

A Fair Grievance Process: Checklist

The new Title IX regulations require schools to investigate and adjudicate formal complaints of sexual harassment using a grievance process that incorporates due process principles, treats all parties fairly, and reaches reliable responsibility determinations. A school's grievance process must:

- Give both parties written notice of the allegations, an equal opportunity to select an advisor of the party's choice (who may be, but does not need to be, an attorney), and an equal opportunity to submit and review evidence throughout the investigation
- Use trained Title IX personnel to objectively evaluate all relevant evidence without prejudgment of the facts at issue and free from conflicts of interest or bias for or against either party
- Protect parties' privacy by requiring a party's written consent before using the party's medical, psychological, or similar treatment records during a grievance process
- Obtain the parties' voluntary, written consent before using any kind of "informal resolution" process, such as mediation or restorative justice, and not use an informal process where an employee allegedly sexually harassed a student
- Apply a presumption that the respondent is not responsible during the grievance process (often called a "presumption of innocence"), so that the school bears the burden of proof and the standard of evidence is applied correctly
- Use either the preponderance of the evidence standard or the clear and convincing evidence standard (and use the same standard for formal complaints against students as for formal complaints against employees)
- Ensure the decision-maker is not the same person as the investigator or the Title IX Coordinator (i.e., no "single investigator models")
- K-12 schools do not need to hold a hearing, but parties may submit written questions for the other parties and witnesses to answer
- Protect all complainants from inappropriately being asked about prior sexual history ("rape shield" protections)
- Send both parties a written determination regarding responsibility explaining how and why the decision maker reached conclusions
- Effectively implement remedies for a complainant if a respondent is found responsible for sexual harassment
- Offer both parties an equal opportunity to appeal
- Protect any individual, including complainants, respondents, and witnesses, from retaliation for reporting sexual harassment or participating (or refusing to participate) in any Title IX grievance process
- Make all materials used to train Title IX personnel publicly available on the school's website
- Document and keep records of all sexual harassment reports and investigations