forget Your Records & Trainings

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Under the 2020 Rules, educational institutions must maintain records related to Title IX cases for no less than 7 years



The 2020 Rule requires posting of all training for Title IX Team members (including these!) on your educational institution's website



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## Documentation

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- Even if documentation is not required, ask yourself, "How would I prove that I did this later if there is a dispute?"
- Ensure that you obtain documents from external decision-makers



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## Work Alike: Night Shift

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*See specific work alike group  
questions in the document*



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## Long descriptions

### Figure on page 3

The agenda presented includes four key topics related to decision-making processes. The first item is 'Decision-Maker Training & Role in the Process,' highlighted in red, emphasizing its importance. The second topic, 'Decision-Making Requirements & Best Practices,' is shown in gray, indicating a focus on essential guidelines and standards. The third item, 'The Written Determination & Relevant Evidence,' is marked in yellow, suggesting a discussion on documentation and supporting information necessary for decision-making. Finally, 'Recordkeeping' is presented in blue, which likely covers the importance of maintaining accurate records throughout the decision-making process. The background of the agenda is a textured beige, providing a subtle visual context.

### Figure on page 3

The image features an open book positioned in the foreground, with a blurred background of bookshelves filled with various books. Above the book, a variety of mathematical symbols, letters, and icons are floating, creating a dynamic and engaging visual effect. These symbols include numbers, letters, and mathematical operators, suggesting themes of learning, education, and knowledge. The overall composition conveys a sense of creativity and intellectual exploration, emphasizing the role of training and solutions in the learning process. The background is softly focused, drawing attention to the book and the symbols above it, enhancing the thematic connection between literature and mathematics.

### Figure on page 4

The image presents a flowchart outlining the required training process for Title IX compliance. It consists of four sequential steps, each represented by an arrow pointing to the next. The first step is labeled 'Knowledge' and is depicted in a red box, indicating the foundational understanding required. The second step, 'Evaluation,' is shown in a gray box,

suggesting an assessment phase. The third step, 'Notice of Allegations,' is highlighted in yellow, indicating the importance of acknowledging any claims made. Finally, the last step is 'Resolution,' presented in a blue box, which signifies the conclusion of the process. Each step is visually distinct, with arrows connecting them to illustrate the progression through the training process.

## **Figure on page 16**

The image features a traditional balance scale, commonly associated with justice and fairness. The scale consists of two circular pans suspended from a horizontal beam, which is supported by a vertical post. The pans are empty and hang from chains, allowing them to move freely. The background is a smooth gradient of blue, providing a calm and neutral setting that emphasizes the scale. The overall composition conveys a sense of balance and equilibrium, symbolizing the principles of justice. The lighting highlights the metallic finish of the scale, creating a subtle contrast with the blue backdrop.