

**LEGAL/POLICY
KASB SERVICES**

Post-Determination: Appeals and Recordkeeping

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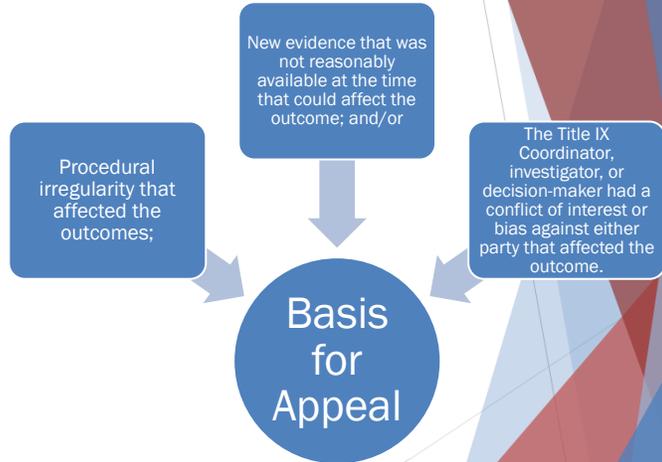
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- Appeals
- Informal Resolution Process
- Recordkeeping
- Prohibition Against Retaliation

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Appeals

- ▶ The complainant or respondent may appeal the decision-maker's determination regarding responsibility or a dismissal of a formal complaint.
- ▶ Request for appeal shall be made in writing within 20 days after the date of the written determination regarding responsibility.
- ▶ Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
- ▶ Provide the written decision simultaneously to both parties, giving a rationale for the finding.



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Appeal Decision-Maker Responsibilities



Review the evidence gathered by the investigator, the investigator's report, and the original decision-maker's determination;



Notify both parties in writing of the filing of an appeal and give them 10 days after the appeal is filed to submit further evidence in writing;



Not have a conflict of interest or bias for or against complainant or respondent and receive the required training;



Issue a written decision and the rationale for the decision within 30 days after the appeal is filed;



Describe the result of the appeal and the rationale for the result in the decision; and



Provide the written decision simultaneously to both parties and to the Title IX Coordinator.

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Who is the hearing officer on appeal?

- ▶ Appeals shall be on the record and heard by an attorney, an independent hearing officer appointed by the board, or the board. The appeal decision-maker may not be the Title IX Coordinator, the Investigator, or the decision-maker from the original determination.



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Time Out for a Game of “Who’s That Hearing Officer?”

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- ▶ At any time during the formal complaint process and prior to reaching a determination regarding responsibility, the district may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and determination of responsibility.
- ▶ If the matter is resolved to the satisfaction of the parties, the facilitator shall document the nature of the complaint and the proposed resolution, have both parties sign the documentation and receive a copy, and forward it to the Title IX Coordinator.
- ▶ Within 20 days after the complaint is resolved in this manner, the Title IX Coordinator shall contact the complainant to determine if the resolution of the matter remains acceptable.
- ▶ If the matter is not resolved, or if the individual does not believe the resolution remains acceptable within 20 days after the informal resolution document is executed, the individual or the Title IX Coordinator may proceed with the formal complaint process.

Informal Resolution Process

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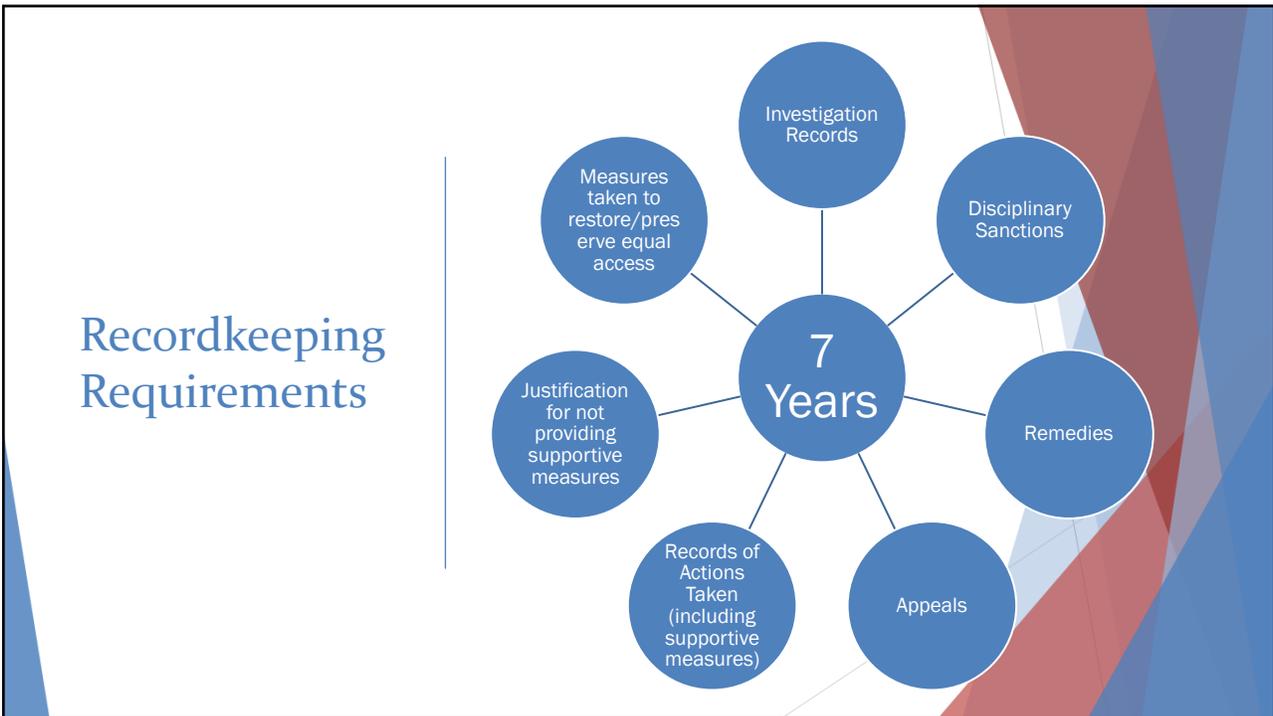
How do we get the informal resolution process started? And by whom?

- ▶ The informal resolution process may be facilitated by a trained educational professional, consultant, or other individual selected by the Title IX Coordinator under the following conditions:
 - ▶ The parties are provided a written notice disclosing the allegations, the requirements of the informal resolution process, information on when it may preclude the parties from resuming a formal complaint arising from the same allegations;
 - ▶ At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the investigation of the formal complaint and be informed of any consequences resulting from participating in the informal resolution process;
 - ▶ The parties voluntarily and in writing consent to the informal resolution process; and
 - ▶ The informal resolution process cannot be used to resolve allegations that an employee sexually harassed a student.

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Requirements for Recordkeeping and Prohibition on Retaliation

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Retaliation Prohibited

Complaints alleging retaliation may be filed according to the formal complaint investigation procedures for sex discrimination.

- ▶ No district or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.
- ▶ Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.
- ▶ The district must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA, as required by law, or to conduct any investigation, hearing, or judicial proceeding arising thereunder.

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Scenario: A Shy Source

- ▶ A male bus driver came to the Title IX Coordinator alleging that the female transportation director has been calling him pet names and finding times while he's bent over checking tires and fluid levels to brush up against him or give him "atta boy" smacks on the hindquarters.
- ▶ He is uncomfortable with this continuing, but he's not willing to file a complaint if it means she will know he is the one who complained.
- ▶ Can you keep his identity a secret during this process?



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Retaliation Prohibited

- ▶ The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by Title IX.
- ▶ Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a formal complaint investigation proceeding does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

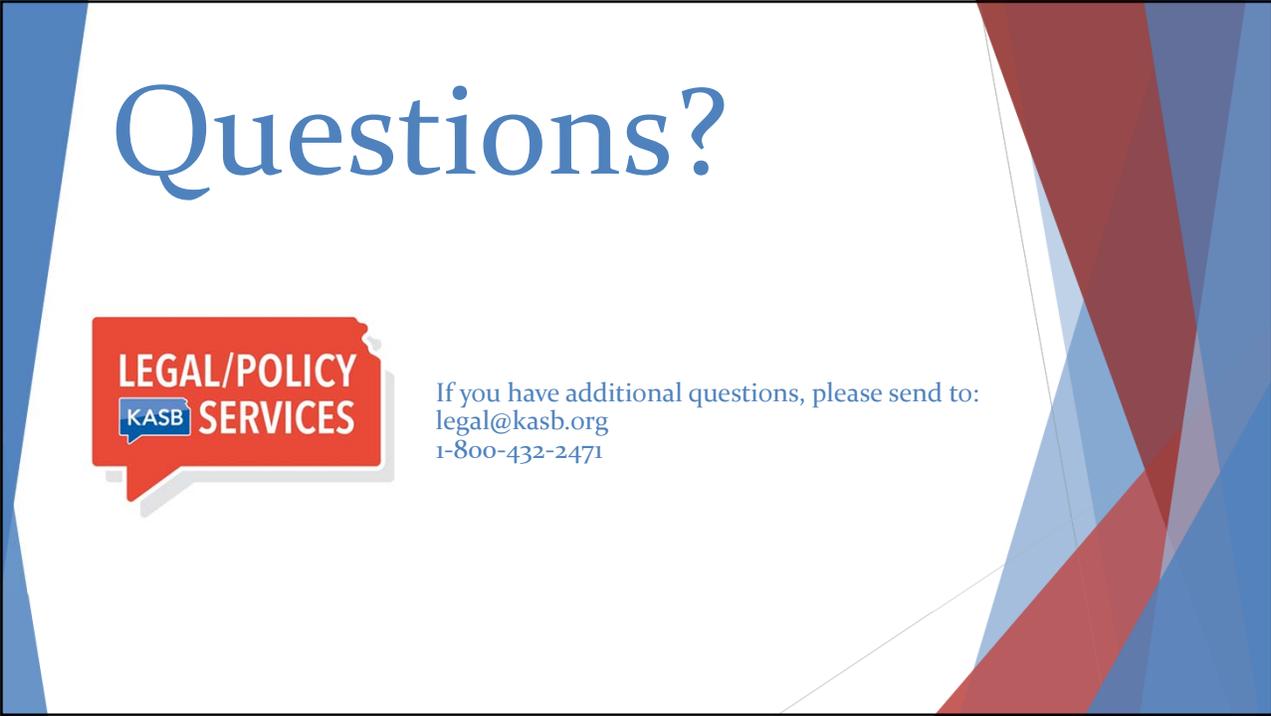
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Scenario: Singing Like a Canary



- ▶ One of your teachers was the Respondent in a Title IX investigation, which culminated in a negative finding, as well as his receiving a written reprimand and being placed on a plan of improvement.
- ▶ He now takes to Facebook and posts his frustrations with the process, the finding, and his coworkers who participated in the investigation.
- ▶ What, if any, recourse do you have in this situation?

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Questions?

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If you have additional questions, please send to:
legal@kasb.org
1-800-432-2471