

# IDAHO K-12 TITLE IX PROFESSIONAL LEARNING COMMUNITY #4

## TITLE IX: COMPLIANT GRIEVANCE PROCESS PT 3

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# NEXT MEETINGS

- ▶ January – May
  - ▶ 4<sup>th</sup> Tuesday at 9 am MT/8 am PT
  - ▶ 4<sup>th</sup> Thursday at 12 pm MT/11 am PT
- ▶ What topics would you like covered?
- ▶ Investigator training offerings

# REVIEW

# LAST MONTH WE REVIEWED -

- ▶ Reviewed definitions that brings something into the scope of Title IX sexual harassment regulations
- ▶ Notice of allegations
- ▶ Mandatory and permissible dismissal of complaints
- ▶ Notice of dismissal
- ▶ Consolidation of Complaints

# CONTINUANCE – AFTER RECEIVING FORMAL COMPLAINT – 34 CFR 106.45 REQUIRED GRIEVANCE PROCESSES

# INVESTIGATION

- ▶ Baseline considerations
  - ▶ Parties are not responsible for proving the claim or defending their innocence
  - ▶ Must provide equal opportunity to present witnesses and evidence
  - ▶ Cannot restrict either party from discussing the allegations or from gathering evidence

# INVESTIGATION

## ▶ Baseline considerations

- ▶ Provide same opportunities to have people present
- ▶ Provide WRITTEN notice of date, time, location, involved people, and purpose for all hearings, interviews, and other meetings if expected to participate
- ▶ Provide equal opportunity to inspect and review evidence directly related to allegations in complaint
  - ▶ Must have at least 10 days to review and respond
  - ▶ Must consider responses prior to finalization of report

# INVESTIGATION

- ▶ Baseline considerations
  - ▶ Create a final investigation report
    - ▶ Fairly summarize all RELEVANT evidence
    - ▶ Send to the party **and advisor** at least 10 days before determination (may be longer if no hearing)
    - ▶ Parties can respond in writing again – which becomes a part of your file



# HEARINGS

- ▶ K-12 NOT REQUIRED TO HAVE HEARINGS – “grievance processes may, but need not, provide for a hearing.”
  - ▶ If no hearing, the decision-maker must allow each party to submit written (relevant) questions that they want asked of another party or witness
  - ▶ If decision-maker believes questions are relevant, they must ask them and provide responses to the requesting party
  - ▶ Must allow for limited follow up questions

# HEARINGS

- ▶ QUESTIONS ABOUT COMPLAINANT'S PRIOR SEXUAL HISTORY GENERALLY NOT RELEVANT
- ▶ Only relevant if:
  - ▶ Used to prove someone other than respondent violated policy, or
  - ▶ Specific prior incidents between parties to demonstrate consent was present

# DETERMINATIONS REGARDING RESPONSIBILITY

- ▶ Made by decision-maker
  - ▶ Cannot be Title IX Coordinator or Investigator
- ▶ Decision-maker must issue written determination
  - ▶ Must be based on the standard of evidence you have opted to use
    - ▶ Preponderance of evidence OR
    - ▶ Clear and convincing

# WRITTEN DETERMINATION OF OUTCOME

- ▶ A written determination must include
  - ▶ Identification of the allegation
  - ▶ Procedural summary
  - ▶ Findings of fact supporting the determination
  - ▶ Conclusions regarding application of policy to the facts
  - ▶ Rational for findings and any disciplinary actions
  - ▶ Information on how to appeal

# WRITTEN DETERMINATION OF OUTCOME

- ▶ Must be provided to the parties at the same time
- ▶ Becomes final upon appeal decision OR if no appeal is filed, when possibility to appeal expires
- ▶ The Title IX Coordinator is responsible for ensuring effective implementation of any remedies

# NEXT MONTH – GRIEVANCE PROCEDURES

## PT. 4

- ▶ Appeals
- ▶ Informal resolution
- ▶ Record keeping

# WHAT QUESTIONS OR CONCERNS HAVE ARISEN FOR YOU THIS MONTH?

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