



Title IX Training Requirements

- ▶ Who Must Be Trained:



Title IX Background

- ▶ Passed in 1972, with limited rule-making in 1975.
- ▶ Court decisions interpreted parts of the Act through the 1980s and 1990s.
- ▶ Until 2017, the Office for Civil Rights (“OCR”) commonly relied on policy guidance to establish requirements for a school’s response to sexual harassment
 - ▶ Dear Colleague Letters
 - ▶ Q&A documents

Procedural Changes

- ▶ Reporting
- ▶ Notice requirements
- ▶ Supportive measures
- ▶ Informal resolutions
- ▶ Prescriptive grievance process
- ▶ Investigations
- ▶ Hearings
- ▶ Appeals
- ▶ Training

Bias and Conflicts of Interest

- ▶ Title IX personnel (Title IX Coordinators, investigators, decision-makers, persons designated to facilitate informal resolutions) cannot have conflicts of interest for or against complainants or respondents generally, or for a complainant or respondent individually.
- ▶ Existence of bias should be based on a reasonable person standard.
- ▶ Types of bias to be aware of and avoid:
 - ▶ Sex-stereotypes as evidence.
 - ▶ Prior affiliations as evidence.
 - ▶ Evaluating bias based on outcomes.

BOR Policy Definitions

- × **Actual Knowledge:** Notice of sexual harassment or allegations of sexual harassment to a Title IX coordinator, any employee with the authority to institute corrective measures, or any employee at the Special Schools. Imputation of knowledge based solely on vicarious liability or constructive notice does not constitute actual knowledge. 163 (T17 (h)-0.7 (i)-1.7 sl)-5.6 (s)1.6 (t)-0.6 a hette onemployee of 20.7 (t)-0.7 (h)-0.7 (e)-9 (i)-1.6 onstitution 29 (w)0.7 (i)-1.7 (t)-0.7 (h)-1.3 aictual 16 resonnnBOR.olcB
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BOR Policy Definitions

- ▶ **Consent:** Consent may be implied from the facts and circumstance surrounding the commission of an act. Consent will not be found where an act has been done through the use of force, coercion, or threats of immediate and great bodily harm. Submission does not equal consent, and to establish consent, a party charged must utterly negate any element of force, coercion, or threat. Consent, once given, may be retracted. Consent will not be found under any of the following circumstances:
 - ▶ If the victim is less than thirteen years of age; or
 - ▶ Through the use of force, coercion, or threats of immediate bodily harm against the victim or other person within the victim's presence, accompanied by apparent power of execution; or
 - ▶ If the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or
 - ▶ If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis; or
 - ▶ If the victim is thirteen years of age, but less than sixteen years of age, and the perpetrator is at least three years older than the victim.

1:17.B.3; 1:17.1(3)E.

BOR Definitions

- ▶ **Education Program or Activity:** Any locations, events, or circumstances taking place in the United States where the institution exercised substantial control over both the respondent and the context in which the alleged violation occurs—including locations that correspond to land, buildings, facilities, and other property in the possession of, or owned, used, or controlled by the institution, and adjacent streets and sidewalks. For purposes of BOR Policy 1:17, the term also includes any building owned or controlled by a student organization that is officially recognized by the institution. 1:17.B.5.

Education Program or Activity

- ▶ What constitutes “substantial control”?
 - ▶ Multiple factors, such as whether the institution funded, promoted, or sponsored

BOR Definitions

- ▶ **Sexual Harassment:**

Other Key Terms

- ▶ **Supportive Measures:** Non-disciplinary, non-punitive individualized services offered to a complainant or respondent. 1:17.B.10.
- ▶ **Deliberately Indifferent:** A manner or response that is clearly unreasonable in light of the known circumstances. 1:17.C.2.; 1:17.C.10.2.
- ▶ **Preponderance of the Evidence:**

Required Notices

- ▶ Designated Title IX Coordinator
- ▶ Policy Contents
- ▶ Complaint Procedures
- ▶ Training Materials
- ▶ Publications

Designated Title IX Coordinator

- ▶ An institution must designate at least one Title IX Coordinator. 1:17.C.8.1.
- ▶ An institution must notify applicants for admission and employment, students, employees, and all professional organizations holding professional agreements with the institution of the Title IX Coordinator's information, including:
 - ▶ Name/Title;
 - ▶ Office address;
 - ▶ Email address; and
 - ▶ Telephone number.1:17.C.8.3.
- ▶ Institutions must prominently display the Title IX Coordinator contact information on their website and in any handbook or catalog made available to persons required to receive notice. 1:17.C.8.3; 106.8(b)(2)(i).

Contents of Title IX Policy

- ▶ Any applicable Title IX policy must be included on an institution's website, along with the Title IX Coordinator contact information. 1:17.C.8.3.
 - ▶ The policy should include:
 - ▶ a statement that the institution does not discriminate on the basis of sex in education program or activities operated by the institution,
 - ▶ that Title IX prohibits such discrimination
 - ▶ That the prohibition on discrimination extends to admission and employment
 - ▶

Complaint Procedures

- ▶ Institutions must provide notice of the complaint procedures and process, including how to report or file a complaint of sexual harassment or discrimination, and how the institution will respond.
- ▶ Complaint procedures are specified in BOR Policy 1:17 and include:
 - ▶ Institutional response requirements and procedures:
 - ▶ Supportive measures;
 - ▶

Misc. Institutional Obligations

- ▶ An institution is required to make Title IX training materials available on its website. 1:17.C.10.1.4
- ▶ An institution must not use or distribute publications that state that the

Reports vs. Formal Complaints

- ▶ Both reports (i.e., something less than a formal complaint constituting actual knowledge) and formal complaints trigger an institution's obligation to respond. 1.17.C.2.1.2.
 - ▶ Report = supportive measures
 - ▶ Formal complaint = supportive measures and the investigation/grievance process
- ▶ Any individual can report sexual harassment (whether or not they are the alleged victim), but only an alleged victim of conduct that may constitute sexual harassment proceeds through the process as a complainant. 106.8(a); 1:17.B.2.
- ▶ Anonymous "reports" do not constitute formal complaints

Duty to Respond

- ▶ An institution with actual knowledge (whether from a report or formal complaint) of sexual harassment in its education program or activity must respond promptly in a manner that is not deliberately indifferent, or not clearly unreasonable in light of the known circumstances. 1:17.C.2.
 - ▶ Which employees count as having “actual knowledge” for the institution to act?
 - ▶ The BOR definition of actual knowledge includes the Title IX Coordinator and employees of
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Response Obligations

- ▶ Complainants and respondents must be treated equitably, through the offer of supportive measures, without or without the filing of a formal complaint, and when a formal complaint is filed, by following the BOR grievance process outlined in Policy 1:17 prior to imposing any disciplinary sanctions or actions that are not supportive measures. 1:17.C.2.
- ▶ The process must be completed in a reasonably prompt timeframe.
 - ▶ Deadlines occurring prior to a hearing on a formal complaint may be extended by an institution for good cause and with written notice to the parties stating the reason for granting an extension. 1:17.C.2.2.10

Response Obligations

- ▶ Upon receipt of any report of sexual harassment, the Title IX Coordinator must:
 - ▶ Promptly contact the complainant to discuss the availability of supportive measures;
 - ▶ Consider the complainant's wishes with respect to the supportive measures;
 - ▶ Inform the complainant about the availability of supportive measures with or without the filing of a formal complaint;
 - ▶ Explain to the complainant the process for filing a formal complaint.
- 1:17.C.2.1.2.
- ▶ An institution may need to undertake initial fact-finding (not a formal investigation) to determine whether a report falls within the scope of Title IX.

Response Obligations

- ▶ When sexual harassment has been alleged and the report falls under Title IX, but no formal complaint has been filed, the Title IX Coordinator must either:
 - ▶ Close the report, or
 - ▶ Sign a formal complaint and initiate the Title IX grievance process (*circumstances warranting this action will likely occur on rare occasion and legal counsel should be consulted before proceeding in this fashion*).
- ▶ A Title IX coordinator may file a formal complaint if the circumstances require the filing to protect the institution's educational community and/or if not doing so would be deliberately indifferent to a report of sexual harassment.
p. 30132.

Written Notice of Formal Complaints

- ▶ When a formal complaint is filed, an institution must provide written notice **to**

Written Notice of Formal Complaints

- × Written notices must also contain:
 - × A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
 - × A statement informing the parties that they may have an advisor of their choice who may be, but is not required to be, an attorney; that the advisor may accompany the party to related meetings or proceedings; and that the party and their advisor may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint.
 - × If any restrictions on the role of or participation by an advisor have been established, a statement informing the parties of those restrictions shall also be included.
- ×

Misc. Complaint Issues

- x If, during the course of an investigation, an institution decides to investigate allegations about the complainant or respondent that were not included in the original notice of the formal complaint, the institution must provide notice of the additional allegations to those parties whose identities are known. 1:17.C.3.2
- x Where allegations of sexual harassment arise out of the same facts or circumstances, an institution may consolidate formal complaints alleging misconduct:

Mandatory Dismissal

- x Within 10 days of receiving a formal complaint, the institution must determine if the conduct alleged, if taken as true, would constitute sexual harassment, and if the allegations contained in the formal complaint occurred in I complitnnn, anrinlr7 com (hi)-2 g1.6 (e)-r4861 (c)-1.7 (om (hi)-2 g1..6 (n))2ared in

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Discretionary Dismissal

- × An institution may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, one of the following occurs:
 - × A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
 - × The respondent is no longer enrolled or employed by, or otherwise affiliated with, the institution;
 - × Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

1:17.C.3.5.

Notice of Dismissal

- x If an institution dismisses a formal complaint, the institution has **five working days** to send a written notice of dismissal simultaneously to the parties.
- x The notice of dismissal should contain:
 - x Reasons for the dismissal; and
 - x The procedure for parties to petition for administrative review of the dismissal.

1:17.C.3.6; 1:17.C.6.

Misconduct Outside the Scope of Title IX

- × Allegations of harassment not constituting sexual harassment will be handled pursuant to the appropriate policy:
 - × Protected class-based harassment- BOR Policy 1:18.
 - × Student harassment –BOR Policy 3:4.
 - × Non-protected class -based employee harassment –applicable employee class

Supportive Measures

- x Supportive measures are non-disciplinary, non-punitive individualized services offered at no cost.
 - x Offered where no formal complaint has been filed, or before or after a formal complaint is filed.
- x Should be designed to restore or preserve equal access to the institution's education program or activity without unreasonably burdening the other party and may include measures designed to protect the safety of all parties or the institution's educational environment, or to deter sexual harassment.

1:17.C.2.1.

Supportive Measures

- × May include:
 - × Counseling;
 - × Extension of deadlines or other course -related adjustments;
 - × Modifications of work or class schedules;
 - × Campus escort services;
 - × Mutual restrictions on contact between the parties;
 - × Changes in work or housing locations;
 - × Leaves of absence;
 - × Increased security and monitoring of certain areas of campus; and/or
 - × Other similar measures.

1:17.C.2.1.1.

Supportive Measures

- x Supportive measures offered by an institution to a complainant or respondent must be kept confidential, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the supportive measures. 1:17.C.2.1.3.
- x Do not have to be “proportional to the harm alleged” or constitute the “least burdensome measures” possible but cannot impose an unreasonable burden to the other party. p. 30183.
- x Fact-specific, but should not unreasonably burden one party over the other (remember presumption of non-responsibility).

Supportive Measures

- x Factors to consider regarding burden on the parties
 - x “Unreasonable burden” standard should be applied to access to all education opportunities and benefits
 - x Supportive measures should not amount to sanctions (non-punitive)
 - x Scope of the supportive measure in relation to the burden on the parties
 - x Removal of a respondent from an institution’s education program or activity on an emergency basis may be permitted under certain circumstances.
 - x One-way or mutual no -contact orders may be appropriate in certain circumstances.

1:17.C.2.1.4; pp. 30182-84.

Supportive Measures

- x Title IX Coordinator has responsibility to coordinate the implementation of supportive measures:
 - x Should promptly contact the complainant,
 - x Should consider the complainant's wishes with respect to supportive measures, and
 - x Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint.

1:17.C.2.1.2.

- x An institution must document whether or not supportive measures were provided, along with a basis for the decision. 1:17.C.10.2.

Informal Resolutions

- x Flexible in form:

- x Mediation,
- x Arbitration,
- x Restorative justice, or
- x Other strategies.

- x Do NOT rat

Informal Resolutions

- x Informal Resolution Facilitators:
 - x Are subject to the same training and impartiality requirements as Title IX Coordinators, investigators, and decision -makers.
 - x Could serve as witnesses in a subsequent grievance proceeding:
 - x If this possibility was disclosed to the parties in the written notice prior to the start of the informal process.
 - x However, South Dakota law declares all mediation communications confidential unless certain exceptions are met.

1:17.C.2.2.5; p. 30401; SDCL 19-13A-4, 19-13A-8.

- x An institution may not condition enrollment, employment, or any other right of students or employees on agreeing to an informal process. 1:17.C.7.2.

Relevance

- x Why is it important to understand relevance?
 - x Instruction on relevance is a specific training requirement because it applies in multiple phases of the grievance process.
 - x Must be considered during the investigation, hearing, and administrative review phases of the grievance process.
 - x An institution bears the burden to ensure that evidence sufficient to reach a determination regarding responsibility is gathered.
 - x The objective evaluation of “all relevant evidence,” both inculpatory and exculpatory, is required.

1:17.C.2.2.3; 1:17.C.4.1.

Relevance

- ▶ Evidence that is “relevant” versus “directly related”
 - ▶ Parties must have an equal opportunity to inspect and review any evidence
-

Relevance

- ▶ Certain types of evidence are excluded as not relevant (or otherwise excluded):
 - ▶ Evidence falling under rape shield protections. 1:17.C.5.3.5.
 - ▶ Evidence protected by a legally recognized privilege (unless waived). 106.45(b)(1)(x).
 - ▶ Any party's medical, psychological, and similar records (unless the party gives consent). 106.45(b)(5)(i).
 - ▶ Party or witness statement from a party or witness that does not submit to cross examination. 1:17.C.5.3.6.

Relevance

- ▶ Sexual Predisposition and Prior Sexual Behaviors
 - ▶ Not defined in the regulations.
 - ▶ Preamble discusses, however, that the regulations' rape shield protections are patterned after the Federal Rules of Evidence and cites to the Federal Rules Advisory Committee Notes from the pertinent rule.
 - ▶ Sexual Behavior: All activities involving actual physical contact or that imply sexual intercourse or sexual contact, including a victim's use of contraceptives, evidence of childbirth, and sexually transmitted diseases.
 - ▶ Sexual Predisposition: Includes a victim's mode of dress, speech, or lifestyle.
- p. 30350, FN 1343 (citing Advisory Committee Notes, Fed. R. Evid. 412).

Investigations

▶ Burden of Proof

- ▶ The burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the institution. 1:17.C.4.1.
 - ▶ But equal opportunity shall be provided to the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
 - ▶ An institution cannot institute a “gag order” during investigations—it cannot restrict the ability of either party to discuss the allegations under investigation or to gather/present relevant evidence. 1:17.C.4.3.

▶ Report

- ▶ The institution is responsible for compiling an investigative report. 1:17.C.4.7.

Investigations

- ▶ Uses for the investigative report
 - ▶ Can be presented at the live hearing by the institution, the complainant, or the respondent
 - ▶ Can be relied upon by the hearing examiner, but the hearing examiner should decide without giving deference to the investigative report. p. 30314.
 - ▶ Part of documents reviewed in a petition for administrative review
 - ▶ Could potentially be used by complainants or respondents in other legal proceedings or litigation, or by the institution in defense of such litigation.
 - ▶ Personnel action

Investigations

- ▶ Who should conduct an investigation?
 - ▶ An investigator should be:
 - ▶ Familiar with the Title IX regulations, BOR policies, and an institution's rules, policies, and procedures;
 - ▶ Trained in conducting the type of investigation required; and
 - ▶ Able to accurately report and summarize the gathered evidence.
 - ▶ An investigator must be:
 - ▶ Free from conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;
 - ▶ Impartial, avoid prejudgment of the facts at issue, and not rely on sex stereotypes; and
 - ▶ Competent in issues of relevance.

Investigations

- ▶ Scope of an Investigation
 - ▶ Allegations identified in a formal complaint. 1:17.C.3.1.
 - ▶ If the investigation identifies additional allegations and the institution decides to investigate those allegations against the complainant or respondent that fall within the scope of sexual harassment, the institution must provide notice of the additional allegations to the known parties. 1:17.C.3.2.
 - ▶ Consolidation of complaints where applicable. 1:17.C.3.3.

Investigations

▶ Planning an Investigation

- ▶ The parties must be given equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. 1:17.C.4.2.
- ▶ Collect pertinent background information and review to ensure prompt and thorough witness interviews.
- ▶ Obtain written consent for certain background information as needed.

Investigations

- ▶ Conducting the investigation
 - ▶ Determine individuals to be interviewed.
 - ▶ Provide written notice of the interviews to required individuals.
 - ▶ An institution shall provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. An institution shall not limit the choice or presence of advisor for either party in any meeting or grievance proceeding. However, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply to both parties. 1:17.C.4.4.
 - ▶ An institution shall provide, to a party whose participation is invited or expected, written notice of the time, date, location, participants, and purpose of all hearings, investigative interviews, or other meetings, at least five working days in advance. 1:17.C.4.5.

Investigations

- ▶ The investigative report
 - ▶ The investigative report must fairly summarize the relevant evidence. 1:17.C.4.7.
 - ▶ The regulations and BOR policy do not require the report to contain conclusions or recommendations pertaining to evidence or a determination of responsibility.
 - ▶ The investigative report must be sent to each party and the party's advisor, if any,

Hearings

- ▶ Institutions shall provide for a live hearing before a hearing examiner using the contested case proceedings set forth in SDCL chapter 1-26. 1:17.C.5.1.
- ▶ Institutions will coordinate with the BOR office to retain law-trained hearing examiners.
- ▶ Live hearings may be conducted with all parties physically present in the same geographic location or, at the institution's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. 1:17.C.5.
 - ▶ Either party may request that the hearing occur with the parties located in separate rooms. 1:17.C.5.3.3.
 - ▶ Decision-makers (hearing examiners) shall be trained on technology utilized during the hearings.
- ▶ The institution shall create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. 1:17.C.5.1.

Hearings - Notice

- ▶ An institution shall provide notice to both parties at least 15 days prior to the hearing. The notice shall include:
 - ▶ The time, place, and nature of the hearing;
 - ▶ The legal authority and jurisdiction under which the hearing is to be held;
 - ▶ Reference to the particular policy, rules, or laws involved;
 - ▶ A short, plain statement of the allegations asserted;
 - ▶

Hearings

▶ Role of the Advisor

- ▶ Parties have the right to an advisor of their choice, who may be, but is not required to be, an attorney. 1:17.C.4.4.
- ▶ An institution must provide an advisor at the live hearing if a party does not have one.
 - ▶ The institution must provide the advisor at no fee or charge to the party, but the institution may choose the advisor, who may be, but is not required to be, an attorney. 1:17.C.5.3.
- ▶ An advisor may be permitted, at the hearing examiner's discretion, to ask the other party and any witnesses all relevant questions and follow up those questions, including those challenging credibility. 1:17.C.5.3.1.
- ▶ An advisor is required to conduct cross examination. A party may never personally cross

Hearings

- ▶ Due to confidentiality requirements, other than an advisor, a party may not

Hearings

- ▶ Role of the Hearing Examiner
 - ▶ Determine whether any question asked of the complainant, respondent, or a witness is relevant before they may answer the question and explain any decision to exclude a question as not relevant before a party or witness answers a cross examination or other question. 1:17.C.5.3.4.
 - ▶ Ensure rape shield protections are implemented. 1:17.C.5.3.5.
 - ▶ Ensure that if a witness does not submit to cross examination at the live hearing, no statement of that party or witness is relied upon in reaching a determination

Hearings

- ▶ Procedural Issues
 - ▶ Pre-hearing depositions or hearing subpoenas are not permitted.
 - ▶ Rules of conduct or decorum for the hearings must apply equally to all parties.
- ▶ Evidentiary Issues
 - ▶ Use of the preponderance of the evidence standard. 1:17.C.2.2.9.
 - ▶ Parties must have equal opportunities to present evidence, including expert evidence. 1:17.C.4.2.
 - ▶ The institution may also present evidence (and bears the burden of proof to meet the standard of evidence). 1:17.C.4.1.

Hearings

- ▶ Written determination regarding responsibility
 - ▶ The hearing examiner shall issue a proposed determination to the

Hearings

- ▶ The 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;
 - ▶ Findings of fact supporting the determination;
 - ▶ Conclusions regarding the application of the institution's code of conduct to the facts;
 - ▶ A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the institution imposes on the respondent, and whether remedies designed to restore or preserve equal access to the institution's education program or activity will be provided by the recipient to the complainant; and
 - ▶ The institution's procedures and permissible bases for the complainant and respondent to petition for administrative review.

1:17.C.5.4.1-5.4.6.

Hearings

- ▶ An institution must provide the proposed written determination to the parties simultaneously. The proposed determination becomes final either:
 - ▶ At the conclusion of the petition for administrative review to the Executive Director; or
 - ▶ If a petition for administrative review is not filed by either party, the date on which the petition for administrative review would no longer be considered timely.
- 1:17.C.5.5.
- ▶ If no petition for administrative review is filed within the timeframe provided, upon the expiration of the timeframe, the proposed determination of the institution shall constitute the final decision on the matter, which is subject to appeal to the state circuit court in accordance with South Dakota law. 1:17.C.5.5.

Petitions for Administrative Review

- ▶ Petitions may be filed by either party.
- ▶ Review may be sought from:
 - ▶ An institution's proposed determination regarding responsibility; or
 - ▶ An institution's dismissal of a formal complaint or any allegations therein.

1:17.C.6.1.

- ▶ A petition for review must be filed:
 - ▶ In writing to the Executive Director of the Board of Regents; and
 - ▶ No later than ten working days after notice of the institution's decision is deemed received.

1:17.C.6.1. 1:1ge >> 0 Tc -1.404 -1.824 Td [(1:17.C)-1.3 (.6.1.)]TJ EMC 48421y34 139.1749 Tm <0058>Tj EM20 Tc -1.

Petitions for Administrative Review

- ▶ Within five working days of receiving a petition, the Executive Director, or their designee, shall provide written notice of the petition to the other party. That party will have five working days from the date of the notice to submit a written statement to the Executive Director in support of, or challenging, the outcome. 1:17.C.6.3.
- ▶ Petitions for administrative review will be limited to a review of:
 - ▶ The written determination of the institution, which shall include the proposed determination of the hearing examiner;
 - ▶ The verbatim record of the hearing;
 - ▶ Supporting documents submitted as part of the hearing; and
 - ▶ Written statements and/or supporting documentation submitted by the respondent and/or complainant in accordance with the appeal process.

1:17.C.6.4.1-6.4.4.

Petitions for Administrative Review

- ▶ The Executive Director will issue a decision on the petition after receipt of the non-petitioning party's written statement or after the expiration of the time provided to submit such a statement.
 - ▶ The decision will be issued simultaneously to both parties.
- ▶ The Executive Director's review of the petition is limited to determining whether:
 - ▶ Any material decisions lack substantial support in the record; and
 - ▶ Any procedural errors materially impacting the integrity of the decision.
- ▶ The Executive Director may affirm or modify the decision of the institution, or return the decision to the institution for reconsideration, additional investigation, or a new hearing.

1:17.C.6.5.



Remedies

- ▶ Remedies should restore or preserve equal access to the institution's education program or activity. 1:17.C.5.4.5.
 - ▶ They must be provided to a complainant when a respondent has been found responsible for sexual harassment against the complainant.
 - ▶ A remedy to the complainant may take the same form as a sanction on the respondent.
 - ▶ A remedy may take the same form as a supportive measure, although remedies may be disciplinary or punitive in nature and may burden the respondent.
 - ▶ The Title IX Coordinator is responsible for implementing remedies.
 - ▶ Remedies should not be disclosed to the respondent unless the respondent is directly affected or disclosure to the respondent is necessary to carry out the remedy. p. 30425.

Title IX Overlap with Other Laws

- ▶ First, Fifth, Fourteenth Amendments to the U.S. Constitution: The new regulations emphasize that an institution's grievance process must not restrict any right protected by the First Amendment or

