

# Title IX Appeal Officer Training for K-12 Districts & COEs

2022 Title IX Training Academy Module 4

December 15, 2022

**Presented by:** 

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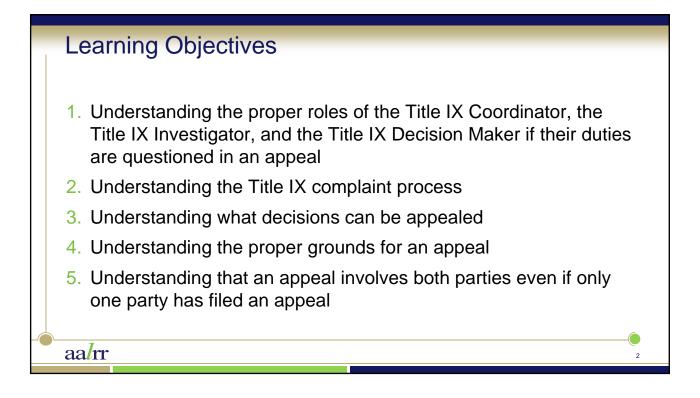
# Agenda

- Review Appeal Officer Role on Title IX Team
- Review Title IX Regulations: Scope and Definitions
- Appeal Procedures
- Reminders
- Hypothetical & Practical Application



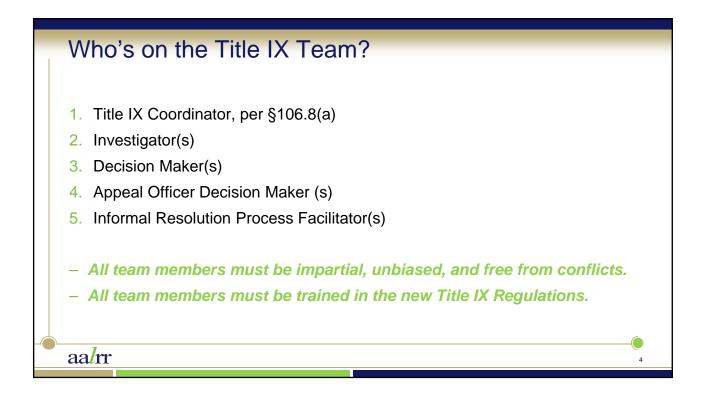
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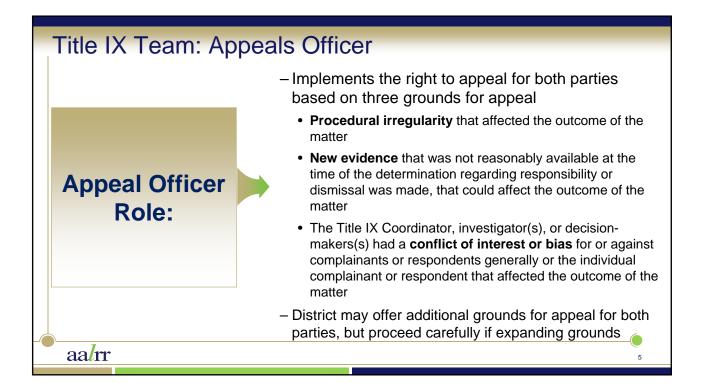




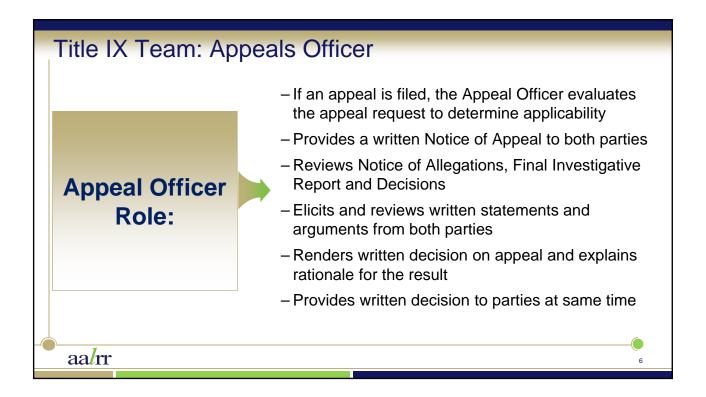


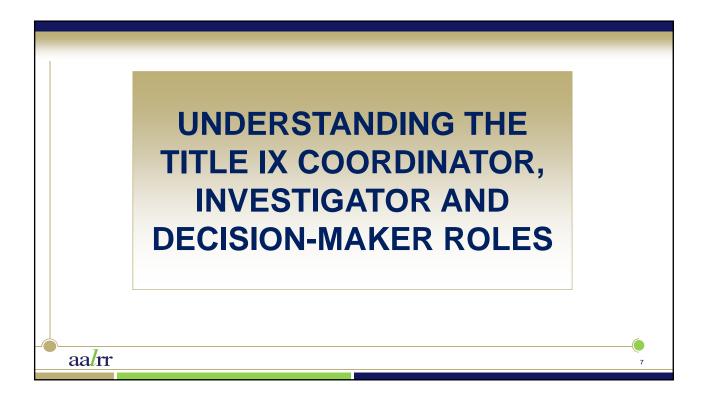






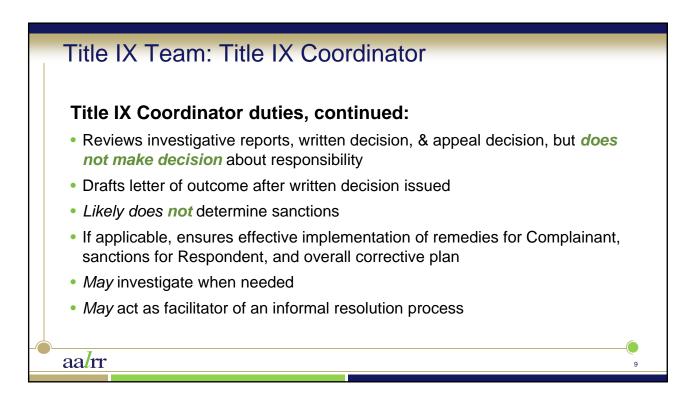






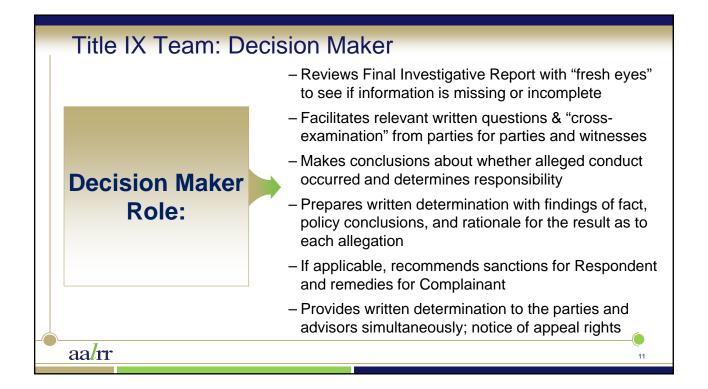




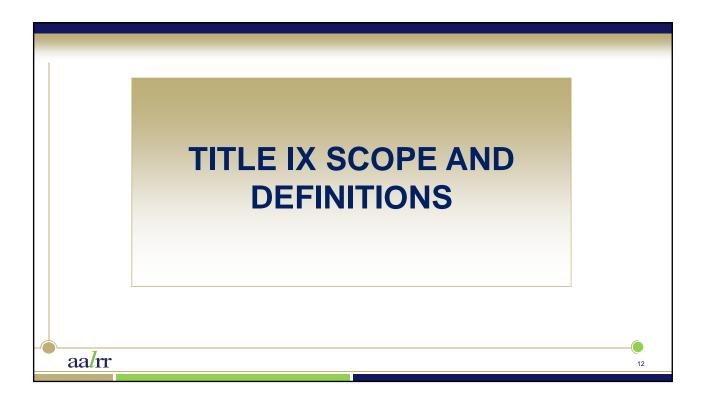


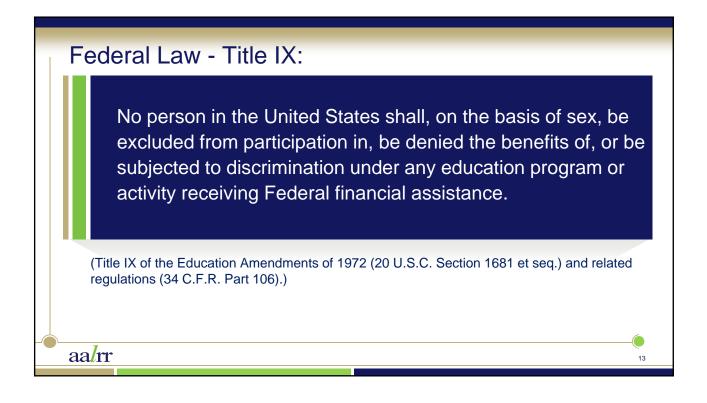




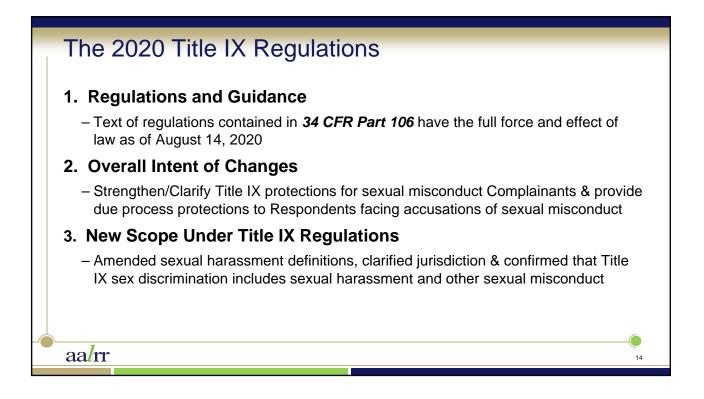


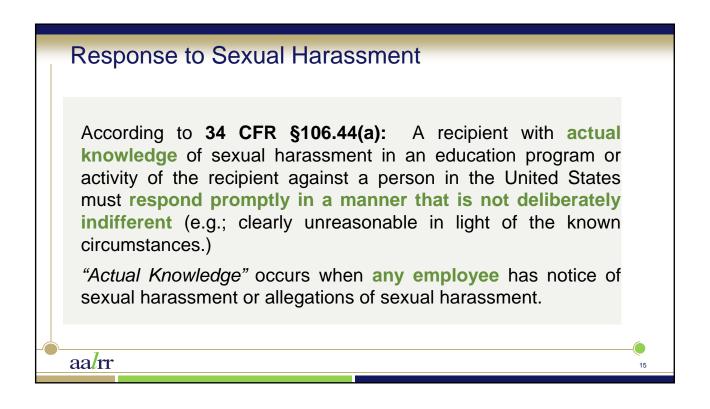




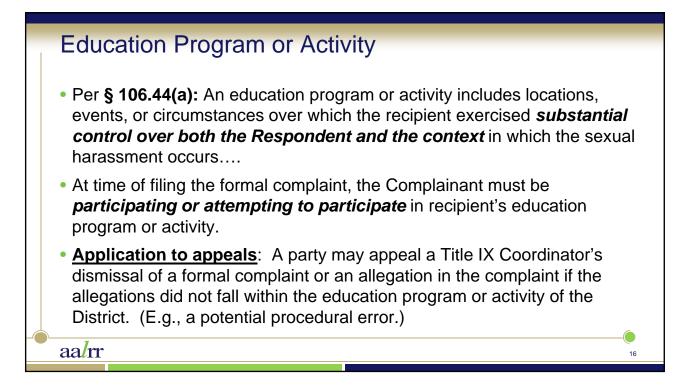


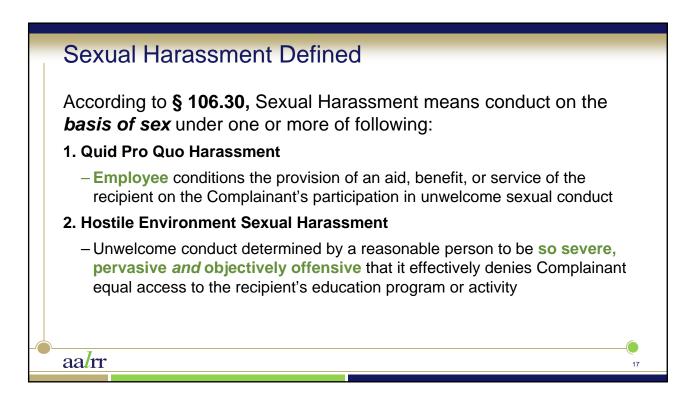




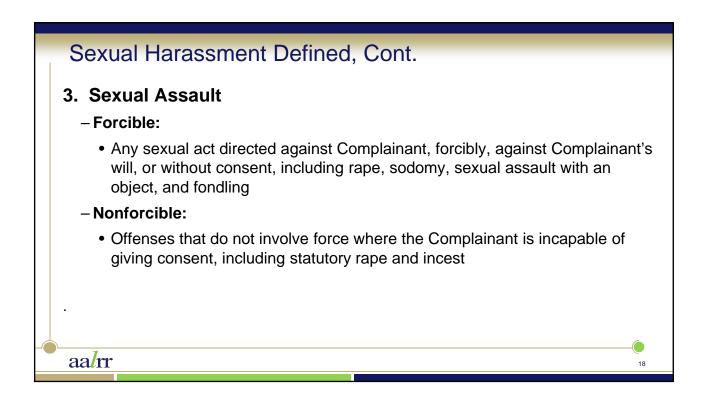


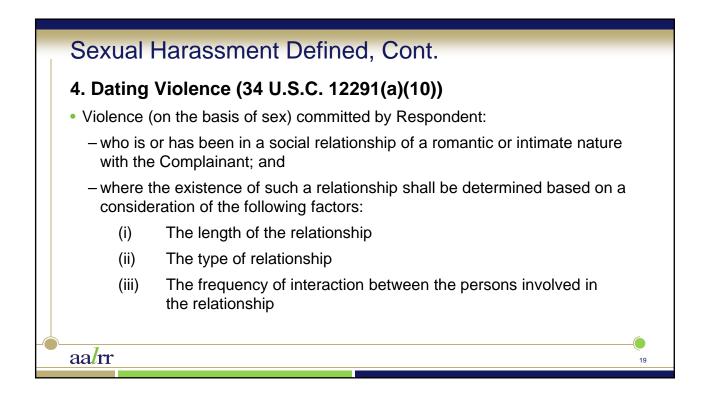




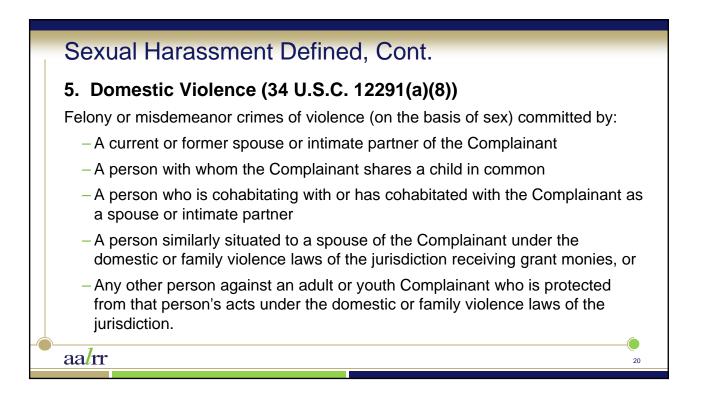












## Sexual Harassment Defined, Cont.

## 6. Stalking (34 U.S.C. 12291(a)(30))

The term "stalking" means engaging in a course of conduct (on the basis of sex) directed at Complainant that would cause a reasonable person to:

- Fear for their safety or the safety of others; or
- Suffer substantial emotional distress

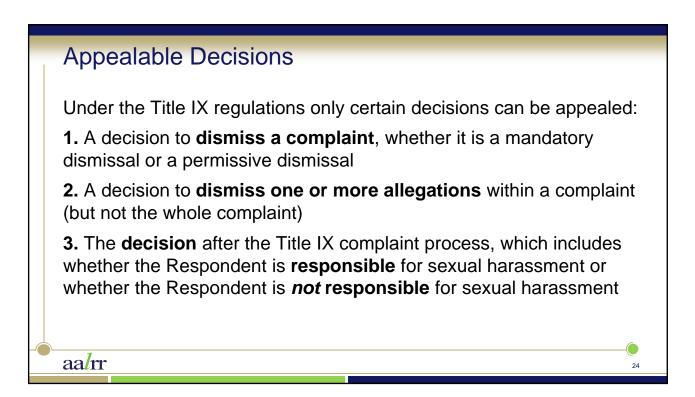
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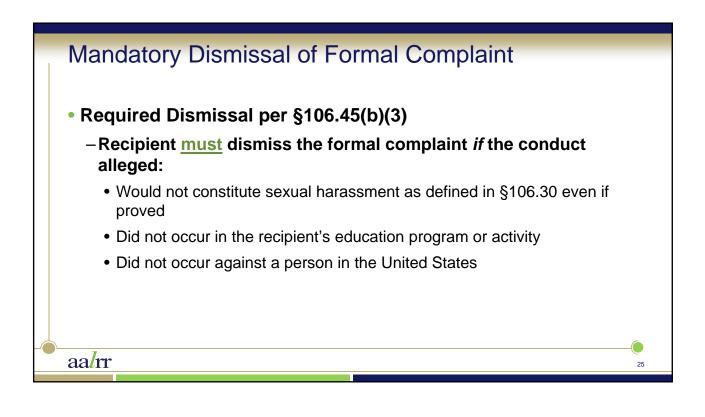




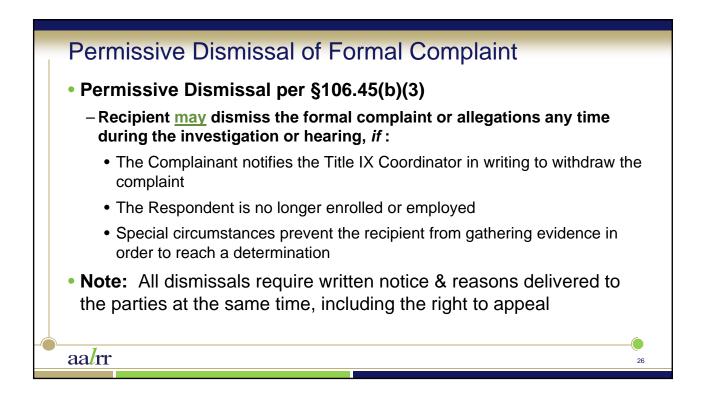












## **Grounds for Appeal**

1. Procedural irregularity that affected the outcome of the matter

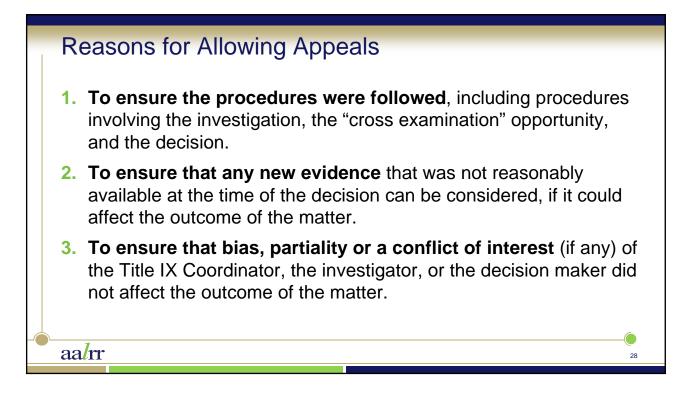
**2. New evidence** that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter

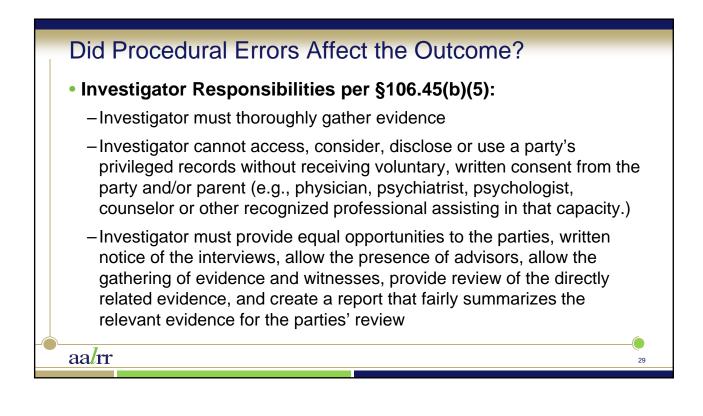
**3.** The Title IX Coordinator, investigator(s), or decision-makers(s) had a **conflict of interest or bias** for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter

**4.** A District may offer an appeal equally to both parties on additional bases, but proceed carefully when expanding appeal rights.

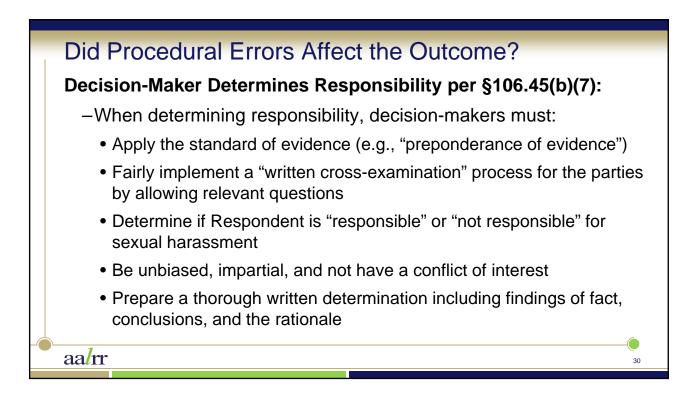
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## **Steps During Appeal**

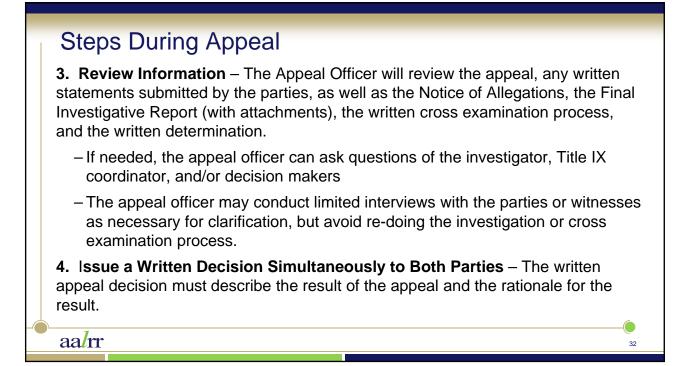
**1. Appeal Request Initiated** - Complainant and/or Respondent submit a written appeal to the Title IX Coordinator, who assigns an Appeal Officer

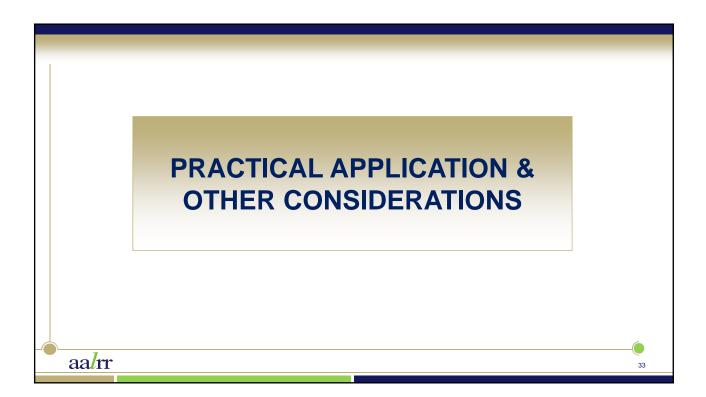
- The Appeal Officer cannot be the investigator, decision maker, and/or the Title IX Coordinator in the present matter; the Appeal Officer must be unbiased, impartial and free from a conflict of interest in the matter being appealed, and the Appeal Officer must be trained in the Title IX regulations.

**2. Notification** – the Appeal Officer will notify all parties in writing of the appeal and offer both parties the opportunity to submit a written statement in support of, or challenging, the outcome.

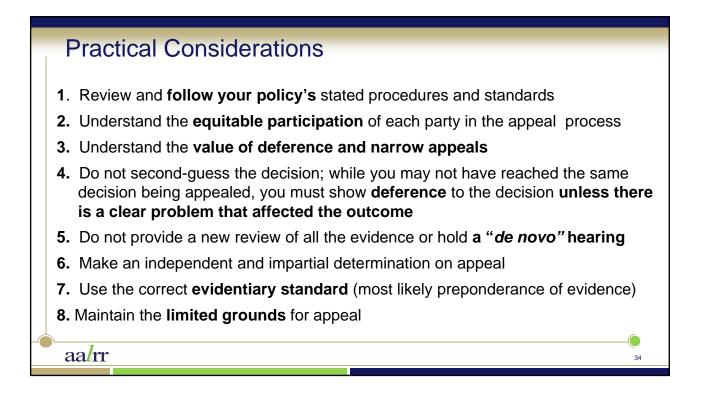
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## **Best Practices with Appeals**

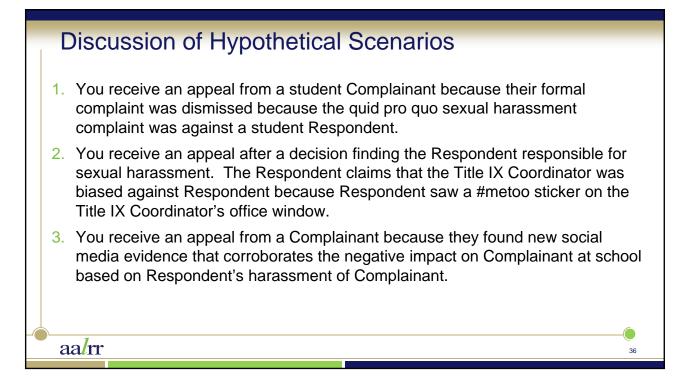
## Explain your rationale

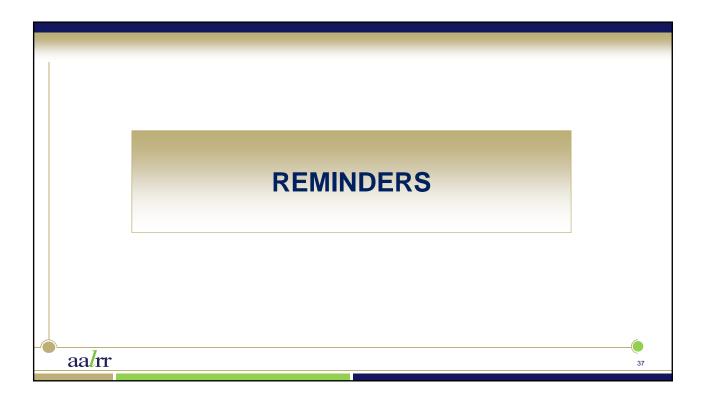
- Why are you rejecting or upholding an appeal?

### Remand as a Remedy

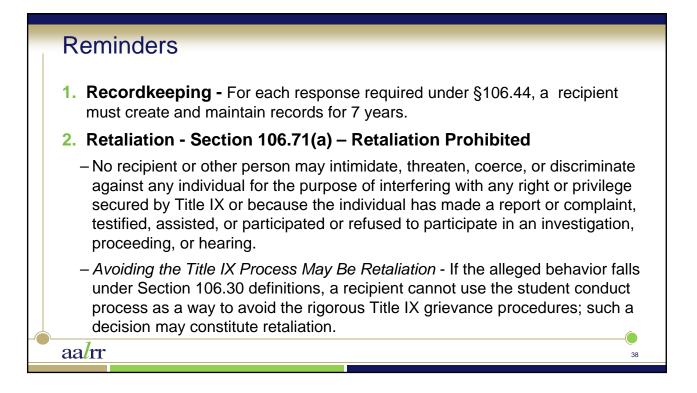
- If you agree with an issue on appeal, the most common remedy will be to remand the matter back to the appropriate level to be corrected
  - If the investigation is incomplete and additional relevant evidence may alter the outcome, consider sending it back for further investigation
  - If the decision did not apply the preponderance of the evidence standard or was unclear, consider sending it back for clarification











## **Reminders**, Continued

### 3. Confidentiality Required by Recipient

- Recipient must keep identity of Complainant, Respondent, and witness(es) confidential unless required by law "or as necessary to carry out Title IX proceeding"
- Regulations imply that the improper release of this confidential information could be retaliation

#### 4. First Amendment Rights

 Parties exercising their 1<sup>st</sup> Amendment rights does not constitute retaliation under Section 106.71(a)

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41

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## Georgelle C. Cuevas

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I feel privileged to have the opportunity to assist people with their problems.

Georgelle Cuevas regularly assists school districts, county offices of education, and community colleges in navigating the requirements of the Education Code, Public Records Act, the Brown Act, and conflict of interest laws. Ms. Cuevas is experienced in counseling and representing public and private sector employers in all aspects of labor and employment law, including discrimination/harassment, wrongful termination, disability, reasonable accommodation, wage and hour requirements, leave requirements, discipline and dismissal. She has significant experience conducting thorough and effective investigations concerning workplace issues and student complaints.

In addition to being a licensed attorney, Ms. Cuevas is also a certified Senior Professional in Human Resources (SPHR). Ms. Cuevas gained experience in employment law, retirement, education and civil rights at previous firms. Her prior experience also includes internships with the Equal Employment Opportunity Commission and the National Labor Relations Board.

During law school, Ms. Cuevas served as the Vice-President of External Affairs for the Moot Court Honors Society. In addition, she won a CALI award for receiving the highest grade in her Immigration Law class.

#### OFFICE

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#### **EDUCATION**

LL.M, University of California, Berkeley School of Law J.D., University of Akron School of Law M.S.M., University of Akron, College of Business Administration B.F.A., Kent State University

#### **ADMISSIONS**

2012, California 2012, Florida U.S. Court of Appeals, Ninth Circuit U.S. District Courts, Eastern and Northern Districts of California

#### **PRACTICE AREAS**

Collective Bargaining & Labor Relations COVID-19 Discrimination & Harassment Education Employee Performance & Evaluation Investigations Labor & Employment Law Student Discipline



# Georgelle C. Cuevas

#### **Events & Speaking Engagements**

Ms. Cuevas conducts engaging and interactive workshops and training seminars on such topics as collective bargaining, Title IX Grievance Process, preventing sexual harassment, the FRISK<sup>®</sup> Employee Documentation Model, employee leaves and accommodations, and maintaining public and student records. Some of the many sessions she has led include:

#### **Publications**

Ms. Cuevas is a contributor to the firm's education publications and blog.

#### **Community & Professional**

Ms. Cuevas volunteered as an attorney coach of the Amador Valley High School Mock Trial Team for the 2018-2019 competition season. She previously served as an attorney scorer for Contra Costa County's moot court and mock trial programs for high school students from 2012-2015.