



**K-12 Title IX Training Series:
Level 3 Report Writing Practicum for Investigators,
Decision Makers, and Appeal Officers**



Bricker & Eckler
ATTORNEYS AT LAW

Disclaimers

- We are not giving you legal advice
- Consult with your legal counsel regarding how best to address a specific situation
- Yes, we will send you a copy of the slides
- We will have a few breakout rooms for discussion
- Please put any other questions in the chat and we'll answer as time permits

Posting These Training Materials?

- Yes!
- The Title IX Coordinator (TIXC) is required by 106.45(b)(10)(i)(D) to post materials to train Title IX personnel on their district's website
- We know this and will make these slides available to your district to electronically post

Additional information
available at:

Title IX Resource Center

www.bricker.com/titleix

Find us on **Twitter** at
@BrickerEdLaw



Agenda – Report/Determination Elements We’re Practicing Today

- Allegations
 - Procedural steps
 - Summary of the evidence
 - Findings of fact
- Application of policy to the facts
 - Statement of, rationale for, and result as to each allegation

Organizing an Issue – “Show Your Work”

- **IRAC or CRAC**

- Issue/Conclusion
- Rule
- Application
- Conclusion

- **Rule** – your policy provisions
- **Application** – explanation of whether the findings of fact amount to a policy violation
- **Conclusion** – the result of your analysis for each allegation

IRAC In Practice

- **Issue** – “Would the alleged conduct, if true, constitute [relevant policy element] under the Title IX Policy?”
- **Rule** – [insert policy definitions relevant to the alleged conduct]
- **Application** – [explain whether the information above means that Complainant has alleged conduct that meets your policy definitions]
- **Conclusion** – “For these reasons, the conduct reported by Complainant [does/does not] meet the definition of [relevant policy element] under the Title IX Policy.”

When would a Title IX Report Writer use IRAC?

- Investigation reports
 - But remember – no conclusions as to the allegations
- Written determination
- Appeal decisions
- Informal Resolution documentation
 - E.g., rationale for terminating an Informal Resolution

Applying IRAC – Example #1

Complainant reported that Respondent touched her inappropriately at the Homecoming Dance.

Applying IRAC – Example #2

Complainant reported that Respondent used inappropriate language toward or about her since the Homecoming Dance, including calling her a “slut” and a “whore,” on social media, via text message, and in conversations with friends.



Our Scenario

Poll #1 – What should Mr. Rooney have done after talking to Corey?

- A. Interviewed Robert and issued discipline if warranted
- B. Interviewed Robert, issued discipline if warranted, **AND** reported it to the Title IX Coordinator
- C. Stopped and called the Title IX Coordinator before anything else happened



Back to our Scenario

Poll #2 – What type(s) of sexual harassment (if any) are implicated?

- A. Quid pro quo
- B. Severe, pervasive, and objectively offensive unwelcome conduct
- C. Sexual assault, dating violence, domestic violence, or stalking
- D. None of the above



Back to our Scenario (2)

“Storytelling” – Best Practices for Investigators and Decision-Makers

- Each case includes at least **TWO** stories (maybe more)
- Be clear as to the **source** of the information
 - **Compare:** “Bob stated this happened” **vs.** “This happened”
- Set the **scene**
- Make sure it’s **readable** – could someone unfamiliar with the incident pick up the decision and understand what happened?
- Separate undisputed and undisputed facts

Structural Considerations – Different Ways to Tell Stories

- Template
 - Typical practice for your district
 - Required components
- Common structural tools
 - Chronology
 - Subject matter
 - IRAC or CRAC

Breakout Room #1

Based on the Investigator's interviews with the Complainant and Respondent, discuss:

- What we know (i.e., undisputed facts)
- What we don't know

Incorporating Screenshots and Other Documentary Evidence into the Report

👤 robert j

ME

hey

are u getting my texts

u better not be ignoring me!

oh so u come wit me to the dance an t
hen just ignore me huh

ur being such a whore

bitch u think a guy just byes a girl dinn
er for no reason

u owe me!!

u can make up for it by hookin up wit
me after sch

cmon my parents will be gone

itll be fun!!

anser me u slut!!

Sprint LTE 12:03 PM 88%

< Messages bella s Details

omg im in the caf rn and i
heard robert talkin about
you

ugh what is he even
saying

that your easy and he
cant wait to get with you

ew gross why won't he
just leave me alone??



Back to our Scenario (3)

Breakout Room #2

- What do the screenshots tell us about what the Investigator should do?
- What do these screenshots tell us about potential witnesses?
- What did we learn from the witness (Walker)?
 - How would you judge his credibility?
 - Is his story consistent with the evidence we gathered?
 - Does he have a reason to lie?
 - Is his story believable? Why or why not?

Inspection and Review of Evidence



Parties must have an **equal opportunity** to inspect and review the evidence

Poll #3 – Who, in *your* district, is responsible for facilitating the inspection of evidence?

- A. Investigator
- B. Title IX Coordinator
- C. Someone else
- D. Don't know

Questions of the Parties

- Decision Maker must allow the parties to ask relevant questions of the parties and the witnesses
 - Includes relevant follow-up questions
- Decision Maker decides whether a question is relevant
- If a question is not relevant, the Decision Maker must:
 - Explain the determination to the proposing party
 - Exclude the question

Poll #4 – Which, if any, of Robert’s questions would you exclude as irrelevant?

- A. Have you ever seen me sexually harass anyone else?
- B. Prior to the Homecoming Dance, in the three years we’ve known each other, have I ever done anything to sexually harass you?
- C. Have you ever accused anyone else of sexual harassment?
- D. Did you tell Macy during cheerleading practice that you hoped I would bring “protection” for the after-dance party?
- E. None of the above

Dissemination of Reports and Decisions

- Three additional areas where “the recipient” (i.e., the district) must share, provide, or disseminate something:
 - Investigative Report
 - Written Determination
 - Notice of Right to Appeal
- If not otherwise specified by your policy, this would fall to the Title IX Coordinator

Appeals

- Title IX Coordinator must offer the parties an **equal opportunity** to appeal:
 - Determination regarding responsibility
 - Dismissal of a formal complaint (or any allegation therein)
- Title IX Coordinator must provide **written notice** to other party if appeal filed
- Appeal decision-maker **cannot** be previous decision-maker, Title IX Coordinator, or investigator
- Title IX Coordinator must provide Appeal Determination to the parties **simultaneously**

Breakout Room #3

Given the evidence submitted with regard to Robert's appeal, what should the Appeal Decision Maker do?

Title IX Report Writing: Decision Checklist



- 1. Allegations
- 2. Procedural steps
- 3. Summary of the evidence
- 4. Findings of fact

Decision Checklist

Bricker's Title IX Toolkit

Available for download: k12tixtoolkit.bricker.com

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Bricker's Title IX for K-12 Training Series

Level 1

- General training for all K-12 staff

Level 2

- Title IX Coordinator/Administrator
- Investigator
- Report Writing for investigators and decision-makers
- Decision-Maker and Appeals Officer
- Informal Resolution Facilitator

Now Added: **Level 3** advanced training for your K-12 Title IX Team!

- Title IX Coordinator
- Investigator
- Report Writing
- Informal Resolution Facilitator

View dates and register at www.bricker.com/titleix



Questions?

Thank you for attending!

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Title IX Report Writing: Decision Checklist



- 1. Allegations
- 2. Procedural steps
- 3. Summary of the evidence
- 4. Findings of fact
 - Credibility determinations
 - Resolution of disputed facts
- 5. Application of policy to the facts
- 6. Statement of, rationale for, and result as to each allegation:
 - Determination as to whether the Title IX Policy was violated
 - Any disciplinary sanctions
 - Statement as to whether remedies designed to restore and/or preserve access to the district's education program or activity will be provided