

## **Title IX Notice of Nondiscrimination**

In accordance with the requirements set forth in Title IX of the Education Amendments of 1972 (Title IX), the

Westmark School provides this notice of nondiscrimination and states that the School does not discriminate on the basis of sex in its education programs and activities. Questions concerning Title IX may be referred to the School's Title IX Coordinator whose contact information is below or to the Office for Civil Rights at the United States Department of Education.

Title IX Coordinator Contact Information:

*Name: Nancy Mann*

*Title: Title IX Coordinator*

*Address: 5461 Louise, CA 91316*

*Phone number: (818) 986-5045*

*Email: [humanresources@westmarkschool.org](mailto:humanresources@westmarkschool.org)*

## **Title IX Nondiscrimination Policy<sup>1</sup>**

In accordance with the requirements set forth in Title IX of the Education Amendments of 1972 (Title IX), the School does not discriminate on the basis of sex in its education programs and activities. The School is committed to providing an academic and work environment free of unlawful harassment. This Policy defines sexual harassment, and sets forth a procedure for the investigation and resolution of complaints of harassment by or against any staff or faculty member or student within the School.

This Policy protects students, employees, unpaid interns, and volunteers in connection with all the academic, educational, extracurricular, athletic, and other programs of the School, whether those programs take place in the School's facilities, a School vehicle, or at a class or training program sponsored by the School at another location.

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<sup>1</sup> This Policy is effective as of April 20, 2020

## **Procedures for Responding to Sexual Harassment under Title IX**

### **Introduction**

The School encourages members of the School community to report sexual harassment. This procedure only applies to conduct defined sexual harassment under Title IX and applicable federal regulations and that meet Title IX jurisdictional requirements. The School will respond to sexual harassment and sexual misconduct that falls outside that definition and outside the jurisdiction of the Title IX federal regulations using California law and applicable School policies and procedures. In implementing these procedures discussed below, the School will also provide supportive measures, training and resources in compliance with California law, unless they preempted by the Title IX regulations.

### **Title IX Coordinator**

Questions concerning Title IX may be referred to the School's Title IX Coordinator.

The Title IX Coordinator is required to respond to reports of sexual harassment or misconduct. The Title IX Coordinator will handle information received with the utmost discretion and will share information with others on a need-to-know basis. For example, Title IX Coordinator may need to address public safety concerns on campus, comply with state and federal legal requirements or share information to implement supportive measures.

A report of sexual harassment to the Title IX Coordinator does not necessarily lead to a full investigation, as discussed more fully below. The Title IX Coordinator will make an assessment to determine if there is a safety risk to the campus. If the Title IX coordinator finds there is a continued risk, the Title IX Coordinator will file the formal complaint without the Complainant's consent or cooperation.

### **Title IX Harassment Complaints and Investigations**

These Title IX sexual harassment procedures protect students, employees, applicants for employment, and applicants for admission.

### **Jurisdictional Requirements – Application of Procedures**

These procedures apply if the conduct meets the following three jurisdictional requirements:

- The conduct took place in the United States;
- The conduct took place in a School “education program or activity.” This includes locations, events, or circumstances over which the School exercised substantial control over both the Respondent and the context in which the harassment occurred, including on-campus and off-campus property and buildings the School owns or controls or student organizations officially recognized by the School own or control; and
- The conduct meets the definition of Title IX “sexual harassment”

## **Definitions**

**Complainant:** A Complainant is an individual who alleges he/she/they is the victim of conduct that could constitute sexual harassment.

**Consent:** Consent means affirmative, conscious, and voluntary agreement to engage in sexual activity. Both Parties must give affirmative consent to sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he/she/they has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest, lack of resistance, or silence do not indicate consent. Affirmative consent must be ongoing throughout a sexual activity and one can revoke his/her/their consent at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, is not an indicator of consent.

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable, based on the facts and circumstances the Respondent knew, or reasonably should have known, at the time of the incident. A Respondent's belief is not a valid defense where:

- The Respondent's belief arose from the Respondent's own intoxication or recklessness;
- The Respondent did not take reasonable steps to ascertain whether the Complainant affirmatively consented; or
- The Respondent knew or a reasonable person should have known that the Complainant was unable to consent because the Complainant was incapacitated, in that the Complainant was:
  - Asleep or unconscious;
  - Unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or
  - Unable to communicate due to a mental or physical condition.

**Decision-Maker:** The Head of School is the person who will make a determination of responsibility. The Decision-Maker will not be the Title IX Coordinator or the investigator.

**Formal Complaint:** A written complaint signed by the Complainant or Title IX Coordinator, alleging sexual harassment and requesting an investigation. If the Title IX Coordinator signs the formal complaint, he/she/they will not become a Party to the complaint.

**Parties:** As used in this procedure, this means the Complainant and Respondent.

**Respondent:** A Respondent is an individual reported to be the perpetrator of conduct that could constitute sexual harassment.

**Sexual Harassment under Title IX:** Conduct that satisfies one or more of the following:

- A School employee conditions the provision of an aid, benefit, or service of the School on an individual's participation in unwelcome sexual conduct (*quid pro quo* harassment);
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the School's education program or activity;
- Sexual assault, as defined in 20 U.S.C. 1092(f)(6)(A)(v);
- Dating violence, as defined in 34 U.S.C. 12291(a)(10);
- Domestic violence as defined in 34 U.S.C. 12291(a)(8); or
- Stalking as defined in 34 U.S.C. 12291(a)(30).

### **Reporting Options**

Any individual may report sexual harassment to the School's Title IX Coordinator. All School employees with knowledge of allegations of sexual harassment must report the allegations, including the name of the Complainant, the Respondent, and any other witnesses, and the date, time, and location of the alleged incident to the Title IX Coordinator promptly.

The School strongly encourages prompt reporting of sexual harassment. Prompt reporting allows for the collection and preservation of evidence, including physical evidence, digital media, or witness statements. A delay may limit the School's ability to effectively investigate and respond.

Individuals have the opportunity to decide whether they want to pursue a formal Title IX complaint. Reporting sexual harassment to the Title IX Coordinator does not automatically initiate an investigation under these procedures. A report allows the School to provide a wide variety of support and resources to impacted individuals and to prevent the reoccurrence of the conduct. A Complainant or the Title IX Coordinator filing a formal complaint will initiate an investigation.

If there are parallel criminal and Title IX investigations, the School will cooperate with the external law enforcement agency, and will coordinate to ensure that the Title IX process does not hinder legal process or proceedings.

### **Mandatory Reporting by School Employees to the Title IX Coordinator**

All School employees must report allegations of sexual harassment to the Title IX Coordinator promptly.

### **Intake and Processing of Report**

#### **Receipt of Report**

After receiving a report of sexual harassment, the Title IX Officer will contact the Complainant and reporting party to explain rights under this policy and procedure and invite the Complainant to an in person meeting. The Title IX Officer will discuss supportive measures with the Parties.

#### **Timeframe for Reporting**

The School does not limit the timeframe for reporting sexual harassment. However, to promote timely and effective review, the School strongly encourages individuals to report sexual

harassment as soon possible, because a delay in reporting may affect the School's ability to collect relevant evidence.

### **Supportive Measures**

Supportive measures are non-disciplinary, non-punitive individualized services offered free of charge to the Complainant or the Respondent regardless of whether a formal complaint has been filed. The School will provide the Complainant and Respondent with supportive measures as appropriate and as reasonably available to restore or preserve equal access to the School's education program or activity. These measures are designed to protect the safety of all Parties, protect the School's educational environment, or deter sexual harassment. The School will provide supportive measures on a confidential basis and will only make disclosures to those with a need to know to enable the School to provide the service. Supportive measures may include counseling, extensions of deadlines, other class-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the Parties, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

### **Removal of Respondent Pending Final Determination**

Upon receiving a report regarding sexual harassment, the Title IX Coordinator will make an immediate assessment concerning the health and safety of the Complainant and campus community as a whole. The School has the right to order emergency removal of a Respondent, or if the Respondent is an employee, place the employee on administrative leave.

### **Emergency removal**

The School may remove a non-employee Respondent from the School's education program or activity on an emergency basis after it conducts an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal.

Emergency removal is not appropriate to address a Respondent's threat of obstructing the sexual harassment investigation or destroying relevant evidence. Emergency removal is only available to address health or safety risks against individuals arising out of sexual harassment allegations, not to address other forms of misconduct that a Respondent might commit pending the processing of a complaint.

The School's Title IX Coordinator or designee will conduct the individualized safety and risk analysis.

If the Title IX Coordinator determines emergency removal is appropriate, he/she/they or designee will provide the person the School is removing from campus on an emergency basis with a notice and opportunity to attend a meeting and challenge the basis of his/her/their removal. The Head of School or designee will determine whether the emergency removal from campus order is warranted after considering information provided by the Respondent challenging the emergency removal.

### **Administrative leave**

The School may place an employee Respondent on administrative leave during the pendency of a grievance process described in the formal complaint process below. The School will follow any

relevant policies, procedures, collective bargaining agreements or state law in placing an employee on administrative leave.

### **Formal Complaint Grievance Procedures**

#### **Notice to Parties**

Upon receipt of a formal complaint, the Title IX Coordinator will provide the following notice in writing to the known Parties:

- Notice of the School's Title IX grievance process;
- Notice of the sexual harassment allegations with sufficient detail to prepare a response before any initial interview;
- Statement that the Respondent is presumed not responsible for the alleged conduct;
- Statement that the determination of responsibility will not be made until the conclusion of the grievance process;
- Notice that the Parties have a right to an advisor of their choice, who may be, but is not required to be, an attorney;
- Notice that the Parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the School does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence, whether obtained from a Party or other source; and
- Notice of the any provision in the School's code of conduct or discipline rules that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the School decides to investigate allegations about the Complainant or Respondent that are not included in the notice provided above, the Title IX Coordinator will provide written notice of the additional allegations to the Parties whose identities are known.

#### **Dismissal of formal complaint**

The School must investigate the allegations in a formal complaint. However, the School must dismiss the formal complaint and will not process the complaint under these procedures if any of the following three circumstances exist:

- If the conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined in this procedure;
- If the conduct alleged did not occur in the School's education program or activity;  
or
- If the conduct alleged did not occur against a person in the United States.

The School has discretion to dismiss a formal complaint or any allegation under the following circumstances:

- If at any time during the grievance process the Complainant notifies the Title IX Coordinator in writing that he/she/they would like to withdraw the formal complaint or any allegations;
- If the Respondent is no longer enrolled or employed by the School; or

- If there are specific circumstances that prevent the School from gathering evidence sufficient to reach a determination regarding responsibility as to the formal complaint or allegations.

If the School dismissed the formal complaint or any allegations, the Title IX Coordinator will simultaneously provide the Parties with written notice of the dismissal and reason(s). The School will also provide the Parties with their right to appeal.

The School may commence proceedings under other policies and procedures after dismissing a formal complaint.

### **Consolidation of Formal Complaints**

The School may, but is not required to, consolidate formal complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant, against one or more Respondents, or by one Party against the other Party where the allegations of sexual harassment arise out of the same facts or circumstances.

### **Equitable Treatment of the Parties**

The School's determination of responsibility is a neutral, fact-finding process. The School will treat Complainants and Respondents equitably such that the procedures will apply equally to both Parties. The School will not discipline a Respondent until it reaches a determination of responsibility for sexual harassment against the Respondent at the conclusion of the grievance process.

### **Statement of Non-Responsibility**

The investigation is a neutral, fact-finding process. The School presumes all reports are in good faith. Further, the School presumes the Respondent is not responsible for the alleged conduct. The School makes its determination regarding responsibility at the conclusion of the grievance process.

### **Bias or Conflict of Interest**

The School's Title IX Coordinator, Investigator(s), Decision-Maker(s), or any person designated by the School to facilitate an informal resolution process, will not have potential actual bias or conflict of interest in the investigatory, sanctioning, or appeal process or bias for or against Complainants or Respondents generally. Actual bias is an articulated prejudice in favor of or against one Party or position; it is not generalized concern about the personal or professional backgrounds, positions, beliefs, or interests of the decision makers in the process. The School will provide training on bias, conflict of interest, and impartial service to the Title IX Coordinator, investigator, Decision-Maker, and facilitator.

### **Timeline for completion**

The School will undertake its grievance process promptly and as swiftly as possible. The School will complete the investigation and its determination regarding responsibility within 200 calendar days.

When appropriate, the Title IX Coordinator may determine that good cause exists to extend the 200 calendar day period to conduct a fair and complete investigation, to accommodate an investigation by law enforcement, to accommodate the unavailability of witnesses or delays by the Parties, to account for School breaks or vacations, or due to the complexity of the investigation.

The School will provide notice of this extension to the Complainant and Respondent in writing and include the reason for the delay and anticipated timing of completion.

A Party may request an extension from the Title IX Coordinator in writing by explaining the reason for the delay and the length of the continuance requested. The Title IX Coordinator will notify the Parties and document the grant or denial of a request for extension or delay as part of the case recordkeeping.

### **Role of advisor**

Throughout the grievance process, both the Complainant and Respondent have a right to an advisor of their choice. An advisor may not be a witness or have a conflicting role in the process or with a Party. The role of the advisor is to provide support and assistance in understanding and navigating the investigation process. The advisor may not participate in the process as a witness or obstruct an interview or disrupt the process. The Title IX Coordinator has the right to determine what constitutes appropriate behavior of an advisor and take reasonable steps to ensure compliance with this procedure.

### **Confidentiality Agreements**

To protect the privacy of those involved, the Parties and advisors are required to sign a confidentiality agreement prior to attending an interview or otherwise participating in the School's grievance process. The confidentiality agreement restricts dissemination of any of the evidence subject to inspection and review or use of such evidence for any purpose unrelated to the Title IX grievance process. The confidentiality agreement will not restrict the ability of either Party to discuss the allegations under investigation.

### **Use of Privileged Information**

The School's grievance procedure does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek, disclosure of information protected under a legally recognized privilege (e.g., attorney-client privilege, doctor-patient privilege, spousal privilege, etc.), unless the person holding the privilege provides voluntary, written consent to waive the privilege.

### **Investigations**

The Title IX Coordinator is responsible for overseeing investigations to ensure timely resolution and compliance with Title IX and these procedures. The Title IX Coordinator can also conduct investigations.

### **Trained investigators**

The School will investigate Title IX formal complaints fairly and objectively. Individuals serving as investigators under this procedure will have adequate training on what constitutes sexual harassment, Title IX and how the School's grievance procedures operate. The School will also

provide investigators training on issues of relevance to create an investigative report that fairly summarizes relevant evidence and complies with this procedure.

### **Gathering Evidence and Burden of Proof**

The School, and not the Parties, has the responsibility to gather information and interview witnesses. When the investigator evaluates the evidence, he/she/they will do so using the preponderance of the evidence standard. After considering all the evidence gathered, the investigator will decide whether it is more likely than not that the reported conduct occurred.

### **Notice of Investigative Interview**

The School will provide written notice of the date, time, location, participants, and purpose of all investigative interviews to an individual whose participation is invited or expected, with sufficient time for the individual to prepare to participate.

### **Evidence Review**

Both Parties have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the School does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a Party or other source.

Prior to the investigator preparing an investigative report, the School will send to each Party and the Party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The Parties will have at least 10 days to submit a written response. The investigator must consider this written response prior to completing the investigative report.

### **Investigative Report**

The results of the investigation of a formal complaint will be set forth in a written report that will include at least all of the following information:

- An executive summary of the allegations and findings as to each allegation;
- A summary of the procedural steps taken during the investigation, including individuals contacted;
- An analysis of relevant evidence, including witness statements, gathered during the course of the investigation;
- A discussion of the investigator's conclusions about whether the allegations occurred using a preponderance of the evidence standard;
- A list of the relevant documents; and
- A table of contents for any report that exceeds 10 pages.

The investigator may redact information that is not directly related to the allegations or that is privileged. However, the investigator will keep a log of information that is not produced to the Parties. The log will be provided only to the Title IX Coordinator and will not be disclosed to the Parties.

The School will send to the Parties and their advisors, if any, the investigative report in an electronic format or a hard copy, for their review. The Parties will have at least 10 days to submit

written, relevant questions that a Party wants asked of any Party or witness. The School will provide relevant questions to the Party or witness and set a deadline of no less than 15 calendar days to submit a response. The School will provide each Party with the submitted responses and allow the Parties to submit additional, limited follow-up questions within 10 calendar days. The School will provide each Party with the submitted responses. The Decision-Maker must explain to the Party proposing the questions any decision to exclude a question as not relevant.

### **Decision-maker**

The Decision-Maker will be free from conflict of interest or bias, including bias for or against Complainants or Respondents. In cases where the Complainant or Respondent objects to the Decision-Maker on the basis of a conflict of interest, the Complainant or Respondent may request the Title IX Coordinator select a different Decision-Maker. The Complainant or Respondent must make this request to the Title IX Coordinator in writing no later than five (5) business days after the School identifies the Decision-Maker to the Parties.

The Decision-Maker must objectively evaluate all relevant evidence both inculpatory and exculpatory and must independently reach a determination regarding responsibility. The Decision-Maker must receive training on issues of relevance.

### **Determinations of Responsibility**

When the Head of School makes a determination of responsibility or non-responsibility, the Decision-maker will issue a written determination regarding responsibility, no later than 60 calendar days after the deadline for the Parties to submit a written response to the investigative report.

When making a determination regarding responsibility, a Decision-maker will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence. A Decision-maker may not make credibility determinations based on an individual's status as a Complainant, Respondent, or witness. In evaluating the evidence, the Decision-Maker will use a preponderance of the evidence standard. Thus, after considering all the evidence, the Decision-Maker will determine whether it is more likely than not that sexual harassment occurred.

The Decision-maker will issue a written determination that will include the following:

- Identification of the allegations potentially constituting Title IX sexual harassment as defined in these procedures;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including who conducted the investigation gave notifications to the Parties. The determination will also state when, where, and date the investigator interviewed Parties and witnesses, conducted site visits, and the methods used to gather other evidence. The procedural section should also discuss the dates and how the Parties were provided the opportunity to review and inspect evidence;
- Findings of fact supporting the determination. In making these findings, the Decision-Maker will focus on analyzing the findings of fact that support the determination of responsibility or non-responsibility;

- Conclusions regarding the application of the School's code of conduct or relevant rules to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- Whether the School will provide remedies designed to restore or preserve equal access to the School's education program or activity to the Complainant.
- A statement of, and rationale for, any disciplinary sanctions the School imposes on the Respondent,
- The School need not disclose to the Respondent remedies that do not impact him/her/them as part of the written determination. The School can inform the Respondent that it will provide remedies to the Complainant. However, the School will inform the Complainant of the sanctions against the Respondent.
- The School's procedures and permissible bases for the Complainant and Respondent to appeal.

The School will provide the written determination to the Parties simultaneously. The determination regarding responsibility becomes final either on the date that the School provides the Parties with the written determination of the result of the appeal, if the Parties file an appeal, or if the Parties do not file an appeal, the date on which an appeal would no longer be considered timely.

### **Disciplinary Sanctions and Remedies**

The School must have completed the grievance procedures (investigation and any appeal, if applicable) before the imposing disciplinary sanctions or any other actions that are not supportive measures against a Respondent. If the Decision-Maker determines the Respondent was responsible for conduct that constitutes sexual harassment, the School will take disciplinary action against the Respondent and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense.

Remedies for the Complainant might include, but are not limited to:

- Providing an escort to ensure that the Complainant can move safely between classes and activities;
- Ensuring that the Complainant and Respondent do not attend the same classes or work in the same work area;
- Providing counseling services or a referral to counseling services;
- Providing medical services or a referral to medical services;
- Providing academic support services, such as tutoring;
- Arranging for a Complainant, if a student, to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Complainant's academic record; and
- Reviewing any disciplinary actions taken against the Complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the Complainant's discipline.

Possible disciplinary sanctions for students Respondents include: written or verbal reprimand, training or counseling, non-academic probation, suspension, and expulsion. Possible disciplinary

sanctions for employee Respondents include: written or verbal reprimand, required training or counseling, reduction in pay, demotion, suspension, or discharge.

### **Appeal of Dismissal of a Formal Complaint or of the Determination of Responsibility**

A Complainant or Respondent may appeal (1) the School's determination regarding responsibility or (2) the dismissal of a formal complaint or any allegations under Title IX. A Complainant or Respondent must submit a written appeal within five business days from the date of the notice of determination of responsibility or from the date of the School's notice of dismissal of a formal complaint or any allegations.

### **Grounds for Appeal**

The Director of Finance & Operations will serve as the Decision-Maker on Appeal. In filing an appeal of the School's determination regarding responsibility or the School's dismissal of a formal complaint, the Party must state the grounds for appeal and a statement of facts supporting those grounds. The grounds for appeal are as follows:

- A procedural irregularity affected the outcome;
- New evidence was not reasonably available at the time the School's determination regarding responsibility or dismissal was made, and this new evidence could affect the outcome; or
- The School's Title IX Coordinator, investigator, or Decision-Maker(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.

### **Appeal Procedure**

If the Complainant or Respondent submit an appeal to the School, the School will:

- Notify the other Party in writing within 10 business days of receiving a Party's appeal;
- Allow the non-appealing Party 15 business from receipt of the appeal to submit a written response in support of, or challenging, the outcome.

The Decision-Maker on appeal will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within 60 business days after the Decision-Maker on appeal receives the response to the appeal or the last day to provide a response. The School will provide notice of the written decision simultaneously to both Parties.

The Decision-Maker on appeal may extend or otherwise modify the deadlines provided above. Either Party may seek an extension by submitting a written request to the Decision-Maker on appeal explaining the need for the extension and the proposed length of the extension. The Decision-Maker on appeal will respond to the request within 48 hours in writing and will inform the Parties simultaneously whether the extension is granted.

### **Informal Resolution**

If the School determines that a formal complaint is appropriate for informal resolution, it may provide the Parties with the opportunity to participate in an informal resolution process, including mediation, at any time prior to reaching a determination regarding responsibility.

The School will provide the Complainant and Respondent written disclosure of 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, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The School must obtain the Parties' voluntary, written consent to the informal resolution process. If the Parties reach an agreement, the School does not have to complete a full investigation and adjudication of a report of sexual harassment. 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.

The informal resolution process is not available to resolve allegations that an employee sexually harassed a student.

### **Retaliation Prohibited**

The School prohibits any intimidation, threats, coercion, or discrimination against any individual who made a report or complaint of sexual harassment, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation or proceeding. Individuals who experience retaliation may file a complaint using the formal complaint process described above.

### **Dissemination of Policy and Procedures**

The School will provide its policy and procedures related to Title IX on its website and in each handbook or catalog provided to applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining with the School. When hired, employees are required to sign acknowledging that they have received the policy and procedures. The School will place the signed acknowledgment of receipt in each employee's personnel file.

### **Training**

The School will provide training to Title IX Coordinators, investigators, Decision-Makers, and any individual who facilitates an informal resolution process, on the definition of sexual harassment, the scope of the School's education program or activities, how to conduct an investigation and grievance process including appeals and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Any materials used to train the School's Title IX Coordinator, investigators, Decision-Makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

### **File retention**

The School will retain on file for a period of at least seven years after closing the case copies of:

- The original report or complaint;
- Any actions taken in response to the complaint, including supportive measures;  
The investigative report including all evidence gathered and any responses from the Parties;
- The School's determination regarding responsibility;
- Records of any disciplinary sanctions imposed on the Respondent;
- Records of any remedies provided to the Complainant;
- Any appeal and the result;
- Any informal resolution and the result; and
- All materials used to train Title IX Coordinators, investigators, Decision-Makers, and any person who facilitates an informal resolution process. These training materials are available on our website.

The School will make these documents available to the U.S. Department of Education Office for Civil Rights upon request.

# New Title IX Regulations: What It Means For California's Independent K-12 Schools

LCW Webinar | August 12, 2020

Presented by: Jenny Denny

**LCW** LIEBERT CASSIDY WHITMORE



## New Title IX Regulations: What It Means For California's Independent K-12 Schools

Presented By:  
Jenny Denny

## Key Changes in Definitions Effective August 14, 2020



**LCW** LIEBERT CASSIDY WHITMORE

## Preemption

- To the extent that state law already provides statutes or regulations that protect individuals from sexual harassment or discrimination, a school should comply with both the state requirements and the new regulations
- If a conflict, the Title IX regulations preempt state law

34 CFR § 106.6 (a)



**LCW** LIEBERT CASSIDY WHITMORE

## Religious Schools – Assurance of Exemption

A religious school is exempt to the extent that the regulations are inconsistent with its religious tenets

- Need not submit a written statement to the Assistant Secretary for Civil Rights to qualify
- During OCR investigation, the school can assert exemption by submitting to the Assistant Secretary a written statement from the highest-ranking official of the school, identifying the conflict with a specific tenet of the religious organization

34 C.F.R. § 106.12, subd. (b).



**LCW** LIEBERT CASSIDY WHITMORE

## Overall Requirement

- A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond in a manner that is not deliberately indifferent

34 CFR § 106.44(a)



**LCW** LIEBERT CASSIDY WHITMORE

## Key Definitions: Notice

- Notice of sexual harassment or allegations of sexual harassment to any employee of an elementary and secondary school

34 CFR § 106.30



**LCW** LIEBERT CASSIDY WHITMORE

## Key Definitions: Sexual Harassment

- Quid pro quo: An employee conditioning an aid, benefit, or service on complainant's participation in unwelcome sexual conduct;
- Unwelcome conduct so severe, pervasive, and objectively offensive that it effectively denies a person equal access to education program or activity; or
- Sexual assault, dating violence, domestic violence, or stalking.

34 CFR § 106.30



LIEBERT CASSIDY WHITMORE

## Key Definitions: Education Program or Activity

- Includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs. Conduct must occur within the United States.

34 CFR § 106.44(a)



LIEBERT CASSIDY WHITMORE

## Key Definitions: Interim/Supportive Measures

- Supportive measures: “Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.”

34 CFR § 106.30(a)



**LCW** LIEBERT CASSIDY WHITMORE

## When Does the Grievance Process Apply?

Required for formal complaints of sexual harassment under Title IX

- Not discrimination (adverse employment action based on sex/gender)
  - Disparate impact or disparate treatment
- Not informal complaints
- Not for sexual harassment that falls outside of the definition in the regulations



**LCW** LIEBERT CASSIDY WHITMORE

## Key Definitions: Formal Complaint

- Document filed by the **complainant** OR signed by the Title IX Coordinator
- Alleging sexual harassment AND requesting investigation

34 CFR §106.30(a)



LIEBERT CASSIDY WHITMORE

## Key Definitions: Complainant

- An individual alleged to be the *victim* of conduct
  - Must be an individual participating in or attempting to participate in the school's education program or activity
  - No 3<sup>rd</sup> party complaints
    - If parent has legal right to act on child's behalf, parent may sign formal complaint
    - Parent does not become the complainant

34 CFR 106.30(a)



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## Key Changes in Legal Obligations Effective August 14, 2020



### Legal Obligations Under Title IX

**Title IX requires**

- **Policies/procedures**
- Reporting of possible sexual misconduct
- **Investigation**
- Training and education
- No retaliation



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## Title IX Procedural Requirements

- Notice of nondiscrimination
  - Notify applicants, students, parents, employees, and all unions
  - Post on website and in handbooks
- Designation of Title IX Coordinator
  - Notify applicants, students, parents, employees, and all unions
  - Post on website and in handbooks



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## Title IX Procedural Requirements

- Adopt compliant complaint procedures
  - Use the updated policy and procedures from LCW
  - Publish to applicants, students, parents, employees, and all unions
  - Post on website and in handbooks



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## Title IX Procedural Requirements

- Can only impose discipline after completing grievance procedure
- Parties may have an advisor
- Require Title IX personnel to receive training
- Post Title IX training materials on school's website

34 CFR § 106.45(b)(1)



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## Grievance Procedures: Notice of Allegations – Form

- Upon receipt of a formal complaint, the school must provide the following written notice to the parties:
  - Notice of the grievance process
  - Respondent presumed not responsible
  - Notice of the allegations (date, location if known)
  - Sufficient detail and sufficient time to prepare before interview
  - Statement that determination about responsibility takes place after the grievance process
  - Parties may have an advisor
  - May inspect and review evidence
  - Must inform parties of code of conduct provisions about false statements and submitting false information

34 CFR § 106.45(b)(2)(i)



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## Retaliation

- Protects everyone who participates in the complaint, investigation, and hearing from retaliation
  - Such as intimidation, threats, coercion, or discrimination
- Cannot take action against anyone for refusing to participate or refusing to testify
  - FLAGGED ISSUE: We now cannot direct employees to participate under the threat of discipline for insubordination

34 CFR § 106.71(a)



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## Grievance Procedures: Timeline

- “Grievance procedures must . . . [i]nclude reasonably prompt timeframes for the conclusion of the grievance process... and a process that allows for a temporary delay... for good cause with written notice to the complainant and the respondent...”

34 CFR § 106.45 (b)(1)(v)



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## Grievance Procedures: Informal Resolution

- May facilitate an informal resolution process that does not involve a full investigation and adjudication any time prior to determination regarding responsibility (cannot use for student against employee or condition on a waiver)

34 CFR § 106.45(b)(9)



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## Grievance Procedures: Reviewing Evidence

### Complainant and respondent:

- Right to inspect and review evidence, including evidence on which recipient does not intend to rely
- Right to submit written response to evidence that the investigator will consider prior to report completion
- Must provide final investigative report at least 10 days prior to time of determination regarding responsibility

34 CFR §106.45 (b)(5)(vi) and (vii)



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# New Title IX Regulations: What It Means For California's Independent K-12 Schools

LCW Webinar | August 12, 2020

Presented by: Jenny Denny

