Title IX K-12 Training

Level 2:

Decision-Maker and Appeals Training

Bricker Graydon

Disclaimers

We can’t help ourselves. We’re lawyers.

- We are not giving you legal advice
- Consult with your legal counsel regarding how best to address a specific situation
- We will send a copy of the slides after this presentation to all who registered their email address when signing in
- Feel free to submit questions - we will answer them at the end as time permits

Posting These Training Materials?

- Yes!
- Your Title IX Coordinator is **required** by 34 CFR 106.45(b)(10)(i)(D) to post materials used to train Title IX personnel on its website
- We know this and will make this packet available to your district electronically to post

Agenda

- Required training
- Overview of Role as a Decision-Maker
- Bias and Impartiality
- Questioning Phase
- Analyzing the Elements of Prohibited Conduct
- What Is Relevant?
- Fact finding
- Credibility Analysis
- Approaches To Counterintuitive Response
- Weighing the Evidence
- After the Decision
- Handling Appeals

A Note About Hearings

- K-12 is not required to hold live hearings
- The regulations provide little structure for live hearings at the K-12 level
- This training presumes that you do not elect to offer live hearings prior to making a determination as to whether a policy violation occurred
- This does not excuse you from holding subsequent suspension/expulsion hearings as may be applicable

Why No Live Hearing?

Cross examination in a live hearing is “not necessarily effective in elementary and secondary schools where most students tend to be under the age of majority and where…. parents or guardians would likely exercise a party’s rights.” 85 FR 30334

- This applies to cases involving student and staff respondents.
- Consider career center with adult education program

Required Training for Decision-Makers

Required Training for Decision-Makers (1 of 2)

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- Issues of relevance (questions and evidence)
- When questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant
- If holding live hearings, must be trained on that process, as well as any technology to be used at a live hearing

Required Training for Decision-Makers (2 of 2)

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- Definition of “sexual harassment”
- Scope of the recipient’s education program or activity
- How to conduct an investigation and grievance process
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, bias and reliance on sex stereotypes
- See 34 CFR 106.45(b)(1)(iii) for training requirements

Role as a Decision-Maker

What is your role as decision-maker? (1 of 3)

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- Conduct an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence [34 CFR 106.45(b)(1)(ii)]
- Mandatorily dismiss Title IX complaint that do not rise to the level of "sexual harassment," did not occur in the recipient's education program or activity, or did not occur against a person in the USA [34 CFR 106.45(b)(3)(i)]

What is your role as decision-maker? (2 of 3)

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- Afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions for each party. [34 C.F.R. 106.45(b)(6)(ii)]
- Explain to the party proposing the questions any decision to exclude a question as not relevant [34 C.F.R. 106.45(b)(6)(ii)]

What is your role as decision-maker? (3 of 3)

- Issue a written determination regarding responsibility by applying the standard of evidence chosen by the recipient (either “preponderance of the evidence” or “clear and convincing”) [34 CFR 106.45(b)(7)]
- Consider appeals

1) Keep an Open Mind

- Keep an open mind until all relevant evidence has been heard (and tested at the live hearing, if applicable)
- Don’t come to any judgment, opinion, conclusion or belief about any aspect of this matter until you’ve reviewed or heard all of the evidence AND consider only the evidence that is permissible and relevant

2) Make Sound, Reasoned Decisions

- You must render a sound, reasoned decision on every charge
- You must determine the facts in this case based on the information presented
- You must determine what evidence to believe, the importance of the evidence, and the conclusions to draw from that evidence

3) Consider All/Only Evidence

- You must make a decision based solely on the relevant evidence obtained in this matter
- You may consider nothing but this evidence

4) Be Impartial

- You must be impartial when considering evidence and weighing the credibility of parties and witnesses
- You should not be swayed by prejudice, sympathy, or a personal view that you may have of the claim or any party
- Identify any actual or perceived conflict of interest

5) Weight of Evidence

- The quality of evidence is not determined by the volume of evidence or the number of witnesses or exhibits.
- It is the **weight** of the evidence, or its **strength,** in tending to prove the issue at stake that is important.
- You must evaluate the evidence as a whole based on your own judgment.

6) Evaluate Witness Credibility (1 of 3)

- You must give the testimony and information of each party or witness the degree of importance you reasonably believe it is entitled to receive.
- Identify all conflicts and attempt to resolve those conflicts and determine where the truth (**standard of review/proof**) lies.

6) Evaluate Witness Credibility (2 of 3)

- Consider the reasonableness or unreasonableness, or probability or improbability, of the testimony.
- Does the witness have any motive?
- Is there any bias?
- The Regulations' commentary provides consideration of consistency, accuracy, memory, credibility (85 FR 30315), implausibility, inconsistency, unreliability, ulterior motives, lack of credibility (85 FR 30330)

6) Evaluate Witness Credibility (3 of 3)

- Credibility is determined fact by fact, not witness by witness
  - The most earnest and honest witness may share information that turns out not to be true

7) Draw Reasonable Inferences

- Inferences are sometimes called “circumstantial evidence.”
- It is the evidence that you infer from direct evidence that you considered.
- Inferences only as warranted and reasonable.

8) Standard of Evidence (1 of 2)

- Use the standard of evidence as defined by your policy when evaluating whether someone is responsible for a policy violation
  - ALWAYS start with presumption of no violation.
- Preponderance of the evidence (most common standard of evidence): Is it more likely than not true that the respondent engaged in the alleged misconduct?
- But may choose clear and convincing standard

8) Standard of Evidence (2 of 2)

- Look to all the evidence in total, make judgments about weight and credibility, and then determine whether or not the burden has been met.
- Whenever you make a decision, apply your standard of evidence

9) Don’t Consider Impact

- Don’t consider the potential impact of your decision on either party when determining if the charges have been proven
- Focus only on the allegations and whether the evidence presented is sufficient to persuade you that the respondent is responsible for a policy violation

Addressing Bias and Impartiality

Decision-Makers Must Be Impartial

- Decision-makers "may not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent" [34 CFR 106.45(b)(1)(iii)]
- Decision-makers must avoid prejudgment of the facts at issue [34 CFR 106.45(b)(1)(iii)]

Being Impartial

- The Regulations' preamble discussion indicates that being impartial means being free from bias (85 FR 30252)
- "The Department believes that keeping this provision focused on 'bias' paired with an expectation of impartiality helps appropriately focus on bias that impedes impartiality." (85 FR 30252)

Conflicts of Interest: Concerns Raised in Comments in Preamble

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- Decision-maker and financial and reputational interest aligned with institution (or to protect institution)
- Co-mingling of administrative and adjudicative roles
- Title IX Coordinator supervises decision-maker
- Past advocacy for victim's or respondents' rights (also given as an example of potential bias)
- "Perceived conflict of interest" vs. actual conflict of interest

Preamble Discussion: Bias and Conflict of Interest

- The regulations "leave recipients flexibility to use their own employees, or to outsource Title IX investigation and adjudication functions, and the Department encourages recipients to pursue alternatives to the inherent difficulties that arise when a recipient's own employees are expected to perform functions free from conflicts of interest and bias." 85 FR 30251
- "The Department declines to define certain employment relationships or administrative hierarchy arrangements as per se conflicts … or to state whether particular professional experiences or affiliations do or do not constitute per se violations." 85 FR 30252

Discussion Recommendation for Assessing Bias

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"Whether bias exists requires examination of the particular facts of a situation and the Department encourages recipients to apply an objective (**whether a reasonable person would believe bias exists**), common sense approach to evaluating whether a particular person serving in a Title IX role is biased, exercising caution not to apply generalizations that might unreasonably conclude that bias exists…bearing in mind that the very training required by 106.45(b)(1)(iii) is intended to provide Title IX personnel with the tools needed to serve **impartially** and without bias such that the **prior professional experience of a person whom a recipient would like to have in a Title IX role need not disqualify the person** from obtaining the requisite training to serve impartially in a Title IX role."

Avoiding Pre-Judgment of Facts at Issue

- A good way to avoid bias and ensure impartiality: avoiding prejudgment of facts
- Each case is unique and different

Avoiding Sex Stereotypes (1 of 3)

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- "Must" not rely on sex stereotypes: Also helpful to avoiding pre-judgment of facts, remaining unbiased and impartial
- Examples of sex stereotypes in comments:
  - Women have regret and lie about sexual assaults
  - Men are sexually aggressive or likely to perpetrate sexual assault

Avoiding Sex Stereotypes (2 of 3)

- Discussion – prohibition against sex stereotypes, but not feasible to list them (85 FR 30254)
  - Different from evidence-based information or peer-reviewed scientific research, including impact of trauma
  - Cautions against an approach of “believing” one party over the other and notes 106.45(b)(1)(ii) precludes credibility determinations based on a party’s status as a complainant or respondent

Avoiding Sex Stereotypes (3 of 3)

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- Preamble discusses concerns regarding marginalized groups:
  - From commentators about stereotypes and accommodations for individuals with disabilities under the ADA, and individuals with developmental and cognitive disabilities
  - From people of color for cultural and racial stereotypes
  - Regarding stereotypes of people within the “LGBTQ community”

Grievance Process Overview

Basic Requirements for Formal Grievance Process § 106.45(b)(1) (1 of 2)

- Treating complainants and respondents equitably
- No conflict of interest or bias; trained staff
- Remedies designed to restore or preserve equal access to District's education program or activity
- Objective evaluation of all relevant evidence and credibility determinations
- Presumption that respondent is not responsible for alleged conduct; no sanctions until process is complete

Basic Requirements for Formal Grievance Process § 106.45(b)(1) (2 of 2)

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- Reasonably prompt timeframes for filing and resolving appeals and informal resolution processes
- Providing a list, or describing a range, of possible disciplinary sanctions and remedies
- Describing standard of evidence to be used to determine responsibility
- Describing procedures and permissible bases for appeal
- Describing range of available supportive measures

Grievance Procedure Initial Steps: How did we get here?

- Formal Complaint: Triggers Grievance Process
- Written Notice to Parties
  - Summary of allegations/time to prepare response
  - Parties' right to advisor
  - Parties' right to inspect/review evidence
  - Advise of code of conduct prohibiting false statements
  - Presumption that Respondent is not responsible
  - Must be supplemented if additional allegations arise

Grievance Procedures: Informal Resolution

- Optional (if your policy allows and if appropriate)
- Written notice
- Only after Formal Complaint
- Must have consent; may not be mandatory
- Consent may be withdrawn prior to reaching agreement
- Cannot be used for Student-C v. Employee-R
- Stops Grievance Process
- If agreement reached, cannot return to Grievance Process

Grievance Procedures: Investigation (1 of 2)

- Burden of proof and burden of gathering evidence is on recipient
- Written notice to parties of any hearings/interviews/meetings
- Equal opportunity to have others present including advisor of choice
- Equal opportunity to present witnesses
- May not prohibit parties from discussing allegations or gathering/presenting evidence

Grievance Procedures: Investigation (2 of 2)

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- Allow parties to inspect/review evidence
  - 10 days to submit response
- Prepare investigative report that fairly summarizes relevant evidence
- Allow parties to review report
  - 10 days to submit response

Grievance Procedures: Decision Maker

- Decision Maker's role begins after the investigation ends
  - Makes determination of responsibility
  - Separate Decision Maker decides appeals (if applicable)

The Questioning Phase

After the Report (1 of 3)

- After the school sends the investigative report to the parties, they have 10 days to provide a written response. [34 CFR 106.45(b)(5)(vii)]

After the Report (2 of 3)

- Before reaching a determination regarding responsibility, the decision maker must:
  - Afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness
  - The decision-maker must explain to the party proposing the question any decision to exclude a question as not relevant. [34 CFR 106.45(b)(6)(ii)]

After the Report (3 of 3)

- Questions go to the decision-maker for review prior to being given to parties/witnesses.
- Allow for additional, limited follow-up questions from each party
  - School can to set reasonable limits [85 FR 30364]
  - The 10-day response period can overlap with the period for follow-up questions, so schools do not need to extend timelines [85 FR 30365]

Analyzing the Elements of Prohibited Conduct

Analyzing the Elements (1 of 3)

- To find a policy violation, there must be evidence to show, using the standard of evidence in your policy (preponderance of the evidence or clear and convincing), that each and every element of a policy violation has been met
- How do you do this?

Analyzing the Elements (2 of 3)

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- Review the definition
- Break down the definition into elements by making a checklist
- Re-read the definition. Have you accounted for all of the language in the definition?
- Are there any definitions that should be included in your element checklist? (e.g. state law definition of domestic violence)
- Sort evidence according to element

Analyzing the Elements (3 of 3)

- If you have a preponderance of the evidence* that each element is present, you have a policy violation
- If you do not have a preponderance of the evidence that each element is present, you do **not** have a policy violation
- If you have a preponderance of the evidence that one or more elements is **not** present, you do **not** have a policy violation

*If you use clear and convincing as your standard of evidence, substitute that here

Example: Quid Pro Quo

- ❑ Conduct on the basis of sex
- ❑ By an employee of the recipient
- ❑ That conduct conditions the provision of an aid, benefit, or service of the recipient on an individual's participation in sexual conduct
- ❑ That sexual conduct is unwelcome

[34 C.F.R. 106.30(a)]

Example: Hostile Environment

- ❑ Conduct on the basis of sex
- ❑ That is unwelcome
- ❑ That a reasonable person has determined is so severe, pervasive, and objectively offensive…
- ❑ That it effectively denies a person equal access to the recipient's education program or activity

[34 C.F.R. 106.30(a)]

Example: Sexual Assault (1 of 2)

- Conduct on the basis of sex
- Qualifies as one of the following:
  - Rape (male on female penetration only)
  - Sodomy (oral/anal penetration)
  - Sexual Assault With An Object (other than genitalia)
  - Fondling
  - Incest
  - Statutory Rape

Example: Sexual Assault (2 of 2)

- In cases of rape, sodomy, sexual assault with an object, or fondling, there was either:
  - No consent, or
  - Victim was incapable of giving consent because of age or temporary/permanent mental or physical incapacity

[34 C.F.R. 106.30(a); 20 U.S.C. 1092(f)(6)(A)(v); FBI UCR National Incident-Based Reporting System User Manual]

Example: Dating Violence

- Conduct on the basis of sex
- Violence committed by a person
- Who has been in a social relationship of a romantic or intimate nature with the victim
- Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - Length of the relationship
  - Type of relationship
  - Frequency of interaction between the persons involved in the relationship

[34 C.F.R. 106.30(a); 34 U.S.C. 12291(a)(10)]

Example: Domestic Violence

- Conduct **on the basis of sex**
- Felony or misdemeanor crime of violence committed:
  - By current/former spouse or intimate partner of the victim
  - By a person with whom the victim shares a child in common
  - By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
  - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction
  - By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

[34 C.F.R. 106.30(a); 34 U.S.C. 12291(a)(8)]

Example: Stalking

- ❑ Conduct **on the basis of sex**
- ❑ Course of conduct
- ❑ Directed at a specific person
- ❑ Would cause a reasonable person to either:
  - ❑ Fear for his or her safety or the safety of others; or
  - ❑ Suffer substantial emotional distress.

[34 C.F.R. 106.30(a); 34 U.S.C. 12291(a)(30)]

Scope of Education Program/Activity

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Remember that the behavior addressed must occur in the recipient's "education program or activity"

- "Education program or activity" means all of the operations of the recipient [34 CFR 106.2(h)(2)(i)]
- In the Title IX grievance context, "education program or activity" includes "locations, events, or circumstances over which the recipient exercised **substantial control** over both the **respondent** and the **context** in which the sexual harassment occurs." [34 CFR 106.44(a)]

Relevancy: What Can You Consider?

Issues of Relevancy (1 of 4)

- The Rules of Evidence do **NOT** apply and **CANNOT** apply 85 FR 30337
- "The Department appreciates the opportunity to clarify here that the final regulations **do not allow** a recipient to impose rules of evidence that **result in the exclusion of relevant evidence**; the decision-maker must consider relevant evidence and must not consider irrelevant evidence." 85 FR 30336-37

Issues of Relevancy (2 of 4)

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- Not generally permissible unless expressly touched upon in Regulations (85 FR 30294):
  - Information protected by a legally recognized **privilege**
  - Evidence about complainant's **prior sexual history**
  - Party's **medical, psychological, and similar records** unless voluntary written consent
  - Party or witness statements that have not been subjected to **cross-examination at a live hearing** (if your policy allows hearings – otherwise this restriction does not apply)

Issues of Relevancy (3 of 4)

- The process allows both parties to submit all relevant evidence:
  - Similarly 106.45(b)(6)(i)-(ii) directs the decision-maker to allow parties to ask witnesses all relevant questions and follow-up questions
  - A recipient may not adopt a rule excluding relevant evidence whose probative value is substantially outweighed by the danger of unfair prejudice (85 FR 30294)

Issues of Relevancy (4 of 4)

- "[D]oes not prescribe rules governing how admissible, relevant evidence must be **evaluated for weight or credibility** by recipient's decision-maker, and recipients thus have discretion to adopt and apply rules in that regard, so long as such rules do not conflict with 106.45 and apply equally to both parties." (85 FR 30294)

BUT

- "[I]f a recipient trains Title IX personnel to evaluate, credit, or assign weight to types of relevant, admissible evidence, that topic will be reflected in the recipient's training materials." (85 FR 30293)

Relevancy: Legally Privileged Information (1 of 3)

- Section 106.45(b)(5)(i): when **investigating** a formal complaint, recipient:
  - "[C]annot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for a grievance process under this section."

Relevancy: Legally Privileged Information (2 of 3)

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- Section 106.45(b)(1)(x):
  - A recipient's grievance process must…not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Relevancy: Legally Privileged Information (3 of 3)

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- Preamble identifies medical and treatment records.
- Other typical privileges recognized across jurisdictions but with variations (will want to involve your legal counsel for definitions in your jurisdiction):
  - Attorney-client communications
  - Implicating oneself in a crime (as in the 5th Amendment)
  - Confessions to a clergy member or other religious figures
  - Spousal testimony in criminal matters
  - Some confidentiality/trade secrets

Rules of Relevancy

"Any rules adopted by a recipient regarding issues of relevance should be reflected in the recipient's training materials." 85 FR 30294

Fact-Finding when Facts are Disputed

The Fact Finding Process

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1
- List undisputed facts – what do parties agree on? = **findings of fact**
- List disputed facts – what do parties disagree on?

2
- What undisputed facts address each element?
- What disputed facts must be resolved for each element?

3
- Weigh the evidence for each **relevant** disputed fact
- Resolve disputed facts = **findings of fact**

Credibility Analysis

Objectively Evaluating Relevant Evidence

- Preamble indicates that the decision-maker should be looking at consistency, accuracy, memory, credibility (p. 85 FR 30315), implausibility, inconsistency, unreliability, ulterior motives, lack of credibility (85 FR 30330)
- Again, not making relevancy determinations beyond those expressly included in regulations (as specified by policy)
- Use your standard of proof to guide decision-making

Standard of Proof

- Standard of Evidence: Preponderance of the Evidence or Clear & Convincing
- Must use same standard for formal Title IX complaints against both students and employees (including teachers) for all policies and procedures with adjudication for sexual harassment complaints (e.g., union grievances procedures, teacher conduct)
- Must begin with a **presumption of no violation** by Respondent

Recommended Considerations for Resolving Conflicts (1 of 4)

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- Statements by any witnesses to the alleged incident
- Evidence about the relative credibility of the complainant/respondent
  - The level of detail and consistency of each person's account should be compared in an attempt to determine who is telling the truth
  - Is corroborative evidence lacking where it should logically exist?

Recommended Considerations for Resolving Conflicts (2 of 4)

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- Evidence of the complainant's reaction or behavior after the alleged harassment
  - Were there witnesses who saw that the complainant was upset?
  - Changes in behaviors? Work-related? School? Concerns from friends and family? Avoiding certain places?
    - May not manifest until later

Recommended Considerations for Resolving Conflicts (3 of 4)

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- Evidence about whether the complainant filed the complaint or took other action to protest the conduct soon after the alleged incident occurred
  - But: failure to immediately complain may merely reflect a fear of retaliation, a fear that the complainant may not be believed, etc. rather than that the alleged harassment did not occur

Recommended Considerations for Resolving Conflicts (4 of 4)

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- Other contemporaneous evidence:
  - Did the complainant write about the conduct and reaction to it soon after it occurred (e.g. in a diary, email, blog, social media post)?
  - Did the student tell others (friends, parents) about the conduct and their reaction soon after it occurred?

Approaches to Counterintuitive Response

Not Everyone Thinks Like You

- Differences in:
  - Cultural backgrounds
  - Learned responses
  - Age, gender, race, religion, height/weight, strength
  - Adverse childhood experiences
  - Trauma in the moment or prior to the encounter

Considerations: Potential Responses to Trauma (1 of 2)

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- Delayed reporting
- Difficulty remembering specifics (could also be due to drugs/alcohol)
- Reluctant reporting
- Remaining in a relationship or living arrangement with the respondent
- Being calm and composed after an assault
- Failing to identify the accused

Considerations: Potential Responses to Trauma (2 of 2)

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- Trauma isn't just something to consider from the complainant's perspective. The respondent may be dealing with trauma, as may be the witnesses.
- Trauma may cause counterintuitive responses – from your perspective. Stop and consider carefully before you decided someone is lying because they responded in a way different from how *you* would have responded.

Disclaimer

- Do **not** assume that because there are signs of trauma that the respondent **therefore** caused the trauma and violated the policy
- Do **not** assume that because there are **no** signs of trauma, nothing bad happened

Credibility Factors

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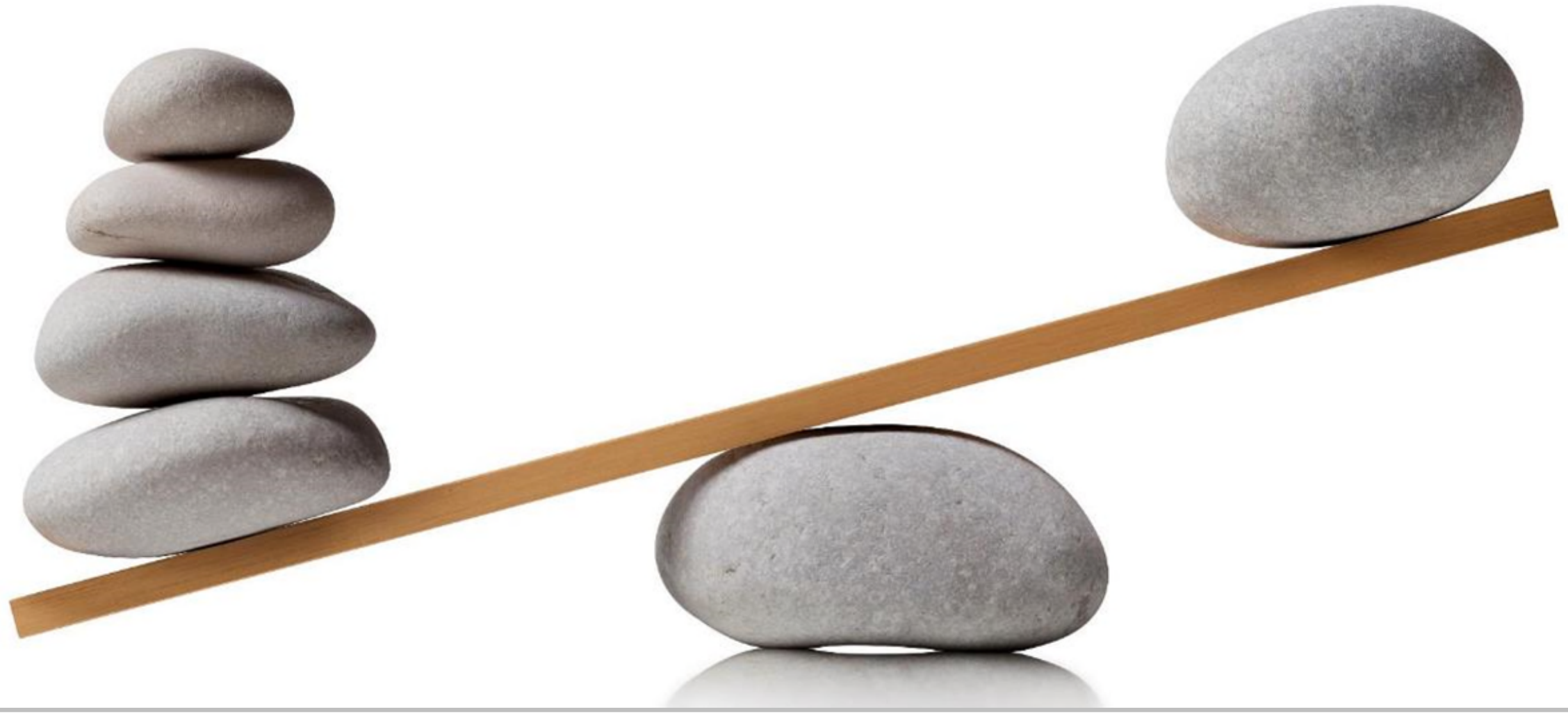
- Revisit the credibility factors we just discussed
- Focus on your evidence
- Draw reasonable inferences from that evidence
- Focus on your parties and witnesses, and take them as they are
- Check yourself: am I reaching my decision because of any bias that I may hold?



Weighing the Evidence

Regulatory Definitions

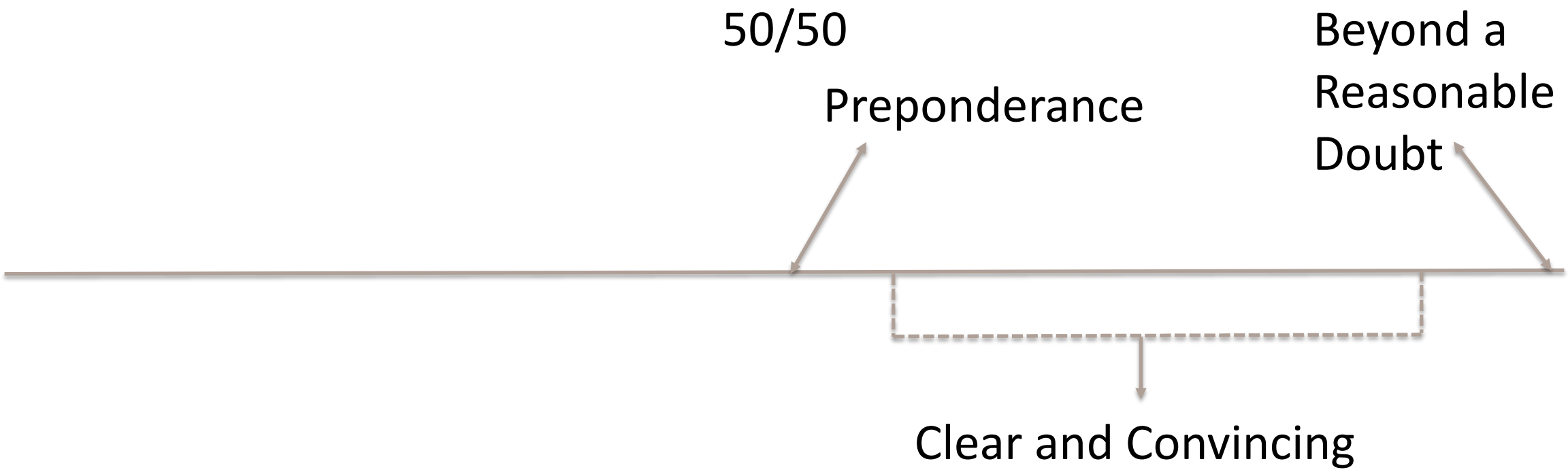
- Preponderance of the Evidence – “Concluding that a fact is more likely than not to be true”
- Clear and convincing – “concluding that a fact is highly probable to be true”

85 FR 30373 at fn 1409

Recipients cannot use “beyond a reasonable doubt” standard, which is used in criminal cases. 85 FR 30373.

Standards of Evidence

What are our choices?



Applies to *Every Fact* and *Every Decision*

- When you make a determination as to a disputed fact, use your standard of evidence
- When you make a determination as to whether an element exists, use your standard of evidence
- If you are using "preponderance of the evidence" and the evidence is exactly 50/50, you do not have a preponderance, so you have *insufficient evidence* to support the existence of the fact/element

Written Determination in 106.45(b)(7)(ii) (1 of 3)

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- Written determination **must** include:
  - Identification of the allegations potentially constituting sexual harassment
  - A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence; and hearings held

Written Determination in 106.45(b)(7)(ii) (2 of 3)

- A statement of, and rationale for, the results as to each allegation, including **determination** regarding responsibility, any disciplinary **sanctions** the recipient imposes on the respondent, and whether **remedies** designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant

Written Determination in 106.45(b)(7)(ii) (3 of 3)

- Institution's procedures and permissible bases for complainant and respondent to **appeal**
- Provided to both parties in writing contemporaneously (106.45(b)(7)(ii))

After the Decision

Disciplinary Sanctions (1 of 2)

- Ensure policy/code of conduct contains relevant language
- If there has been a finding of responsibility (incl. retaliation), follow due process procedures in state law and Board Policy
    - Written notice of possible discipline (suspension/expulsion)
    - Opportunity to respond to the allegations/proposed discipline
    - Appeal rights

Disciplinary Sanctions (2 of 2)

- Note that under 34 CFR 106.45(b)(8), if schools permit appeals regarding sanctions, they must offer this right to the complainant and respondent. 85 FR 30399
- Before any sanction that would constitute a change of placement for a child with a disability, ensure compliance with IDEA and Section 504 (manifestation determination, continuation of services as applicable, etc.)

Handling Appeals

Identity of the Appeals Officer

- You cannot hear an appeal of your own decisions
  - The Appeals Officer cannot be the same investigator, Title IX Coordinator, or decision-maker that worked on the case
- The Appeals Officer must be trained in the same manner as the Decision-Maker

Bases for Appeal

- Procedural irregularity that affected the outcome of the matter
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- The Title IX Coordinator/investigator/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
- A recipient may offer an appeal equally to both parties on additional bases

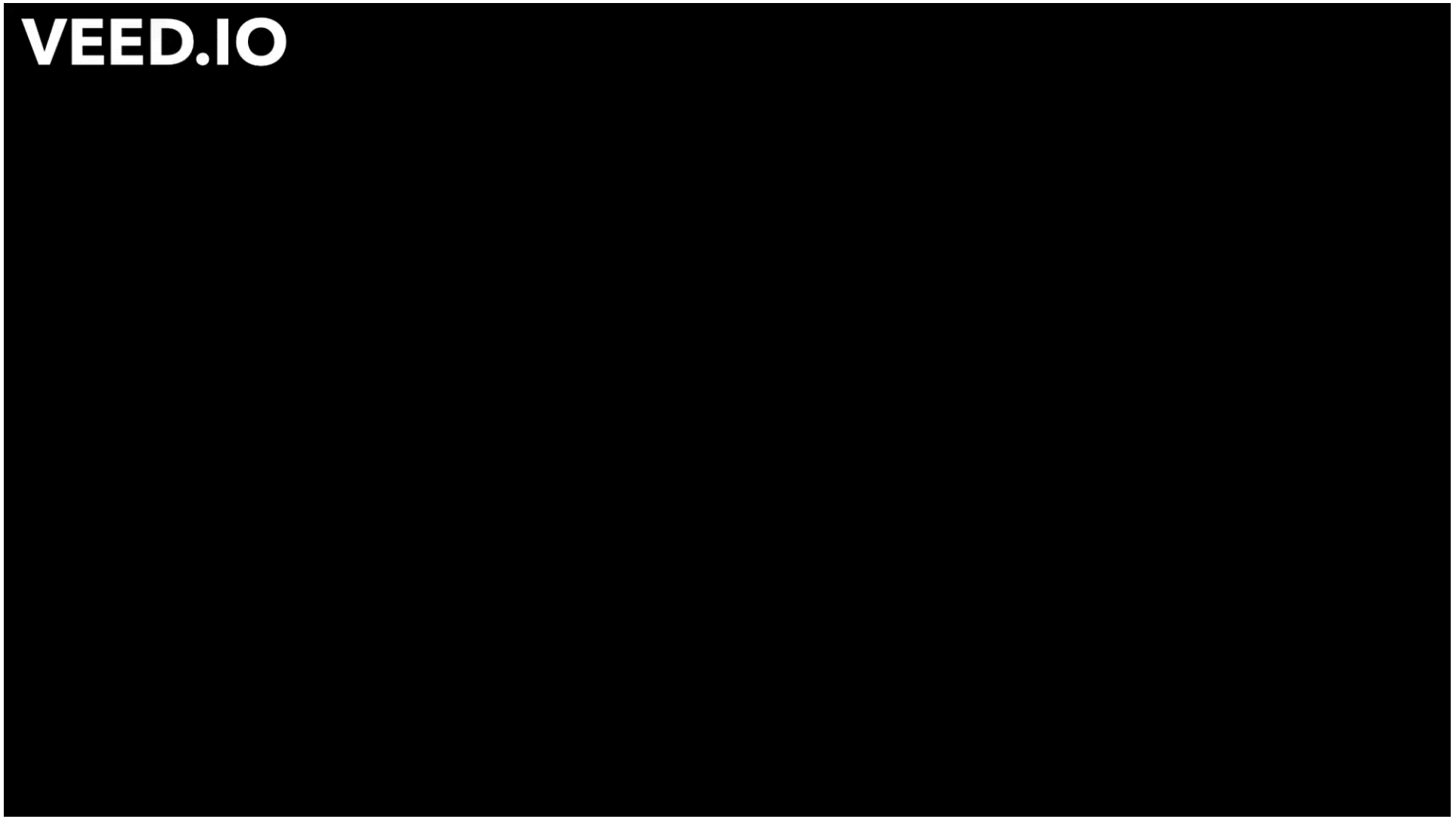
Appeals

- As to all appeals, the recipient must:
  - Offer the appeal to either party
  - Let both parties know when an appeal has been filed
  - Give both parties a reasonable and equal opportunity to submit a written statement in support of or challenging the appealed decision
  - Issue a written decision describing the result of the appeal and the rationale for the result
  - Provide the written decision simultaneously to both parties.

Questions?

Bricker Graydon's Title IX Toolkit

Available for download: k12tixtoolkit.bricker.com



Bricker Graydon's Title IX for K-12 Training Series

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Level 1

- General training for all K-12 staff

Level 2

- Title IX Coordinator/Administrator
- Investigator
- Report Writing for investigators and decision-makers
- Decision-Maker and Appeals Officer
- Informal Resolution Facilitator

Now Added: Level 3 advanced training for your K-12 Title IX Team!

- Title IX Coordinator
- Investigator
- Report Writing
- Informal Resolution Facilitator

View dates and register at **www.bricker.com/titleix**

Thank you for attending!

Remember – additional information available at:

Title IX Resource Center at
www.bricker.com/titleix

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