



COLORADO LEAGUE *of*
CHARTER SCHOOLS



Title IX Coordinator Training
Session 5
September 23, 2021

Title IX Coordinator Course Outline

Session 1: Duties and Responsibilities of a Title IX Coordinator, Building a Title IX Program, and Developing Title IX Policies and Procedures

Session 2: Receiving and Responding to Complaints, Interim Measures, Strategies for Establishing Rapport During Intake Interviews

Session 3: Considerations for Specific Student Populations & Trauma-Informed Approaches

Session 4: Managing Informal Resolutions

Session 5: Managing Formal Resolutions, including Best Practices for Investigations

Session 6: Record Keeping and External Complaints to the Department of Education

Session 5 Handouts

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- Handout 1 – Sample Investigation Process Explanation
 - Handout 2 – Sample Complainant Notice of Investigation
 - Handout 3 – Sample Respondent Notice of Investigation
 - Handout 4 – Sample Witness Notice of Investigation
 - Handout 5 – Summary Statement Template
 - Handout 6 – Statement Form
 - Handout 7 – Investigation Checklist for Title IX Coordinators
 - Handout 8 – Sample Investigation Report

Formal Resolutions

Responsibilities of Title IX Coordinator during the Formal Process

Oversee the investigation process ensuring that both parties receive notice of the allegations, both parties have equal opportunities to present facts and evidence, and that the Investigator follows the time frames as listed in the new regulations.

Ensure that all involved parties (complainant and respondent) have advisors. This role can be filled by parents or guardians, lawyers, or other adults. A Title IX Coordinator cannot be the advisor.

Presume innocence. Confirm that the Investigator and Decision-Maker include this presumption as they conduct their work.

Dismiss allegations that do not meet the DOE's definition of sex harassment or do not occur within the school's education programs.

When does a school need to Investigate?

Parties wish to use formal process = investigation

Serious allegations

- Misconduct due to sex/gender
- Retaliation

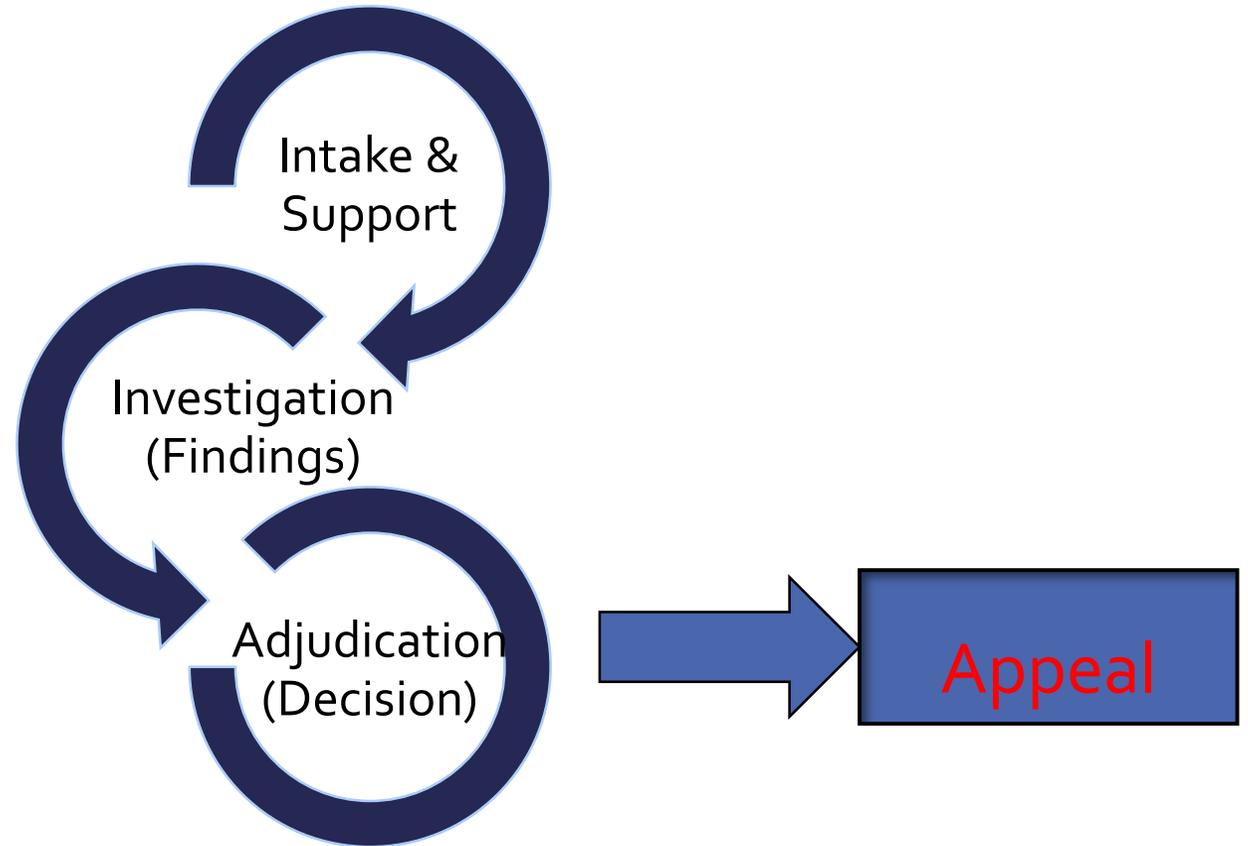
Serious consequences could arise

- Criminal violations
- Policy not respected
- Management challenges

Issues are widespread or pervasive

- Multiple community members are accused of misconduct
- Multiple instances of misconduct
- Patterns of misconduct

Formal Process



Formal Process & Investigation Timeline

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1. Intake **by Title IX Coordinator**
 2. Determination of whether an investigation is appropriate **by Title IX Coordinator** (see **Handout 1**)
 3. Supportive Measures implemented **by Title IX Coordinator**
 4. Notices of Investigation sent **by Title IX Coordinator**

Identify parties, policies allegedly violated, specific conduct constituting alleged violation and date/time/location of the alleged incident

Notices to complainant, respondent, and witnesses (see **Handouts 2-4**).

Formal Process & Investigation Timeline

5. Investigation conducted **by Investigator**

Outline specific allegations and related P&Ps

Identify and interview witnesses

Identify and retain documents or other relevant information (see **Handouts 5-6**)

Review documents and/or other relevant information

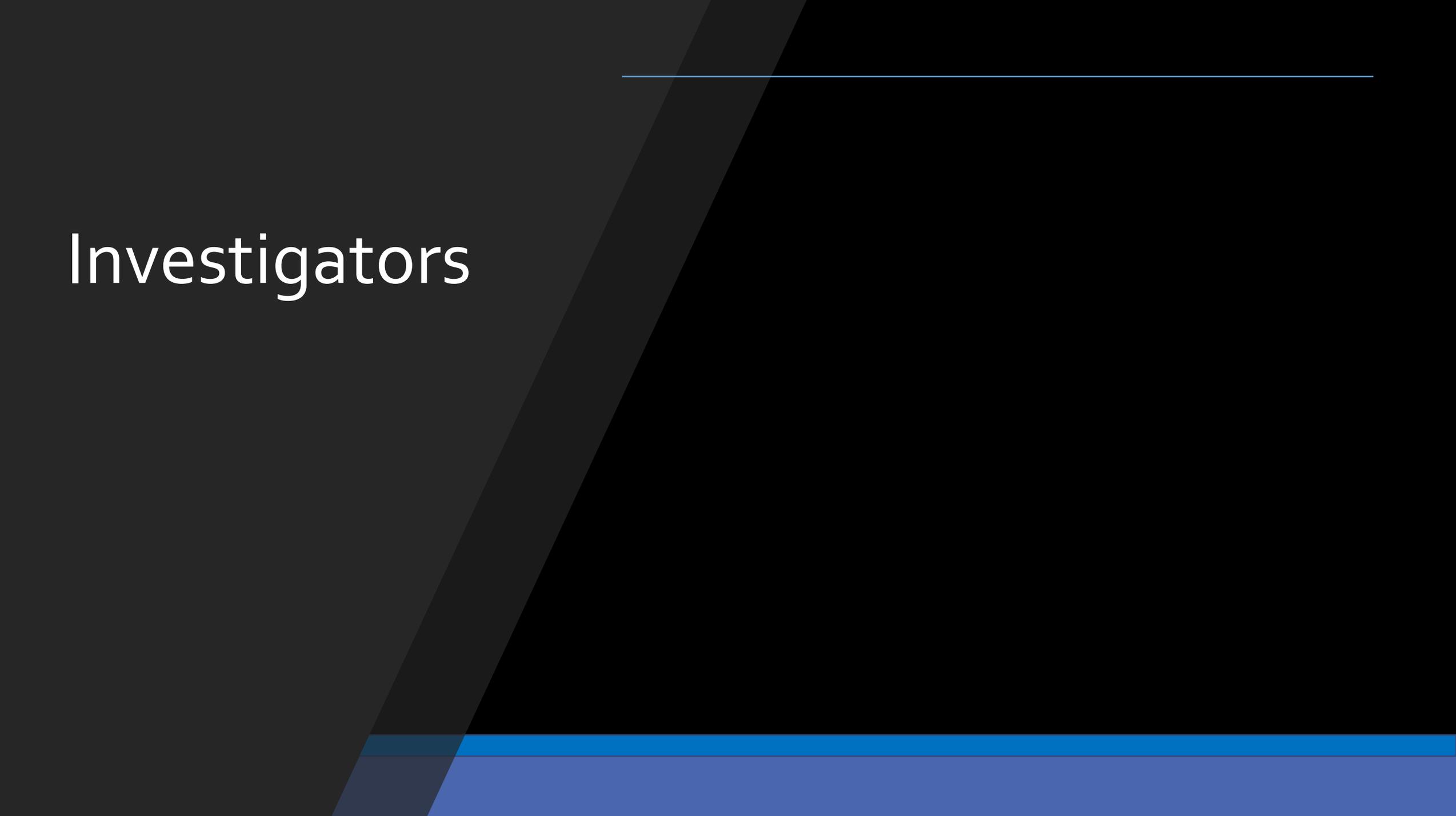
6. **Investigator** provides Respondent and Complainant with opportunity to respond to allegations and opportunity to identify witnesses and provide additional information

7. **Investigator** concludes all outstanding investigation issues.

Formal Process & Investigation Timeline

8. **Investigator** prepares report (see **Handout 8**)
9. **Title IX Coordinator** checks the report for sufficiency
10. **Title IX Coordinator** sends report to **Decision-maker**.
11. **Decision-maker** assesses the report and determines what, if any, action on the school is required (discipline, training, restorative justice measures, etc.)
12. The parties may pursue appeals under certain circumstances.

Investigators



Appropriate Investigation Resources

Internal Resources:

- Best practice: not the Title IX Coordinator, a principal, or person with disciplinary authority
- Trained and to the extent possible, experienced
- Someone with the emotional intelligence to investigate issues involving sexual misconduct

External Investigators:

- An attorney or other professional with experience in civil rights matters.
- Someone with experience in trauma-informed investigation techniques.

Title IX Coordinator & Investigator?

A Title IX Coordinator can be an investigator BUT:

- Recognize the difficulty in managing the Title IX process as well as conducting the investigation.
- Consider delegating other Title IX Coordinator duties, such as having another school staff member provide and implement supportive measures.
- Be mindful of concerns or perceptions of bias or lack of objectivity.

Choosing an Investigator

Fair, impartial and trained

Independent

Free of conflicts of interest

Able to discuss difficult topics with compassion

Effective listener

Good communication skills

Comfortable making credibility assessments

Ideally not involved in other aspects of the Title IX Process

Investigation



Responsibilities of Title IX Coordinator during the Investigation Process

Ensure both parties receive notice of the allegations and have equal opportunities to present evidence.

Oversee the Investigator and make sure they follow the time frames as listed in the new regulations.

Confirm that Complainant and Respondent have advisors. This role can be filled by parents or guardians, lawyers, or other adults. A Title IX Coordinator cannot be an advisor.



The Purpose Of An Investigation

To advise the decision-maker of the following:

- Does the totality of the evidence obtained during the investigation support a finding that it is more likely than not that the alleged conduct occurred?
- If so, was it a violation of the school's policy?

To allow the decision-maker to determine:

- What is the appropriate response/sanction?
- What is the appropriate remedy?

The Five Phases of an Investigation

1. Notification of Investigation
2. Information Gathering
3. Information Review
4. Analysis and Determination of Facts and Policy through a Written Report
5. Notification of Outcome

Phase One: Notification of Investigation

- The Title IX Coordinator sends formal written communication to both the Complainant and the Respondent. Includes information about:
 - the investigation process including the allegations
 - implicated sections of the school's Title IX policy
 - the name of the investigator
 - the rights the Complainant and Respondent have throughout the investigation process
 - a caution regarding retaliation
 - any other information that is pertinent to the investigation of the case
- The Title IX Coordinator notifies relevant witnesses.

Phase Two: Information Gathering

- The investigator gathers information related to the allegations.
- May include documents, electronic materials (e.g., texts, social media posts, emails, phone logs), video and audio recordings, and interviews with witnesses.
- During this phase of the process, the Complainant and Respondent are each provided an opportunity to:
 - interview with the investigator,
 - provide information to the investigator to review
 - identify other witnesses for the investigator to interview.

Phase Two: Information Gathering - Witness Interviews

- Interview Complainant and Respondent
- Interview other witnesses
- Repeat interviews are permitted and encouraged
- Ensure that they review evidence that doesn't support their account of events.

Phase Three: Information Review

- At the close of the information gathering phase, both the Complainant and the Respondent (and their advisors) must be provided an opportunity to review and respond to the information that the investigator has gathered.
- The regulations require that the parties have **10 calendar days** to review the materials.

Phase Four: Analysis and Determination of Facts and Policy through a Written Report

- The investigator reviews, weighs and analyzes the information using the “preponderance of the evidence” standard.
- This means the investigator reviews the information to determine whether it was more likely than not that the alleged conduct occurred.
- Most schools want the investigator to determine whether the facts show that there is a policy violation.

Phase Four: Analysis and Determination of Facts and Policy through a Written Report

- The investigator writes a formal investigation report that must contain:
 - the allegations that were investigated
 - the applicable policy against which the allegations were reviewed
 - the individuals contacted and interviewed
 - a list of the documents and materials gathered, reviewed and analyzed
 - a summary of information collected through materials and interviews

Phase Four: Analysis and Determination of Facts and Policy through a Written Report

General Report Format (see **Handout 8**)

- Introduction or Background
(identifies parties and specifies allegations)
- Jurisdiction and Procedural Background
(outlines ability of the school to address issue)
- Investigation Process Summary
- Summary of Evidence Collected and Reviewed
- Relevant Policies and Procedures
- Standard of Proof used in Analysis
- Factual Findings and Analysis
- Conclusion

** The report is based on the totality of the evidence.

Phase Four: Analysis and Determination of Facts and Policy through a Written Report

Best Practice: The written report should contain an analysis of the information gathered, the investigator's conclusions and determinations about what happened and whether the allegations have been substantiated.

Note: Some schools rely on the Decision-Maker to make this determination. This places more emphasis on the Decision-maker's role which open that person up to more scrutiny within the community and to the Department of Education. Consult with legal counsel to determine whether this is a good option for your school

Phase Five: Notification of Outcome

- After the investigator completes the written report, the Title IX Coordinator sends formal written communication to both the Complainant and the Respondent about the outcome of the investigation.
- The notice of outcome is accompanied by a redacted version of the investigation report.
- The parties have **10 calendar days** to review and respond to the report. Responses should be directed to the Decision-Maker.
- When appropriate, such as when the investigator determines that school policy has been violated, the notice of outcome letter will also include information regarding next steps in the Title IX process.

Adjudication

GOAL: Determine what if any sanctions and/or supports the school must implement.

- Decision-Makers:
 - Must be trained
 - Must be unbiased and free from conflicts of interest
 - Must be in position of authority/leadership
- Title IX Coordinators should not be decision-makers.
 - Can provide perspectives
 - Can speak to past practices or outcomes in informal processes

After the Report

- Report sent to Complainant, Respondent and Decision-Maker
- Complainant and Respondent have **10 calendar days** to submit written response o Decision-Maker
- Decision-maker will issue sanctions if appropriate
- Sanctions may include:
 - mandatory attendance at relevant training program
 - oral reprimand and warning
 - written reprimand and warning
 - student probation
 - Suspension, expulsion
 - Termination of employment

After the Report

Who may want access to the investigation report:

- Decision-Maker
- Complainant and/or Respondent
- Advisors for Complainant or Respondent
- Police
- State or federal agencies
- Media

After the Report

- Understand and appreciate the aftermath of Title IX investigations
 - Interactions with the parties, witnesses, and advisors may be awkward
 - How might it impact you on a personal level
 - What if you believe the Complainant's allegations but a preponderance of the evidence did not support a policy violation?
- Self care is important for Title IX Coordinators!

Appeals

Appeals should be allowed in limited circumstances

The Final Rule states that a school must offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint.

Appeals should be allowed in limited circumstances

In order to appeal, the appealing party has to allege:

- A **procedural irregularity** that affected the outcome of the matter.
- There is **newly discovered evidence** that could affect the outcome of the matter.
- Title IX personnel had a **conflict of interest or bias** that affected the outcome of the matter.

A school may offer an appeal equally to both parties on additional bases.

Helpful Links

The Title IX Law:

<https://www.justice.gov/crt/title-ix-education-amendments-1972>

Self Care Resources:

<https://www.activeminds.org/about-mental-health/self-care/>

<https://www.apa.org/topics/self-care>

<https://rockwoodleadership.org/21-self-care-resources-help-heal-survive/>

Next & Last Session September 30

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