

2020 TITLE IX TRAINING DEVELOPED EXCLUSIVELY FOR TENNESSEE PUBLIC UNIVERSITIES

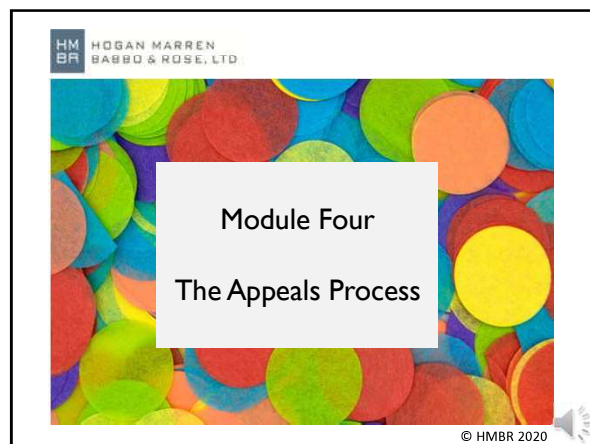


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Title IX Sexual Harassment Training August 2020

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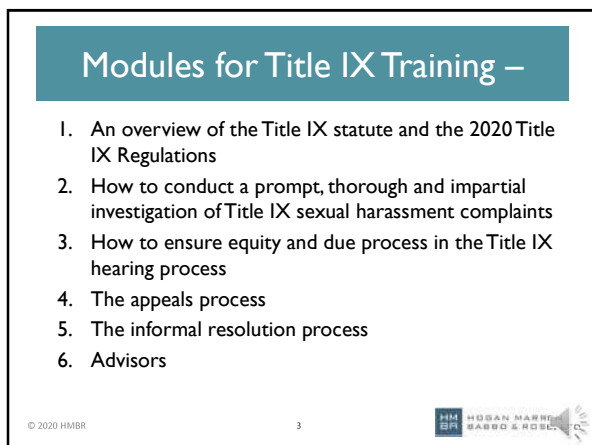
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Module Four
The Appeals Process

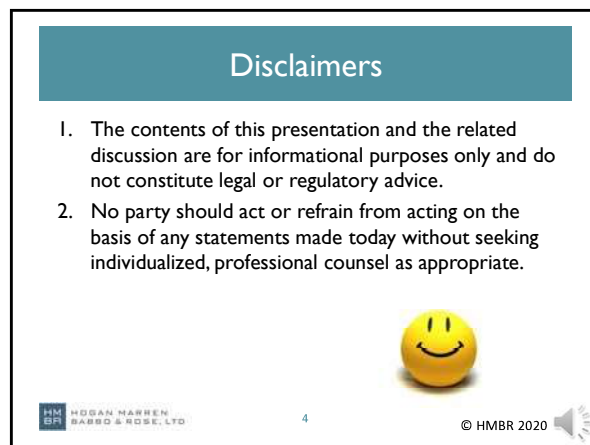
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Modules for Title IX Training –


1. An overview of the Title IX statute and the 2020 Title IX Regulations
2. How to conduct a prompt, thorough and impartial investigation of Title IX sexual harassment complaints
3. How to ensure equity and due process in the Title IX hearing process
4. The appeals process
5. The informal resolution process
6. Advisors

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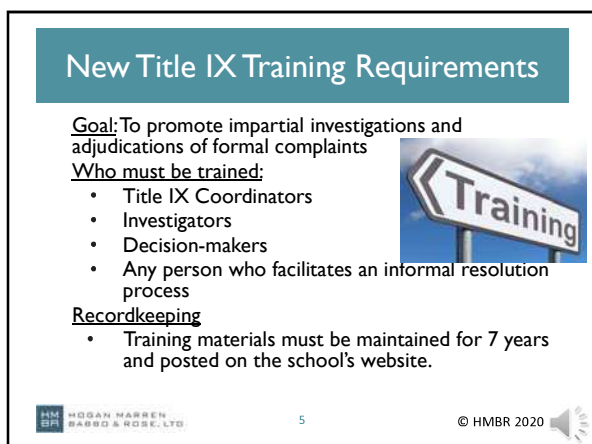


Disclaimers

1. The contents of this presentation and the related discussion are for informational purposes only and do not constitute legal or regulatory advice.
2. No party should act or refrain from acting on the basis of any statements made today without seeking individualized, professional counsel as appropriate.



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New Title IX Training Requirements

Goal: To promote impartial investigations and adjudications of formal complaints

Who must be trained:

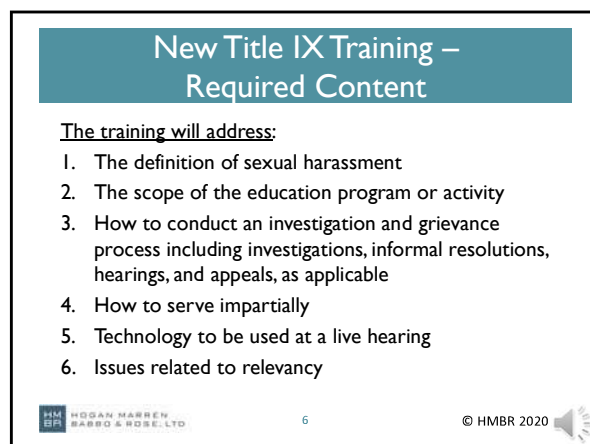
- Title IX Coordinators
- Investigators
- Decision-makers
- Any person who facilitates an informal resolution process



Recordkeeping

- Training materials must be maintained for 7 years and posted on the school's website.

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New Title IX Training – Required Content

The training will address:

1. The definition of sexual harassment
2. The scope of the education program or activity
3. How to conduct an investigation and grievance process including investigations, informal resolutions, hearings, and appeals, as applicable
4. How to serve impartially
5. Technology to be used at a live hearing
6. Issues related to relevancy


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Agenda The Appeals Process

This module will address the following topics:


- The applicable Title IX requirements
- Permissible grounds for appeal
- Appeal procedures
- Available remedies




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What is the Appeals Process?




- The final step in the Title IX investigation and resolution process
- Allows either party to challenge a dismissal decision or the written determination regarding responsibility and/or sanctions (if applicable)




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What is the Appeals Process?



- The final step in the Title IX investigation and resolution process
- Complainant Allows either party to challenge the Hearing Officer's or Hearing Panel's written determination regarding responsibility and/or sanctions (if applicable)





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Individuals Involved in the Appeal Process

- The Complainant
- The Respondent
- The Appeal Decision-maker






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Qualifications of the Appeal Decision-maker

- Must receive mandated Title IX training
- May not be the same person as the Hearing Officer, the Investigator(s), or the Title IX Coordinator
- Must be impartial and unbiased
- Must be free from conflicts of interest


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Title IX -- Appeal Requirements

- The appeal option is a *mandatory* part of the grievance process
- Available to either party
- Three specific permissible bases for appeal
- Information about the appeal process must be included in the written grievance procedures

APPEALS




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Title IX – Appeal Requirements (cont.)

- Information must also be included in the dismissal letter and/or the written determination letter issued to both parties
- The timeframe for appeal process must be specifically designated in the grievance procedures



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Title IX – Appeal Requirements (cont.)




- Information about the appeal process must be included in the written grievance procedures and the written determination letter issued to both parties
- Parties are provided written notice of the appeal and an equal opportunity to submit statements to the Appeal Decision-maker
- Appeal Decision-maker reviews information and issues Appeal Decision

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Appeals

Either the Respondent and/or the Complainant may appeal:




- The dismissal of a formal complaint or any allegations
- A determination regarding responsibility and sanctions, if applicable

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Appeals

Appeals may be filed based on the following:

- Procedural irregularity
- New evidence
- Bias or conflict of interest



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Example -- Appeal of a Dismissal


A complainant appeals a dismissal by asserting that:

- newly discovered evidence demonstrates that the misconduct in fact does meet the definition of sexual harassment under the Title IX regulations, or
- there was procedural irregularity because the alleged conduct in fact does meet the definition of sexual harassment and thus mandatory dismissal was inappropriate

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After an appeal is filed by one party . . .

- The other party is notified in writing that an appeal has been filed
- The institution must give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome



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Information to be Considered



The Appeal-decision maker will consider:


- The written determination issued by the Hearing Officer or the Hearing Panel
- The written request for an appeal
- The written responses submitted by each of the parties to support their positions

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Appeals

Appeals may be filed based on the following:


1. Procedural irregularity
2. New evidence
3. Bias or conflict of interest
4. Optional: Another basis selected by the institution and equally available to both parties



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Appeals – Procedural Irregularity

1. Procedural irregularity - examples:
 - Institution's failure to evaluate all relevant evidence
 - Erroneous relevancy determinations by hearing officer
2. Must affect the outcome of the matter



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Appeals – New Evidence




1. The “new” evidence was not reasonably available at the time of the determination, and
2. Must affect the outcome of the matter

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Appeals – Bias or Conflict of Interest


1. The Title IX Coordinator, investigator, or Hearing Officer (or member of a hearing panel) had a conflict of interest or bias:
 - For or against the individual Complainant
 - For or against the individual Respondent
 - For or against Complainants or Respondents generally
2. The conflict of interest or bias affected the outcome of the matter.



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Written Appeal Decision

- Appeal Decision-maker issues a written decision describing the result of the appeal and the rationale for the result
- Provides the written decision simultaneously to both parties
- The appeal decision is final






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Possible Appeal Outcomes

- Dismiss the appeal
- Change the determination of responsibility
- Change the sanctions decision
- Send case back to hearing officer/hearing panel to reconsider determination of responsibility and/or sanctions
- Send the case back to Title IX office for new investigation because of bias in the previous investigation




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Presenter's Contact Information



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- Title IX Compliance Services
 - External Investigator
 - Hearing Officer
 - Appeal Decision-maker
 - Policies and procedures review
 - Compliance assessments and recommendations
 - Training
 - General Title IX advice and consultation
 - <https://www.hmb.com/news-insight/title-ix-compliance/>
- OCR senior manager in Headquarters and OCR Chicago (for 25 years)

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