

# Title IX Grievance Procedures: An Introductory Manual

U.S. Department of Education  
Office for Civil Rights

Originally written by Martha Matthews and Shirley McCune, Resource Center on Sex Roles in Education, National Foundation for the Improvement of Education, Washington, D.C.; 2nd edition, revised by the Office for Civil Rights, U.S. Department of Education, 1987.

One of the unique aspects of the Title IX regulation is its delineation of procedures which education agencies and institutions receiving Federal funds are required to implement in order to ensure and monitor compliance with Title IX requirements for nondiscrimination. Two of these required procedures—one for the designation of an employee responsible for the coordination of agency or institutional efforts to comply with Title IX, the other for the adoption and publication of an internal grievance procedure for the resolution of complaints<sup>1</sup> under Title IX—place responsibility on the agency or institution for the establishment and maintenance of a mechanism whereby students and employees may seek an end to and redress from illegal sex discrimination and whereby the agency or institution may continually be apprised of and evaluate possible discriminatory policies and practices and develop its own strategies or programs for the correction of discrimination.

These two provisions of the Title IX regulation read as follows:

*§ 106.8 Designation of responsible employee and adoption of grievance procedures.*

*(a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this . . . [regulation], including any investigation of any complaint communicated to such recipient alleging any actions which would be prohibited by this . . . [regulation]. The recipient shall notify all its students and employees of the name, office, address and telephone number of the employee or the employees appointed pursuant to this paragraph.*

*(b) Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this . . . [regulation].*

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<sup>1</sup>The terms "complaint" and "grievance" are used apparently interchangeably within § 106.8 of the regulation to implement Title IX. This manual shall follow the regulation in this interchangeable usage: an allegation of noncompliance with Title IX made within the structure of an internal procedure shall be referred to as either a "complaint" or a "grievance." An allegation of noncompliance which is filed with the Office for Civil Rights, shall be referred to as a "Federal complaint."

All recipient agencies and institutions were required to comply with these requirements by July 21, 1976.

With its issuance of the regulation to implement Title IX, the Department of Health, Education, and Welfare indicated that the primary intent of these two provisions was to "facilitate compliance and prompt correction of complaints without resort to Federal involvement." The existence of an agency or institutional grievance procedure does not affect the right of an individual or group to file a Federal complaint regarding possible Title IX violations with the Office for Civil Rights, ED, without utilizing the internal procedure of the agency or institution, simultaneously with the filing of an internal grievance, or after the unsatisfactory resolution of a grievance under the agency/institutional procedure. A usable and effective agency or institutional procedure can, however, minimize the complainant's need for recourse to the Federal process, and offer both the complainant and the agency or institution the prospect of an expeditious resolution of issues and the development of compliance activities which are best suited to the particular situation involved.

In order to facilitate the implementation of a grievance procedure which can most effectively meet the needs of an individual education agency or institution and its students and employees, the Title IX regulation does not specify a structure for the grievance procedure. It requires only that the procedure provide for the "prompt and equitable resolution of student and employee complaints."

## Evaluating or developing a Title IX grievance procedure: how to use this manual

For education agencies and institutions with existing grievance procedures, procedures which have often been refined during years of use, the timely adoption of effective procedures may have presented little difficulty. For others, with little or no experience in grievance administration, this task may have been more difficult, resulting in a grievance procedure of uncertain effectiveness. It is to these agencies and institutions that this manual is primarily directed.

The purpose of *Title IX Grievance Procedures: An Introductory Manual* is to suggest a structure within which education agencies and institutions may systematically review and evaluate their Title IX grievance procedures, and modify these procedures or develop new ones according to their needs.

### The "open door" policy:

The most informal method is the "open door," whereby employees or students are encouraged to discuss their concerns or dissatisfactions with a responsible administrative officer, who may range from the administrator most immediately involved (e.g., the principal of a school, the chairperson of a department within a postsecondary institution, or the supervisor of an office or employee unit) to the chief administrative officer of the agency or institution (e.g., the superintendent of schools, or the president of a college or university). This procedure is most frequently and effectively used in small agencies or institutions with relatively uncomplicated administrative structures and histories of openness and good faith on the parts of all parties involved. The disadvantage of this method is that a complainant may often find himself or herself complaining to the very person responsible for the complaint, and with little or no access to a hearing before a neutral party.

### The ombudsman [sic]:

Another relatively informal method which has been used for the reconciliation of complaints is the assignment of a student or employee ombudsman to assist in fact-finding and mediation. The ombudsman is usually employed by an agency or institution but he or she maintains a neutral and flexible role, serving as investigator or mediator as a situation warrants, rather than as a consistent advocate for either the employing agency/institution or the complainant. This model is likely to be the most successful when a complaint involves fact-finding regarding a violation of explicit policy or when the issue is one which encourages concession on both sides. Its effectiveness may be limited by the fact that although the ombudsman may recommend appropriate resolutions for complaints, he or she is often without any authority to implement or enforce these recommendations. Further, the maintenance of neutrality while on the payroll of the agency or institution complained against may be a difficult task for the ombudsman.

### The faculty grievance committee:

The faculty grievance committee has frequently been employed in institutions of post-secondary education to resolve complaints or disputes regarding faculty employment or treatment. Members of the faculty grievance committee are usually elected by their fellow faculty members; under this procedure, it is assumed that faculty themselves are best qualified to evaluate the grievances of their peers. The faculty grievance committee model of grievance handling usually involves the following steps:<sup>2</sup>

<sup>2</sup>Margaret L. Rumbarger, "Internal Remedies for Sex Discrimination in Colleges and Universities." In: *Academic Women on the Move*. Alice S. Rossi and Ann Calerwood, Eds. New York, Russell Sage Foundation, 1973, 425-438.

- the use of informal procedures by the grievant for the resolution of the dispute through normal administrative channels, with the absence of a prompt response as a signal to proceed to the next step;
- the discussion of the grievance with an advisor from the faculty grievance committee, who may attempt to mediate or to resolve the grievance through informal means, or may advise the grievant regarding the rest of the grievance procedure;
- the referral of the grievance to a preliminary hearing committee appointed from within the faculty grievance committee, who may: recommend that the grievance does not merit further action; resolve the grievance by negotiation; or determine that the grievance is justified and recommend specific remedial measures, which may include a formal hearing;
- the presentation of the complaint in a formal hearing, before a hearing panel selected from within the faculty grievance committee. The panel does not negotiate; it conducts a formal hearing (in which all parties have the right to representation by counsel, the right to obtain and present witnesses and evidence and the right to question opposing witnesses) and concludes with findings and recommendations. These recommendations are rejected by the institution's administration or board of trustees only for compelling reasons stated in detail.

If, after either the second or third step, the complainant considers the resolution unsatisfactory, he or she may appeal to the president of the institution.

The value of this model is greatest in those institutions where faculty share substantial responsibility for personnel policies and decisions regarding faculty employment. This model does not provide a mechanism for the resolution of complaints from nonacademic employees. Its usefulness in the resolution of sex discrimination complaints has been questioned by some, who cite the frequent numerical dominance of males on the grievance committee as an impediment to the fair processing of such complaints.

### The negotiated grievance procedures (collective bargaining model):

The most formal and prescribed procedure is usually found in those education agencies and institutions which are covered by formal agreements with labor organizations. In this instance, the employer and the labor organization have negotiated a contract which prescribes policies and methods for the handling of complaints related to areas covered by the contract or agreement. The grievance procedure provides an orderly mechanism for ensuring adherence to the terms of the contract. The procedure usually consists of

a step-by-step process for settlement of the grievance, beginning with informal discussions between employee and supervisor and moving to the consideration of the grievance in formal hearings at progressively higher levels of institutional or agency administration. If agreement cannot be obtained between the parties after deliberations between the grievant and the employer, the grievance process generally provides for the involvement of an outside party (an arbitrator) for the settlement of differences. In many agencies and institutions, the recommendations of the outside arbitrator are binding upon both the grievant and the employer.

This form of grievance handling is usually used in larger decentralized institutions or agencies when faculty and employees are organized in and represented by a labor organization.

Each of these models may be adapted for the processing of grievances relating to Title IX. In adapting or implementing any model, however, it should be remembered that a Title IX grievance procedure differs from procedures which have been used in the past in that the standards which must be applied in resolving grievances are those outlined in the Title IX regulation. In most existing procedures, the standards to be applied are those mandated by agency or institutional policy, established by grievance precedent, or delineated in the terms of a negotiated agreement. Under such procedures, negotiation and compromise may be sought by both parties to a grievance. In Title IX grievance procedures, the purpose must be the identification of noncompliance in agency or institutional policy or practice and the determination of corrective and remedial actions in accordance with regulatory standards. Although it is conceivable that the development of remedial actions could occur through the process of negotiation similar to that which characterizes many existing grievance models or procedures, it must be remembered that the individual's rights to nondiscrimination as specified in the Title IX regulation are *legal* rights; they are *not* negotiable or subject to compromise.

## What are the basic components of a grievance procedure?

The actual grievance procedures which may be developed within any grievance model vary considerably in their specificity, and the components and provisions of various procedures reflect the differing constituencies, sizes, administrative structures, legal mandates, contractual arrangements, and grievance experience of the agencies or institutions in which they exist. Certain basic components,

however, characterize most formalized grievance procedures, regardless of the model on which they are based. A number of these components are listed below. Some grievance procedures contain all of them, some contain more, and some less. The organization of provisions differs from procedure to procedure, but most procedures treat the following concerns in some manner.

- I. Provisions related to the initiation of grievances
  - A. The definition of who may grieve
  - B. The definition of what shall constitute a grievance
  - C. The stipulation of time limits for the initiation of grievances
  - D. The stipulation of the manner or form in which grievances shall be initiated
  - E. The specification of any assistance available to grievants for the initiation/presentation of a grievance
- II. Provisions related to the processing of grievances
  - A. The number and levels of steps for grievance processing
  - B. The form of grievance presentation or processing at each step
  - C. Requirements for notification of involved parties at various phases of the grievance process
  - D. Timelines governing the various actions or steps within the grievance process
  - E. Procedures which shall govern the conduct of grievance meetings or hearings at any step of the grievance process, e.g.,
    - the minimum time allocated for the grievance hearing;
    - the time allocated to each party
    - the right of each party to representation
    - the right to present witnesses and evidence
    - the right to question opposing witnesses
    - the moderation of hearings
    - the right to confidential or public grievance meetings or hearings
  - F. Requirements for the filing or submission of written information by the grievant or the respondent
  - G. The specification of the forms which grievance decisions shall take at each step
  - H. The roles and/or the selection of persons involved in grievance processing

- III. Provisions related to the basic procedural rights of the parties to the grievance
  - A. The grievant's right of appeal
  - B. The right of all parties to impartial grievance decisionmakers
  - C. The access of grievants to relevant agency/institutional records
  - D. Protection of grievants from harassment and retaliation
  - E. Confidentiality of grievance proceedings

Any or all of these components could be included in a Title IX grievance procedure. The provisions included, the content of each, and the specificity of the grievance procedure would vary with the particular characteristics, needs, and experience of the education agency or institution implementing the procedure.

## How should grievance procedures provide for complaints of sexual harassment?

The Title IX regulation provides protection against acts of sexual harassment, requiring recipients to have available

grievance procedures called for by section 106.8 for allegations of sexual harassment. Institutions may choose to investigate and resolve sexual harassment complaints that would constitute a violation of Title IX either under their general grievance procedures or specific sexual harassment grievance procedures. Frequently, allegations of sexual harassment raise sensitive issues that require confidentiality. If the identity of the complainant and/or the respondent or the allegations themselves were made public prior to any determination, serious problems for the individuals involved, as well as the institutions, could result. Thus, a grievance procedure that differs from the standard grievance procedure, at least during the early stages of proceedings, may be appropriate. Section 106.8 of the Title IX regulation requires that grievance procedures: be established and published that encompass complaints of sexual harassment; provide for prompt and equitable resolution of complaints of sexual harassment; and be available to complainants (although a complainant is not required to use the grievance procedure).

- summation by the grievant
- summation by the respondent

The specification of the forms to be used for the presentation and processing of grievances at each level or step is at the discretion of the education agency or institution. The primary consideration in the specification should be the assurance of due process for all parties involved.

**Requirements for the notification of all involved parties regarding the various phases of the grievance process:**

Once a grievance has been initiated and the grievance process has begun, the timely notification of all involved parties regarding all developments in the grievance process is necessary to assure due process for all parties.

Notification will be necessary at a number of phases within the process:

- After a formal grievance has been filed, all parties involved in allegations of Title IX violations must be notified regarding the nature of the grievance filed.
- When a grievance meeting or hearing has been scheduled at any level of the grievance procedure, both the grievant and the responding party(ies) must be notified of its time and place, as well as any procedural rules which would guide their conduct (discussion of such rules follows later in this section).
- After a grievance decision or ruling has been made at any stage of the grievance process, all parties should be notified of this decision, and the grievant should be notified of her/his right to appeal the decision to the next level of processing.

These are general guidelines for notification provisions; the appropriate points for notification and the staff responsible for making or ensuring notification will vary according to the levels and structures of the grievance procedure implemented by a particular agency or institution. Provisions regarding notification should be clearly specified within the written grievance procedure.

**Timelines governing the various actions or steps within the grievance process:**

Prompt processing and resolution of grievances at each phase or step of the grievance process is essential to the effectiveness of any grievance procedure. It protects the rights of both the grievant and the agency or institution. Lengthy delays at any point may make resolution more difficult and may extend the grievance process beyond the

bounds of "promptness" required by the Title IX regulation.

Time limits should be specified for virtually every action within the grievance procedure, including:

- the filing of a formal grievance after the occurrence of a possible Title IX violation
- the notification of persons against whom Title IX violations are alleged regarding the filing of a Title IX complaint against them
- the scheduling and the conducting of any appropriate grievance meetings or hearings
- the provision of a decision regarding the grievance after any grievance step
- the filing by the grievant of the complaint for processing at the subsequent grievance level (appeal of grievance decisions)

In most agencies and institutions, five working days are the maximum amount of time which should elapse between any two grievance activities or steps. (For example, a grievance decision must be issued within five days of a grievance meeting or hearing; an appeals hearing must be scheduled within five days of the receipt of the grievant's appeal.) In most cases, especially those in which a large number of activities and steps is involved, this time should be reduced as much as possible.

Provision should also be made for waiver of established timelines upon the mutual consent of the parties to the grievance.

**Procedures which shall govern the conduct of any grievance meetings or hearings held at any step of the grievance process:**

Although grievance meetings or hearings should be conducted in an informal manner which will allow persons without legal training or extensive preparation to participate fully, it is desirable that some general procedures for such meetings or hearings be specified in advance. Such specification has several advantages:

- It can provide all parties to a grievance with a common framework from which to operate.
- It provides all parties to a grievance with guidelines for the preparation and presentation of their grievance information.
- It can help to assure all parties to a grievance of due process in grievance consideration.

- It ensures that all grievances are handled in a similar fashion.

In general, procedures to be used in a grievance meeting or hearing should be organized around the two major purposes of the grievance process—the determination of whether the policy, procedure, or practice alleged to be discriminatory is in fact in violation of Title IX requirements, and, if so, what constitutes appropriate corrective action and redress to the grievant. More specifically, provisions regarding meeting or hearing procedures should also ensure that all parties to the grievance are provided adequate opportunity to present all relevant information with regard to the grievance allegation, and that such opportunities are provided in such a way to ensure due process to all parties.

The specifications which may be made with regard to grievance hearings or meetings are at the option of the education agency or institution. Specifications which may be made involve:

- the minimum time to be allocated to the grievance hearing:**

Stipulation of a minimum time for the hearing can ensure that no grievance is given only *pro forma* consideration and that adequate time is allowed for the presentation of all relevant information. Such a minimum time allocation may, of course, be waived at the mutual consent of the parties to the grievance.

- the time allocated to each party:**

Specific allocations of time for the presentation of the differing positions on a grievance ensure that each party is provided equal time during the meeting or hearing. Time allocations may reflect the total time allotted each party for participation in the meeting, including initial presentation of her/his grievance position, presentation of relevant evidence or witnesses, questioning of opposing witnesses, and presentation of a summary statement. It should not include any time which a party may spend in responding to questions which may be posed by any grievance authority present.

- the right of each party to representation:**

Each party to a grievance is usually provided the right to be represented in whole or in part by any person of her/his choosing. It should not be necessary that these persons have legal training since grievance meetings or hearings are not usually conducted according to formal rules of evidence. Rather, the representatives should be persons selected by the respective parties because they possess knowledge and understanding of the issues involved.

Although some education agencies and institutions may have reservations regarding the admission of such

representatives for participation in the grievance hearing, this participation can serve two purposes:

- Individuals not directly involved in the outcome of the grievance but with knowledge of the situation and principles involved may be able to advocate a position more clearly and efficiently than the parties directly involved.
- It can provide due process to the grievant, who in many cases faces an agency or institution represented by expert internal counsel, or who may be intimidated by the hearing procedure.

The stipulation of time allocations for the various parties can minimize the likelihood that permitting outside representation may result in a grievance hearing of excessive and unreasonable length.

- the right to present witnesses and evidence:**

The presentation of relevant witnesses and evidence by all parties to the grievance may be basic to the determination of whether or not a Title IX violation has actually occurred. Without such presentations, the validity of a grievance is potentially a matter of the word of one party against that of the other. As is the case regarding the admission of representatives for participation in the meeting or hearing, the stipulation of time allocations for each party can prevent the unnecessary extension of hearing time by the introduction of redundant witnesses.

- the right to question opposing witnesses:**

The right of both parties to question witnesses can facilitate the disclosure of all facts relevant to grievance consideration. It is also one element in the provision of due process to all parties to the grievance.

- the moderation of the meeting or hearing:**

It is often useful if some neutral person is designated to act as moderator during the grievance meeting or hearing in order to ensure that the relevant procedural requirements are adequately and fairly implemented. This could be a function of the Title IX coordinator or a designated representative.

- the right to confidential or public grievance meetings or hearings:**

If the grievant feels that the grievance is of general importance, she or he may be provided the right to open all proceedings to public observation. (The public need not be permitted active participation in the proceedings, if such an option is provided.) Such open proceedings are valuable as they provide interested persons within the agency or institution the opportunity to watch the grievance process in action and to better understand its operation and implementation. In the absence of a decision by the grievant to open

(Note: The responsibility of one key staff member, the Title IX coordinator, for the coordination of investigations of complaints filed under the Title IX procedure is required by the implementing regulation. The additional roles which may be filed or functions which may be performed by this person or by her/his designees are many. These will be discussed in some detail later in this manual.)

## Considerations related to the basic procedural rights of the parties to the grievance

### The grievant's right of appeal:

✓ The right of grievants to appeal grievance decisions to higher levels of decisionmaking authority is one of the most basic components of an equitable grievance procedure. It assures that all grievance decisions (except those made at the final level of appeal) are subject to review and modification, and it thus protects grievants from the bias which may occur in any single grievance decision. Grievance procedures which provide for grievance hearing at several levels of progressive authority build in an appeal mechanism.

✓ The right of appeal should be clearly and explicitly stated within the written grievance procedure. The responsibilities of the grievant relating to the timelines, procedures, and forms for appeal should also be delineated. Many agencies and institutions may wish to ensure understanding by grievants of the right of appeal by making provision for continuing notification regarding the appeal process at the time of issuance of all grievance decisions.

### The right of all parties to impartial grievance decisionmakers:

✓ The right of all parties to a grievance decision rendered by an impartial decisionmaking authority is another basic component of an equitable grievance procedure. If a Title IX grievance procedure is to provide a mechanism by which grievants may obtain redress for illegal discrimination and by which education agencies/institutions may identify and correct inadvertent noncompliance, grievance decisions must be made by impartial authorities.

The maintenance of impartiality within an internal grievance procedure (one in which grievance decisions are made by authorized representatives of the agency or institution in which discrimination is alleged to have occurred) may be addressed in several ways within the structure of a grievance procedure:

□ A grievance procedure may specify that grievances alleging noncompliance at a particular administrative level of an agency/institution are automatically referred to the next administrative level for initial processing. Such a provision is one mechanism for maximizing the impartiality of initial decisionmaking; its disadvantage is its potential sacrifice of the informality which may be desirable for the initial processing of most grievances. Further, this provision alone does not address the issue of impartiality at the final decisionmaking level.

□ A grievance procedure may specify the delegation of grievance processing authority by institutional/agency administration or governance to persons or groups of persons more like to be impartial. In most such procedures, a grievance hearing panel is constituted for this purpose. In many procedures established under collective bargaining agreements, an outside arbitrator is employed to render an impartial decision at the final processing level. If a grievance procedure provides for the involvement of a hearing panel or outside arbitrator in order to ensure impartiality, it must further delineate:

—the process and criteria for the selection of panel members or arbitrators:

Many agencies and institutions find it desirable to delegate grievance processing authority to hearing panels representing the various constituencies within the agency/institution; students, teaching faculty, administrators, community members, etc. In some procedures, panel members are elected by their peers, in some they are selected by the parties to the grievance, and in some they are selected by the administration or governing body of the agency/institution. One type of grievance procedure requires the selection of panel members on a case-by-case basis, another requires that panel members be chosen from a standing pool of eligible persons. All such options are open to education agencies and institutions; it is important, however, that any procedure employing a hearing panel clearly specify the process by which members shall be selected and any criteria used in this process. Such criteria might include representation of particular constituencies, male-female/social-ethnic representation, lack of personal involvement in the grievance, familiarity with the subject matter of the grievance, etc.

If an outside arbitrator is employed for grievance processing, the grievance procedure must similarly specify procedures and criteria governing her/his selection.

—the extent of their authority for grievance decisionmaking:

The decisionmaking authority of a grievance hearing panel or arbitrator may be full or advisory. A