

Title IX Writing Workshop
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September 30, 2021

Introduction

A Title IX sexual harassment investigation requires writing. A lot. Your investigators, coordinators, and decision makers should be proficient writers. Writing is communication. Communication is understanding. And while understanding doesn't always lead to agreement, good writing can reduce disagreement and dispute. Bad writing, on the other hand, tends to increase confusion and disagreement. It usually results in more work, either because of needed follow-up clarification or, worse, because someone appeals a poorly written determination.

These materials include an overview of the different types of documents your district will write during the course of a Title IX investigation. We also offer here some fundamentals of good writing and some tips for improving it. These materials are not comprehensive. Anyone involved in the investigative process should continually seek to improve their writing. Countless style guides and reference books exist, and a good writer will consult them regularly while writing.

I. Part 1: Overview of Investigative Documents

The Title IX regulations, found in Title 34 of the Code of Federal Regulations, Part 106, (the Regs) require school districts to produce various types of written documents throughout an investigation. For example, the Regs specifically require an investigative report, a written determination, and multiple types of written notice. Other types of writing are not required specifically by the Regs but will inevitably come up, such as email correspondence with the parties and witnesses. In this part we provide an overview of the different types of written documents that must or may be produced during an investigation.

A. The Investigative Report.

1. This is required by the Regs in 106.4(5)(vii): "When investigating a formal complaint and throughout the grievance process, a recipient must – (vii) Create an investigative report that fairly summarizes relevant evidence..." This is one of the most important pieces of writing to come out of an investigation. Two breakout sessions of this symposium have discussed the role of the investigator and the creation of the investigative report.

B. Notices and Other Correspondence

Multiple notices are required by the Regs. Some are required in every investigation, while others are required only when certain actions are taken. Beyond the required notices, a good investigation will include effective written correspondence to parties and witnesses throughout. The whole process will be smoother with clear, concise communication. We list here the required notices and some recommended documents. You may think of some we have missed here.

1. Notice of Grievance Process

- i. Required.
- ii. This is required by the Regs in 106.45(b)(2)(i)(A): “(i) Upon receipt of a formal complaint, a recipient must provide the following written notice to the parties who are known: (A) Notice of the recipient’s grievance process that complies with this section, including any informal resolution process.”
- iii. The Notice of Grievance Process can be combined with the Notice of Allegations in a single document. If you do combine them, be sure to clearly identify and describe each part distinct from the other.

2. Notice of Allegations

- i. Required.
- ii. This is required by the Regs in 106.45(b)(2): “(i) Upon receipt of a formal complaint, a recipient must provide the following written notice to the parties who are known: ... (B) Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time...”
- iii. “Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under § 106.30, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section. The written notice must inform the parties of any provision in the recipient’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.”
- iv. The Notice of Allegations is probably the most important of the notices. It is typically written by the Title IX Coordinator. It is one of the first things a TIXC writes during an investigation. One of the breakout sessions of this symposium discussed the role and responsibilities of the TIXC, including issuing this notice.

3. Notice of Dismissal

- i. Required if dismissed.
- ii. Under certain circumstances a district must dismiss a formal complaint. Under other circumstances a district may dismiss it. In either case, if the

district is dismissing a formal complaint before completing the investigation, the Regs require written notice in 106.45(b)(3)(iii): “Upon a dismissal required or permitted pursuant to paragraph (b)(3)(i) or (b)(3)(ii) of this section, the recipient must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.”

4. Notice of Consolidation of Complaints

- i. Not required.
- ii. The Regs allow a school district to consolidate formal complaints “where the allegations of sexual harassment arise out of the same facts or circumstances.” This could happen if the district receives formal complaints by one person against multiple respondents or by multiple complainants against one or more respondents. It may also happen if a respondent files a formal complaint against the complainant.
- iii. No written notice is required when a district consolidates complaints, but consider whether issuing a written notice to the parties notifying them that the complaints have been consolidated would be helpful.

5. Notice of Meeting

- i. Required.
- ii. This is required by the Regs and will happen multiple times throughout an investigation. Section 106.45(b)(5)(v) requires a district to “Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;”
- iii. When you schedule an interview with a complainant or respondent, you must do so in writing, even if you have initially scheduled it verbally (by phone or in person). Make sure the written notice includes all the elements listed by the Regs.

6. Notice of Informal Resolution Process

- i. Required if informal resolution process initiated.
- ii. This is required only if you facilitate an informal resolution process. Section 106.45(b)(9) permits you to facilitate informal resolution if you “Provide[] to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the

grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;”

- iii. One breakout session of this symposium discussed the informal resolution process.
- iv. In addition to the elements required by the Regs, consider also that as part of the resolution process you are required to “Obtain[] the parties’ voluntary, written consent to the informal resolution process.” We suggest including a request for consent in your written notice, as well as a consent form for the parties to sign.

7. Notice of Emergency Removal

- i. Required (not explicitly in writing, but we strongly recommend).
- ii. The Regs allow you to remove a respondent from your educational program or activity on an emergency basis if you undertake an individualized safety and risk analysis and determine that an immediate threat to the physical health or safety of any student or other individual from the allegations of sexual harassment justifies the removal.
- iii. If you initiate an emergency removal, 106.44(c) requires you to provide the respondent with notice and an opportunity to challenge the decision immediately following the removal. While the Regs don’t say the notice must be in writing, you should do it in writing anyway and include the rationale for the removal.

8. Notice of Appeal

- i. Required if appeal filed.
- ii. This is required if one party appeals the district’s decision. The Regs require that you offer both parties an appeal from a determination or a dismissal. In section 105.45(b)(8)(iii)(A), the Regs require that as to all appeals you “Notify the other party in writing when an appeal is filed.”
- iii. The Regs do not specify any details that must be included in the Notice of Appeal; however, you should notify the parties what the appellate process will look like. Include elements from the Regs, such as that the decision-maker for the appeal will not be the same person as the original decision-maker, that the appeal can only be based on a procedural irregularity that affected the outcome, that new evidence was introduced, or that the TIXC, investigator, or decision-maker had a conflict of interest or bias. Your district may permit appeals on additional bases as long as those bases apply equally to both parties. A good notice of appeal will document the basis for the appeal. Moreover,

throughout the appeal, both parties must be given a reasonable, equal opportunity to submit a written statement in support of, or challenging the outcome. The best place to invite these statements would be in the Notice of Appeal (even though it's not required by the Regs).

9. Decision of Appeal

- i. Required if appeal filed.
- ii. As to all appeals you must "(E) Issue a written decision describing the result of the appeal and the rationale for the result; and (F) Provide the written decision simultaneously to both parties.

10. Notice of Delay or Extension

- i. Required if delay or extension.
- ii. The Regs allow you to temporarily delay the process or offer a limited extension of the time frames. This may only be done for good cause. If you choose to delay or extend the process, you must provide written notice to both parties. Section 106.45(b)(1)(v) requires you to have a grievance process that includes "reasonably prompt time frames... and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action."
- iii. Thus, if you decide to extend either of the 10-day periods for review of evidence or questioning the other party, you must provide written notice to both parties explaining the good cause on which the extension is based.

11. Response to Party or Witness Questions

- i. Not required.
- ii. Throughout the process it is common for parties and witnesses to have questions for coordinators, investigators, and decision-makers. The Regs do not address how a district should respond to questions. You can decide whether to respond verbally or in writing. If you respond in writing, follow the tips in this presentation.

12. Requests for Information

- i. Not required.
- ii. An investigator will likely have follow-up questions after an interview or after receiving evidence. You may decide to ask these questions verbally; however, you likely need to give written notice and sufficient time to prepare (see Notice of Meeting above). You may also decide to

ask these follow-up questions via email or other written correspondence. If you do, follow the writing tips in this presentation.

13. Notice of Transition from Investigator to Decision-Maker

- i. Not required.
- ii. The Regs require that an investigation be completed by an investigator, culminating in an investigative report. This report must be provided not only to the parties but also to the decision-maker, who cannot be the investigator.

14. Exclusion of Questions

- i. Not required
- ii. The Regs require a decision-maker to allow each party to submit questions to be asked of the other party or any witness. The decision-maker may decide to exclude a question as not relevant. If this happens, the decision-maker “must explain to the party proposing the questions any decision to exclude a question as not relevant.”
- iii. The Regs do not require that this explanation be in writing, but we recommend that it be written.

15. Record of Actions

- i. Required
- ii. The Regs require that “For each response required under § 106.44, a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient’s education program or activity. If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.”

16. Cover Letter or Emails

- i. Not required
- ii. The Regs require that certain documents be given to each party. The Regs do not require any kind of explanation or cover letter to be sent with the required documents, but an effective investigation will provide some explanation.

- iii. For example, the investigator is required to “send to each party” the investigative report “for their review and written response.” While the investigative report may be given in person, if it is sent via email or some other means, a cover letter or explanatory email should inform the parties that they have 10 days to review the report and provide a written response to it. Failure to inform them may result in the parties not providing a response or wondering what is happening for the next 10 days. Some parties may not even realize the investigative report is not the final written determination unless this is explained in writing. A cover letter or email is a good place to explain this to the parties.
- iv. In addition, following receipt of the investigative report, each party is allowed to submit questions to be asked of another party or witness. The Regs specifically designate the decision-maker as the one to afford each party this opportunity. Thus, at some point communication with the parties must transition from the investigator to the decision-maker. One way to communicate this to the parties is in the cover letter introducing the investigative report. It could explain the report’s purpose, give the parties 10 days to review and submit a written response, introduce the decision-maker, and allow the decision-maker to explain the process of asking questions. Or the investigator or Title IX Coordinator could send the investigative report, an intro letter/email, and a letter written by the decision-maker, all sent together. You will need to decide how you want to approach it, but there’s no way around the fact that clear, written communication is essential.

C. The Written Determination.

1. This is required by the Regs in 106.45(7)(i): “The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility.” This is the most important document to come out of an investigation. One breakout session was dedicated to the role of the decision-maker in creating the written decision.

II. Part II: Fundamentals

A. Purpose

1. Any time you’re about to write something, make sure you understand the purpose of the document you’re about to create. Ask yourself, “What am I trying to accomplish?”
 - i. provide notice
 - ii. summarize the evidence
 - iii. inform parties as to the facts
 - iv. analyze policy to facts

- v. respond to questions from the parties
 - vi. document the Title IX process
2. To accomplish a specific purpose, you must effectively convey your points in writing to the intended audience.

B. Audience

1. The audience is the initial reader of the document, the person or people it was written to.
 - i. For example, the audience of the investigative report includes the complainant, the respondent, the decision-maker(s), party advisors, and attorneys.
2. The Regs require that records be maintained for seven years. Over those years, who else may be included in your audience?
 - i. Parents/Legal Guardians; District and School Personnel (Administrators; Human Resources); Decision-maker (s); the Court.
 - ii. As you develop written records, it is important to review issues of confidentiality and to consider to whom the written document may be distributed.

C. Format

1. Select a writing format/template for use. If you have several templates available, find one that effectively meets your purpose and audience.
2. Evaluate the templates and study effective examples.

D. Content

1. This is the what of your document.
2. The content will depend upon applicable statutes and rules and the purpose of the document.
3. Content is based on the intended message for your audience and comes from interviews, facts, other evidence, your own analysis, etc.
4. Particular tips or considerations for content include:
 - i. Verify and adhere to governing law, including statutes and rules;
 - ii. Avoid misstating the law or facts;
5. In the end, did you say what you wanted to say?

III. Part III: Writing Tips

A. Plain Language

1. Words should be simple and easily understood by your audience. Avoid stuffy, overly formal, unnatural words.
2. Sentences should be concise.
3. Paragraphs should contain one, and only one, main idea.

B. Grammar and Usage

1. Find and refer to a grammar and usage book regularly.
2. Be careful with pronouns
3. Use complete sentences
4. Be careful with words with legal significant meaning, a “term of art”
5. Maintain a consistent point of view

C. Mechanics

1. Quotations

- i. Whether in an investigative report, a written determination, or some other document, you will likely want or need to quote something or someone. It might be something said by a party or witness during an interview. It might be something written in a report, complaint, response, or statement. It might be something captured in an audio or video recording. It might even be a portion of your LEA policy. Whatever it is, make it absolutely clear that it is being quoted.
- ii. Most quotations under 50 words or 5 lines should be enclosed with quotation marks. Use a style guide to understand how to introduce and punctuate quoted material (see also the sections on ellipses and brackets in this presentation).
- iii. Quotations longer than 50 words or 5 lines should be set as block quotes, indented on both sides and appropriately introduced and cited.
- iv. Finally, be careful of copying and pasting material into your document as the font style or size may change. You’ll want a consistent font throughout.

2. Commas

- i. In 2018 a Dairy in Maine had to pay its workers \$5 million to settle a lawsuit that hinged entirely on a missing comma. Truck drivers for the dairy sued for four years’ worth of overtime pay they claimed they had been denied. Maine law typically required time-and-a-half pay for overtime, but it had exemptions for a list of activities. It said overtime pay was not required for the following:

The canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of:

- (1) Agricultural produce;
- (2) Meat and fish products; and
- (3) Perishable foods.

- ii. The question was whether *distribution* was exempt or just *packing* for distribution. The question could have been answered by including a comma after shipment, which would have made it clear that both packing and distribution were exempt. Without the comma, it was unclear. Oxford Comma Dispute Is Settled as Maine Drivers Get \$5 Million, by Daniel Victor, New York Times, February 9, 2018, available at <https://www.nytimes.com/2018/02/09/us/oxford-comma-maine.html>. Retrieved September 29, 2021.
- iii. With commas it's not so much what is right or wrong, but rather what you're trying to communicate. Use a study guide to learn the rules for commas so you can use them to communicate more effectively.

3. Ellipses

- i. Ellipsis dots are the three dots used to show that part of a quotation has been omitted. Use these when you need to part of a quote out for length, syntax, or relevance.
- ii. Use a space after the word preceding the ellipsis dots, and use a hard space between each dot.
- iii. Do not use ellipsis dots at the beginning of a quote.
- iv. If you use them at the end of a sentence, use four dots (the fourth is a period ending the sentence).

4. Brackets

- i. Brackets (like square parentheses) are used to insert words or letters into a quote that were not in the original. This is usually done so the syntax of the quote matches your sentence. Use empty brackets to show that part of a quoted word has been omitted.

5. Periods

- i. This should be obvious, but you'd be surprised at the number of rules governing periods. Use a style guide to learn them.
- ii. The most basic is that a period is used at the end of a declaratory or imperative sentence. In a Title IX investigation, the vast majority of your

non-question sentences, if not all, should end in a period unless you are quoting someone else.

- iii. While ending sentences may seem easy, be aware of when to use periods in headings and numbered lists. If a heading is a complete sentence, end it with a period; otherwise, don't use punctuation. With a numbered (or lettered) list, as in this document, follow the letter or number with a period. Most word processors include these automatically.
- iv. Periods should always go inside the closing quotation marks of a quote that ends a sentence (unless the sentence calls for an exclamation or question mark). Like we said, use a style guide. Periods aren't always as easy as you think.

6. Apostrophes

- i. Apostrophes generally have two uses: they form the possessive case of a noun, and they stand for missing letters or numbers. In extremely rare occasions they are an acceptable way to pluralize certain nouns to avoid confusion.
- ii. Study the section on plurals and possessives to understand how the apostrophe is used. Typically, it precedes the letter *s* for singular nouns and follows the *s* for plural nouns, but as you know there are countless exceptions to this rule.
- iii. In contractions such as *can't* and *won't*, the apostrophe signals missing letters. And in shortened numbers, like the years '19 and '20, the apostrophe signals the missing number (20).
- iv. An apostrophe should be used to make a noun plural only if leaving it off would cause confusion. For example, if you need to make the letter *A* plural, as in a student receiving an *A* on her report card, an apostrophe helps avoid the miscue that you are instead writing the word *As*. But you would not need an apostrophe if the student received *Bs* or *Cs* on her report card.
- v. An apostrophe is never used to make the word *it* possessive. If you ever see the word *it's*, read it as *it is*. If that doesn't make sense in the context, remove the apostrophe. The possessive of *it* is *its*.

7. Bullets

- i. Bullets are a good way to bring attention to an important list.
- ii. The list may be made up of single words, phrases, clauses, or sentences.
- iii. A bulleted list should be parallel in its structure. This means that if it is made up of single words, they should all be the same part of speech (for

example, all verbs or all nouns, but not a mixture of both). The same applies for phrases, clauses, and sentences.

- iv. If a bulleted list is made up of sentences, each sentence should end with closing punctuation and begin with capital letter. If the items are not sentences, you can choose whether to follow each item with punctuation, such as a comma or semicolon. Just make sure you are consistent.

8. Capitalization

- i. Like periods, capitalization should be easy, but it's surprisingly easy to get confused. Here are a few tips, but you should consult a dictionary or a style guide. The most important thing is to be consistent.
- ii. Capitalize first word in a sentence (even if it's a word that is normally lower case, like iPad).
- iii. Capitalize names (unless a person's name is intentionally not capitalized).
- iv. Capitalize the first word of a quotation if it is a full sentence.
- v. Don't capitalize the first word of a quotation if it is a partial sentence, is grammatically woven into the main sentence, or is introduced by the word *that*.
- vi. Use brackets to change capitalization of the first word of a quote if it is changed from the original.
- vii. Capitalize proper nouns
- viii. Avoid typing in all caps as a means of yelling or expressing emotion.

9. Italics, Bold, and Underlining

- i. Italics, bold, and underline formatting make certain parts of your text stand out. There are only two possible reasons for making text stand out: (1) to emphasize it; or (2) to comply with a style convention.
- ii. Use italics to show emphasis, or signal a letter, word, or phrase is being used as a term.
- iii. Use bold typeface for headings.
- iv. Avoid underlining altogether.

10. Numbers

- i. Be Consistent. Using numerals versus spelling out numbers is a matter style. Once you set your style, stick with it.

- ii. As a general rule spell out numbers one through ten, but use numerals for 11 and above.
- iii. Use cardinals for most purposes (one, two three), but use ordinals to indicate position in a series (first, second, third).
- iv. Never begin a sentence with a numeral.
- v. Use numerals for statutes, sections, in tables, and for money.
- vi. Spell out a large number used for exaggeration (hundreds or millions).
- vii. Use the simplest forms for times, dates, and money, and be consistent.
 - a. The 911 call was placed at 3:47 p.m.
 - b. A \$10 bill was left on the counter.
 - c. The check was for exactly \$10.37.

11. Plurals and Possessives

- i. The plural of most regular nouns is formed by adding s or es
 - a. Words ending in s or other sibilant sound (z, x, sh, ch).
 - b. Boxes, benches, cases, justices
- ii. Add an apostrophe followed by an s to the end of a word to form the possessive of (1) a singular noun or (2) a plural noun that does not end in s or z.
 - a. Boy's, girl's, child's, children's
- iii. Add an apostrophe to the end of regular plural to form a plural possessive, even if it ends in s or z.
 - a. Boys' girls', boxes'

D. Proofreading and Editing

1. Orwell's Six Questions

- i. What am I trying to say?
- ii. What words will express it?
- iii. What image or idiom will make it clearer?
- iv. Is this image fresh enough to have an effect?
- v. Could I put it more shortly?
- vi. Have I said anything that is avoidably ugly?

2. Edit in a phased approach, making several passes in the document.
 - i. Large structural edits
 - ii. Sentence-level edits
 - iii. Subtler sentence-level edits
 - iv. Polish for clarity