



Title IX Coordinator Certification Course

Presented by:
Holly Boyd Wardell and Emma J. Darling

October 18, 2023



9TH ANNUAL TEXAS TITLE IX ADMINISTRATOR CONFERENCE

Title IX Coordinator Certification Course



EICHELBAUM WARDELL
HANSEN POWELL & MUÑOZ, P.C.

TEXAS TITLE IX ADMINISTRATOR CONFERENCE



DAY 1

8:00 AM – 5:00 PM

Title IX Coordinator Responsibilities



Holly Boyd Wardell
Managing Shareholder - Austin Office
Eichelbaum Wardell Hansen Powell & Muñoz, P.C.



Emma J. Darling
Senior Associate
Eichelbaum Wardell Hansen Powell & Muñoz, P.C.

Closing the Circle: Best Practices for Conducting Investigations



Dr. Darwin Spiller
Executive Director of Title IX Compliance
and Investigations
Richardson ISD

Decision Making and Appeals



Jennifer Archimbaud Powell
Shareholder
Eichelbaum Wardell Hansen Powell & Muñoz, P.C.

OCR Processing Manual and Investigations



Dr. Vicky Luna Sullivan
Senior Associate
Eichelbaum Wardell Hansen Powell & Muñoz, P.C.

Ask the Experts

DAY 2

8:00 AM – 5:00 PM

Legal Update – 2022-23 Case Highlights



Andrea L. Mooney
Shareholder
Eichelbaum Wardell Hansen Powell & Muñoz, P.C.

Disability Rights and Title IX



Colleen Elbe Potts
Attorney
Disability Rights Texas

SBEC Update



David Rodríguez
Director of Educator Investigations
Texas Education Agency



Daniel Berumen
Director of Intake and Records
Texas Education Agency



Tina Farrell
Director of Investigations Unit
Texas Education Agency

Administrative Leave... A Key Piece to Solving the Puzzle



Dr. Tyrone Sylvester
Human Resources Director
Goose Creek CISD

Cyber Safety, Personal and Internet Safety, and Cyberbullying



Sgt. Amy Gonzales
Investigator
Office of the Texas Attorney General

Information Sharing Between School Districts and Law Enforcement and Community Safety: A Two-Way Street



Joe Parks
Attorney
The Law Office of Joseph L. Parks, PLLC

Transgender Students and Staff Issues



Emma J. Darling
Senior Associate
Eichelbaum Wardell Hansen Powell & Muñoz, P.C.

Transgender Athletics



Tiger Hanner
Attorney
Law Offices of Tiger Hanner



Holly Boyd Wardell
Managing Shareholder - Austin Office
Eichelbaum Wardell Hansen Powell & Muñoz, P.C.

A pair of metal scales of justice against a clear blue sky.

FOUNDATIONAL PRINCIPLES

A person wearing a dark shirt with "COACH" written on the back, standing on a grassy field.

**TITLE IX COORDINATOR
RESPONSIBILITIES**

Three young girls with red headbands hugging each other.

COMMON SCENARIOS

A large school building with a yellow and brick facade, a flagpole with the American flag, and a paved area in the foreground.

**FOUNDATIONAL PRINCIPLES
AND
THE CURRENT REGULATIONS**

**Signed into law by President Richard Nixon on
Friday, June 23, 1972.**

Title IX: 1972



Before Title IX

- **Some schools and universities had separate entrances for male and female students.**
- **Female students were not allowed to take certain courses, such as auto mechanics or criminal justice; male students could not take home-economics**
- **Some medical and law schools limited the number of women admitted to 15 or fewer**
- **Some colleges and universities required women to have higher test scores and better grades than male applicants to gain admission**

Source: *Report Card on Gender Equity*, National Coalition for Women and Girls in Education, 1997)

Before Title IX

- Women living on campus were not allowed to stay out past midnight.
- Women faculty members were excluded from faculty clubs and encouraged to join faculty wives' clubs instead.
- After winning two gold medals in the 1964 Olympics, swimmer Donna de Varona could not obtain a college swimming scholarship. For women they did not exist.

Source: Report Card on Gender Equity, National Coalition for Women and Girls in Education, 1997)

Title IX: 1972

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education programs or activity receiving federal financial assistance.

Signed into law by President Richard Nixon on Friday, June 23, 1972.



Title IX: 1972

- 1973:** Battle of the Sexes - Billie Jean King defeated Bobby Riggs in an exhibition tennis match
- 1975:** First Title IX regulations adopted
- 1976:** NCAA challenged the legality of Title IX regarding athletics in a lawsuit; was dismissed two years later
- 1977:** Three female students at Yale, two graduates, and a male faculty member became the first to sue over sexual harassment under Title IX (*Alexander v. Yale*). The cause of action failed on appeal.
- 1979:** Three-prong test for compliance in athletics established.
- 1979:** Students can sue for sex discrimination (*Cannon v. Univ. of Chicago*)
- 1980:** Oversight for compliance was given to the Office for Civil Rights (OCR) in the U.S. Department of Education
- 1982:** Employees could sue for sex discrimination
- 1992:** Students can sue for money damages for discrimination by employees (*Franklin v. Gwinnett County Public Schools*)
- 1999:** Students can sue for sexual harassment by students
- 1997:** OCR issued "*Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*" containing the first explicit reference to "gay or lesbian students" as being covered by federal prohibitions against sexual harassment

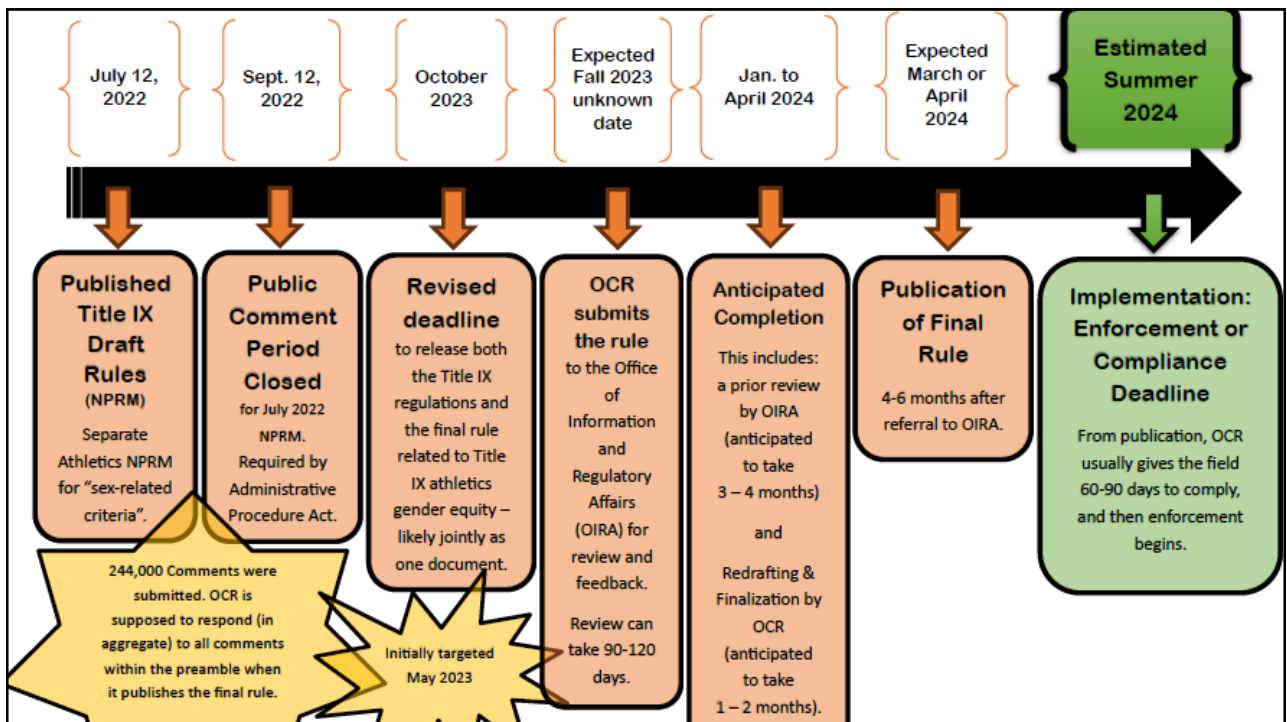


Title IX: 1972

- 1998:** Student could sue for teacher's sexual harassment only if the school had "actual notice" and acted with "deliberate indifference" (*Gebser v. Lago Vista ISD*)
- 1999:** Title IX covers student-to-student harassment; damages available only if school had actual notice and acted with deliberate indifference (*Davis v. Monroe County*)
- 2001:** OCR issued revised guidance on sexual harassment – Gebser and Davis did not apply to OCR enforcement actions
- 2005:** Coaches and teachers have a right of action under Title IX for retaliation (*Jackson v. Birmingham Bd of Educ.*)
- 2006:** OCR issued guidance allowing single-sex programs/schools
- 2014:** Obama Administration OCR issued DCL saying transgender students should be allowed to use the bathroom or locker room that matches their gender identity
- 2018:** Trump Administration OCR rescinded the 2014 Obama Guidance
- 2020:** [Second version of Title IX Regulations adopted](#) - amended to address sexual harassment investigations
- 2021:** Biden Administration – Exec. Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation
- 2022:** **Proposed** Title IX Regulations Published



Where are those new Title IX regulations?



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What is your position?

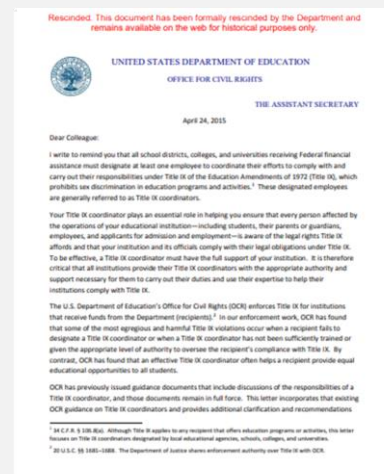
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Rescinded: This document has been formally rescinded by the Department and remains available on the web for historical purposes only.

Title IX Coordinators

- **Monitor outcomes**
- **Identify and address patterns**
- **Assess campus climate**
- **Educate school community on how to file complaint**
- **Promptly and appropriately resolve complaints**
- **Provide technical assistance on school policies**
- **Work with law enforcement**

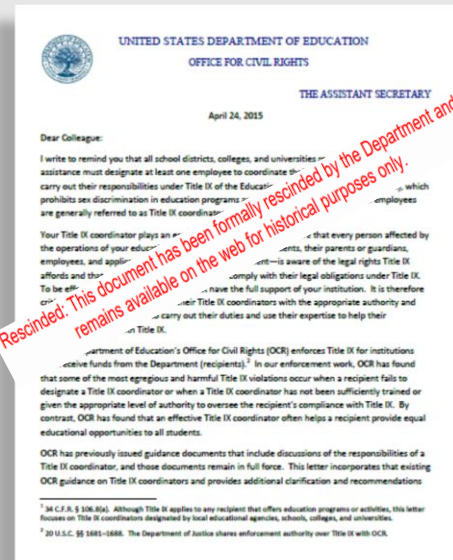
RESPONSIBILITIES AND AUTHORITY OF T9 COORDINATOR



Title IX Coordinators

- District's policies and procedures
- Drafting and revising policies/procedures
- Collecting information
- Participation in subject areas, athletics
- Administration of school discipline
- Incidents of sex-based harassment
- Retaliation
- Aware of all T9 complaints
- Visible in the school community

RESPONSIBILITIES AND AUTHORITY OF T9 COORDINATOR

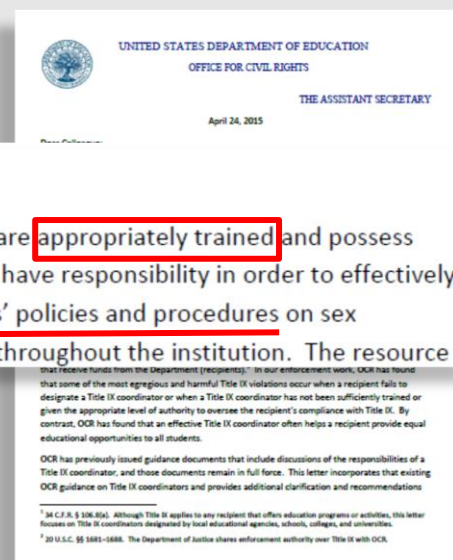


Title IX Coordinators

B. Training of Title IX Coordinators

Recipients must ensure that their Title IX coordinators are **appropriately trained** and possess comprehensive knowledge in all areas over which they have responsibility in order to effectively carry out those responsibilities, including the recipients' policies and procedures on sex discrimination and all complaints raising Title IX issues throughout the institution. The resource

Training on Policies and Grievance Procedures



RELEVANT POLICIES AND PROCEDURES

- FB (LEGAL) Equal Educational Opportunity
- FB (LOCAL) Equal Educational Opportunity
- FFG (LEGAL) Student Welfare: Child Abuse and Neglect
- FFG (LOCAL) Student Welfare: Child Abuse and Neglect
- FFH (LEGAL) Freedom from Discrimination, Harassment, & Retaliation
- FFH (LOCAL) Freedom from Discrimination, Harassment, & Retaliation
- FM (LOCAL) Student Activities
- FNE (LEGAL) Pregnant Students
- FNE (LOCAL) Pregnant Students
- FNG (LEGAL) Student & Parent Complaints
- FNG (LOCAL) Student & Parent Complaints
- DAA (LEGAL) Equal Employment Opportunity
- DGBA (LEGAL) Employee Complaints
- DGBA (LOCAL) Employee Complaints
- EHAA (LEGAL) Required Instruction
- GF (LOCAL) Public Complaints
- GRA (LEGAL) Relations with Governmental Entities – State and Local Authorities
- GRA (LOCAL) Relations with Governmental Entities – State and Local Authorities

Responsibilities from 2020 Sexual Harassment Regulations

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Have you ever conducted a full Title IX Investigation under the 2020 regulations?

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T9 Coordinator Responsibilities Under 2020 Regulations

- The 2020 regulations pertain to reports and formal complaints of sexual harassment.
- They do not affect responsibilities pertaining to equity in athletics, inequities, or discrimination in course selections, etc.



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Title IX Coordinator Responsibilities

- Ensure policies reflect current information about T9 Coordinator
- Ensure website and publications contain proper notices
- For all reports of sexual harassment, contact alleged victims (complainant) to discuss the availability of supportive measures
- Consider a complainant's wishes re supportive measures
- Inform complainants of the right to file formal complaint and right to supportive measures with or without a formal complaint
- Decide whether to file a formal complaint when the complainant does not

**Many of these tasks can be delegated but must be overseen by the Title IX Coordinator.*

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Title IX Coordinator Responsibilities

- Decide whether to dismiss a formal complaint (or who should decide dismissal)
- Assist with emergency removal and administrative leave decisions
- Provide notice to parties of grievance process in case of formal complaints
- Post all training materials to district's website
- Ensure proper record keeping

**Many of these tasks can be delegated but must be overseen by the Title IX Coordinator.*

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All of these individuals must be informed of the Title IX Coordinators...



Name or Title

Applicants for admission and employment



Office address

Students and parents or legal guardians of elementary and secondary students



E-mail address

Employees



Telephone number

All unions or professional organizations holding collective bargaining or professional agreements with the recipient

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Reporting sexual harassment...

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment)...



Using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

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Reporting sexual harassment...

Such report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

34 C.F.R. § 106.8(a).

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Most of my district's complaints are received

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SCENARIO: Reporting sexual harassment...

Taylor and John used to date. John has “nudes” of Taylor. After they break up, John sends the pics to other students who show them around school. Taylor’s new boyfriend, Travis, finds out about this and “avenges” Taylor’s honor by punching John in the nose at school.

Both John and Travis play on the football team.

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SCENARIO: Reporting sexual harassment...

After days of trying to avoid school, Taylor finally tells her mother about the photos and begs not to go to school. Taylor’s mother sends an email to Coach Reid to report that her daughter is being sexually harassed by his players. Coach Reid says he will handle it and has John and Travis run bleachers.

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SCENARIO: Failing to Report

Relevant Policies: FFI/FFH - Employee report to appropriate official listed in policy

Action Needed: Students: 1) review policy – FFI or FFH?; 2) contact parents/student – offer info about TIX process; 3) offer supportive measures; 4) employee documentation/retraining

Documentation Required/Recommended: 1) supportive measures offered; 2) whether FC filed; 3) if FC filed...

Retention of Documentation: At least 7 years

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Standard TASB Policy-A

Reporting Procedures

Student Report

Any student who believes that he or she has experienced prohibited conduct or believes that another student has experienced prohibited conduct should immediately report the alleged acts to a teacher, school counselor, principal, other District employee, or the appropriate District official listed in this policy.

Employee Report

Any District employee who suspects or receives direct or indirect notice that a student or group of students has or may have experienced prohibited conduct shall immediately notify the appropriate District official listed in this policy and take any other steps required by this policy.

Definition of District Officials	For the purposes of this policy, District officials are the Title IX coordinator, the ADA/Section 504 coordinator, and the Superintendent.
<i>Title IX Coordinator</i>	Reports of discrimination based on sex, including sexual harassment, gender-based harassment, or dating violence, may be directed to the designated Title IX coordinator for students. [See FFH(EXHIBIT)]
<i>ADA / Section 504 Coordinator</i>	Reports of discrimination based on disability may be directed to the designated ADA/Section 504 coordinator for students. [See FFH(EXHIBIT)]
<i>Superintendent</i>	The Superintendent shall serve as coordinator for purposes of District compliance with all other nondiscrimination laws.

Reporting Procedures	Any student who believes that he or she has experienced prohibited conduct or believes that another student has experienced prohibited conduct should immediately report the alleged acts to a teacher, school counselor, principal, assistant principal, or the Title IX Coordinator/designee.
Student Report	
Employee Report	Any District employee who suspects or receives notice that a student or group of students has or may have experienced prohibited conduct shall <u>promptly notify a campus administrator or the Title IX Coordinator.</u>
Definition of District Officials	For the purposes of this regulation, District officials are the Title IX Coordinator/designee and <u>campus administrators.</u>
Title IX Coordinator	Reports of discrimination based on sex, including sexual harassment or gender-based harassment, may be directed to the designated Title IX Coordinator for students. [See FFH(EXHIBIT)]





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HANSEN POWELL & MUÑOZ, P.C.

Sexual Harassment
TITLE IX GRIEVANCE PROCESS
for Reports, Complaints, Investigations, Appeals
Effective August 14, 2020

	<p>Sexual harassment is conduct based on sex that satisfies one or more of the following:</p> <ol style="list-style-type: none"> 1. An employee conditioning an aid, benefit, or service of the school on an individual's participation in sexual conduct; 2. Unwelcome conduct that a reasonable person would consider severe, pervasive, and objectively offensive such that it effectively denies an individual equal access to a district program or activity; or 3. Sexual assault, dating violence, domestic violence, or stalking. 	<p>New Definition of Sexual Harassment 34 C.F.R. §106.30</p>
Terminology	<p>Complainant: an individual who is alleged to be the victim of sexual harassment. Respondent: an individual who is alleged to be the perpetrator of sexual harassment. A respondent may not be disciplined for sexual harassment until the conclusion of this grievance process. Formal complaint: a document filed by a complainant (or parent/guardian) or signed by the Title IX Coordinator³ alleging sexual harassment against a respondent and requesting that the district investigate the allegation.</p>	<p>**All employees must report suspected sexual harassment, but only a Complainant or the Title IX Coordinator can file a Formal Complaint.</p>
	<p>Reporting: All employees must immediately/promptly report all instances of suspected sexual harassment to a campus administrator or the Title IX Coordinator or a Title IX Coordinator designee. (An employee's failure to report alleged sexual harassment will result in disciplinary action up to and possibly including termination).</p> <p>A student may report alleged sexual harassment to a teacher, school counselor, administrator, or other appropriate school employee. Those employees must immediately report alleged sexual harassment to a campus administrator.</p>	<p>RESPONSIBILITY: All Employees FFH(LOCAL) DIA(LOCAL)</p>
	<p>Child Abuse Reporting: If the incident could be child abuse, the employee must report to CPS or law enforcement within 48 hours of learning of incident.</p>	<p>All Employees FFG(LOCAL)</p>
	<p>Ask for written report: An administrator may ask the individual to provide a written statement, but the reporter is not required to put the report in writing. This District may request, but not require, a written report. If a report is made orally, an administrator will put the report in written form and provide it to the Title IX Coordinator.</p>	<p>FFH(LOCAL)</p>

- Use the checklist.
- **Red text** = suggested procedures



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Dissemination of policy

- District does not discriminate on the basis of sex in the education program of activity that it operates
- It is required by Title IX to not discriminate in this manner
- Requirement not to discriminate extends to admission and employment
- Inquiries about the application of Title IX to the district may be referred to the Title IX Coordinator, the Assistant Secretary for Education (USDOE), or both

Applicants for admission
and employment

Students and parents or
legal guardians of
elementary and secondary
students

Employees



All unions or professional
organizations holding
collective bargaining or
professional agreements
with the recipient

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34 C.F.R. § 106.8(b).

Publications

Must promptly display Title IX
Coordinator's contact information:

- On district's website 
- In each handbook or catalog 

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34 C.F.R. § 106.8(b).

**District must adopt and publish
grievance procedures and provide
notice of process including...**

1. How to report or file a complaint of sex discrimination;
2. How to report or file a formal complaint of sexual harassment; and
3. How the district will respond.

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34 C.F.R. § 106.8(b).

____ ISD
STUDENT WELFARE
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION (REGULATION 2) FFH

Note: This regulation addresses sexual harassment involving District students under Title IX. For procedures to address allegations of prohibited conduct *other than* allegations of sexual harassment prohibited by Title IX, see FFH (REGULATION 1). For other types of sex discrimination involving students, such as equitable opportunities for athletics or pregnancy-related claims, see FFH(LOCAL) and FNE(LOCAL). For provisions regarding discrimination, harassment, and retaliation involving District employees, see DIA. For reporting requirements related to child abuse and neglect, see FFG. Note that FFH shall be used in conjunction with FFI (bullying) for certain prohibited conduct.

Title IX Statement of Nondiscrimination The District prohibits discrimination, including harassment, against any student on the basis of sex. Retaliation against anyone involved in the complaint process is a violation of District policy and is prohibited.

Sexual Harassment Sexual harassment is defined as:

- (1) A school service is denied or withheld from a student.
- (2) Unwelcome sexual advances or requests for sexual favors are made by one person to another person, where the conduct is unwelcome and uninvited.
- (3) Sexual harassment is defined as the use of physical force or coercion to obtain sexual acts or favors.

Sexual Harassment By an Employee Sexual harassment by an employee is defined as the use of physical force or coercion to obtain sexual acts or favors.

DATE ISSUED: _____
FFH(REGULATION)

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The 2020 regulations...

Seek to create a separation between the investigation and decision-making of formal complaints (sexual harassment).

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While it is best to separate roles...

- The Title IX Coordinator can also be the investigator and the informal resolution facilitator.
- The Title IX Coordinator cannot also serve as the decision-maker on a formal complaint or on appeal.
- All roles can be outsourced, except the Title IX Coordinator (e.g., investigator, decision-maker, informal resolution facilitator, appellate decision maker).

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Remember that anyone serving as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an information resolution process must not have a **conflict of interest** or **bias** for or against **complainants** or **respondents generally** or an **individual** complainant or respondent.

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My district has trouble finding people to serve in all 3-4 roles

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SCENARIO: Conflicts of Interest

An employee files a Formal Complaint of sexual harassment against Justin (Employee). Selena is the Director of HR and the Title IX Coordinator for employee-related complaints. She usually serves as the investigator for Formal Complaints. Justin and Selena were previously romantically involved.

- Can she serve as the investigator?
- Can she serve as the Title IX Coordinator in this case?

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The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures...consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without filing a formal complaint, and explain to the complainant the process for filing a formal complaint."

- Respond to every report of sexual harassment
- Must not be deliberately indifferent
- For OCR purposes, actual knowledge is imputed to the district if any employee is aware of sexual harassment.

34 C.F.R. § 106.44(a).

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- Respond to every report of sexual harassment
- Must not be deliberately indifferent
- For OCR purposes, actual knowledge is imputed to the district if any employee is aware of sexual harassment.

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SCENARIO: Verbal reports

Taylor does not tell her parents, but another student reports the situation to her parents, who calls Principal Prime.

Principal Prime tells this parent that he is going to need her to put her concerns in writing, so he can address the situation.

This parent will not put her concerns in writing and wants to remain anonymous.

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SCENARIO: Verbal reports



Ask for written report: An administrator may ask the individual to provide a written statement, but the reporter is not required to put the report in writing. This District may request, but not require, a written report. If a report is made orally, an administrator will put the report in written form and provide it to the Title IX Coordinator.

FFH(LOCAL)

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My district has handled an anonymous complaint before

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CONTACTING THE COMPLAINANT

Regulations do not dictate the medium of contact.

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CONTACTING THE COMPLAINANT

K-12 SETTING

- Phone call, followed by email/letter.
- In person parent conference, followed by email/letter.

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DISTRICT LETTERHEAD

**This letter may be sent to adult students or parents of minor students after initial verbal contact by school officials about a report of alleged sexual harassment involving their child when no Formal Complaint is filed.*

[Date]

[Adult Student Complainant/Parent/Guardian]
[Address]

Re: Title IX Complaint – Response to Sexual Harassment Report

Dear Mr./Ms. _____:

This letter is to confirm receipt of a report of alleged sexual harassment involving your child. It is our understanding that, at this time, you do not wish to file a Formal Complaint and pursue this matter further. If you change your mind, please contact my office immediately.

Even though you have not filed a Formal Complaint, we are providing you with the following supportive measures for your child. It is our understanding that, at this time, you do not wish to file a Formal Complaint and pursue this matter further. If you change your mind, please contact my office immediately.

Supportive Measures: *(Select only those options below that will not be implemented)*

- Counseling of students regarding appropriate conduct
- Review of district and code of conduct
- Change of class schedule/lunch schedule
- Campus/class escort
- Increased school monitoring of location
- School counseling
- Stay away agreement/No contact directive
- Limitation on extracurricular activities
- Training
- Other _____

DISTRICT LETTERHEAD

**This letter may be sent to adult students or parents of minor students after initial verbal contact by school officials about a report of alleged sexual harassment involving their child when no Formal Complaint is filed.*

[Date]

[Adult Student Complainant/Parent/Guardian]
[Address]

Re: Title IX Complaint – Response to Sexual Harassment Report

Supportive Measures

Dear Mr./Ms. _____:

This letter is to confirm receipt of a report of alleged sexual harassment involving your child. It is our understanding that, at this time, you do not wish to file a Formal Complaint and pursue this matter further. If you change your mind, please contact my office immediately.

DISTRICT LETTERHEAD

**This letter may be sent to adult students or parents of verbal contact by school officials about a report of all involving their child when no Formal Complaint is filed.*

[Date]

[Adult Student Complainant/Parent/Guardian]
[Address]

Re: Title IX Complaint – Response to Sexual Harassment Supportive Measures

Dear Mr./Ms. _____:

This letter is to confirm receipt of a report of alleged sexual harassment. It is our understanding that, at this time, you do not and pursue this matter further. If you change your mind, please contact the Title IX Coordinator immediately.

Even though you have not filed a Formal Complaint, the following supportive measures for your child, because of discrimination on the basis of sex, including sexual harassment, against students in all of its educational programs, non-disciplinary, non-punitive individualized services reasonably available, without fee or charge to students, if harassment is made.

Supportive Measures: *(Select only those that apply and options below that will not be implemented.)*

- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus/class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling
- Stay away agreement/No contact directives
- Limitation on extracurricular activities
- Training
- Other: _____

Even though you have not filed a Formal Complaint, the District is implementing the following supportive measures for your child, because school board policy FFH prohibits discrimination on the basis of sex, including sexual harassment and other prohibited conduct, against students in all of its educational programs. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge to students, when a report of alleged sexual harassment is made.

Supportive Measures: *(Select only those that apply and provide details. Delete the options below that will not be implemented.)*

- Counseling of students regarding appropriate behavior expectations
- Review of district and code of conduct expectations with students by administrator
- Change of class schedule/lunch schedule/locker location
- Campus/class escort
- Increased school monitoring of [location] for [time period e.g., next 9 weeks]
- School counseling
- Stay away agreement/No contact directives
- Limitation on extracurricular activities
- Training
- Other: _____

“The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.”

34 C.F.R. § 106.30.

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SUPPORTIVE MEASURES

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My most commonly offered supportive measure is...

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Supportive Measures means...

- Non-disciplinary, non-punitive individualized services
- Offered as appropriate, as reasonably available
- Without fee or charge to the complainant or respondent
- Before or after filing of a formal complaint or where no formal complaint has been filed
- Designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment or deter sexual harassment

34 C.F.R. § 106.30

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Supportive Measures examples

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services**
- Mutual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Other similar measures

34 C.F.R. § 106.30

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- **Counseling of students regarding appropriate behavior expectations**
- **Review of district and code of conduct expectations with students by administrator**
- **Change of class schedule/lunch schedule/locker location**
- **Campus/class escort**
- **Increased school monitoring of [location] for [time period e.g., next 9 weeks]**
- **School counseling - # sessions**
- **No contact/no communication agreements**
- **No contact/communication directives**
- **Limitation on extracurricular activities**
- **Social Skills Training**
- **Staff Training**
- **Other: _____**



Add the term of supportive measures (e.g., pending resolution of the grievance process; four weeks; end of semester; end of the school year).

Supportive Measures means...

The recipient must maintain as confidential any supportive measures provided to the complainant or respondent—to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures.

34 C.F.R. § 106.30

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Keep documentation of supportive measures (e.g., no contact/communication agreements, log of counseling sessions, copies of social skills stories/trainings, summary of schedule changes, summary of campus escorts).

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SCENARIO: Emergency Removal

If a Formal Complaint is filed, Principal Prime and Coach Reid cannot remove John from the team until the Title IX Investigative Process is completed and a determination of “responsibility” is made, unless the criteria for an “emergency removal” are met.

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NOTICE TO PARTIES IF FORMAL COMPLAINT IS FILED

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DISTRICT LETTERHEAD

**This notice must be sent simultaneously to the Complainant and Respondent and before investigation of the Formal Complaint begins, including student interviews occur.*

[Date]

[Adult Student Complainant/Parent/Guardian]
[Address]

Re: Notice to Parties of Title IX Formal Complaint of Sexual Harassment
Case No. _____

Dear Mr./Ms. _____:

This letter is to notify you of the filing of a Formal Complaint of sexual harassment involving your student. The details of the allegations are included on the enclosed Formal Complaint form. Sexual harassment is prohibited by and defined in Board Policy FFH (LEGAL) and (LOCAL). The grievance process for handling this complaint can be found in FFH (REGULATION 2-SEXUAL HARASSMENT). The policies and procedures are enclosed for your reference.

The District's Title IX sexual harassment grievance process is an informal resolution process at any responsibility. During the grievance process, the Complainant, and the accused is called the Respondent.

The first step in the grievance process is for the District to attempt to resolve the complaint through mediation. If mediation is unsuccessful, the District will conduct an investigation. You are also entitled to inspect and review the evidence upon which the District's determination regarding responsibility and inculpatory conduct is based, so that you can provide evidence prior to conclusion of the investigation.

Please be aware that, by law, the Respondent is permitted to have an advisor. You are also entitled to inspect and review the evidence upon which the District's determination regarding responsibility and inculpatory conduct is based, so that you can provide evidence prior to conclusion of the investigation.

You are allowed an advisor to assist you in this process. You may wish to help you through the process or represent you at the hearing. If you would like to have an advisor, you must provide the name and contact information of your advisor to the District. The advisor must be directly related to the allegations, including the evidence upon which the District's determination regarding responsibility and inculpatory conduct is based, so that you can provide evidence prior to conclusion of the investigation.

****This notice must be sent simultaneously to the Complainant and Respondent and before investigation of the Formal Complaint begins, including student interviews occur.***

[Date]

[Adult Student Complainant/Parent/Guardian]
[Address]

Re: Notice to Parties of Title IX Formal Complaint of Sexual Harassment
Case No. _____

Dear Mr./Ms. _____:

This letter is to notify you of the filing of a Formal Complaint of sexual harassment involving your student. The details of the allegations are included on the enclosed Formal Complaint form. Sexual harassment is prohibited by and defined in Board Policy FFH (LEGAL) and (LOCAL). The grievance process for handling this complaint can be found in FFH (REGULATION 2-SEXUAL HARASSMENT). The policies and procedures are enclosed for your reference.



SENT BY TITLE IX
COORDINATOR
or DESIGNEE

Investigation of Formal Complaint – Appoint Investigator and Decision Maker

Provide **Notice to Parties**: Simultaneous notice must be provided to all known parties that includes:

- Allegations of sexual harassment, known at the time, with sufficient detail to prepare before any initial interview;
- Identities of the parties involved;
- Date, location of alleged incident(s);
- Statement that Respondent is presumed not responsible and that a determination will not be made until the conclusion of the grievance process
- Statement that the parties have the right to an advisor of their choosing, who can be a parent/guardian or another individual who may, but is not required to be, an attorney and who may inspect and review evidence; and
- Statement that the Code of Conduct prohibits knowingly making false statements.
- **An offer of informal resolution.**

ASSISTING WITH EMERGENCY REMOVAL OR ADMINISTRATIVE LEAVE DECISIONS

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Emergency Removal: The Title IX Coordinator/designee and the campus administration/HR will determine whether a respondent should be removed on an emergency basis. The District must first undertake an individualized safety and **risk analysis** to determine whether an **immediate threat** to the physical health and safety of others, **arising from the alleged sexual harassment**, justifies removal.

*Title IX does not modify the rights of students with disabilities regarding change of placement under the Individuals with Disabilities Education Act and Section 504 still apply.

- Title IX Coordinator
- Campus Administrator
- **Threat Assessment Personnel**

SCENARIO: Locker Room Bums

Several of the school's football players are annoyed by a new student, Jake, who has recently moved to the district from another country with different cultural norms (i.e., California). Jake is more direct when communicating with others and does not always appreciate the subtleties of local customs and relationships.

A handful of teammates decide to "take him down a notch" by holding him down and sticking something "up his bum."

SCENARIO:

Relevant Policies: FFI/FFH

Action Needed: Students: 1) review policy – FFI or FFH? - both; 2) contact parents/student – offer info about FFH process; 3) contact law enforcement; 4) offer supportive measures; 5) determine whether immediate threat to physical health or safety of students

Documentation Required/Recommended: 1) supportive measures offered; 2) that reported to law enforcement; 3) whether FC filed; 3) if FC filed...

Retention of Documentation: At least 7 years (or 2 years passed 18)

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**REPORTS TO CPS, LAW
ENFORCEMENT, SBEC**



Emergency Removal: The Title IX Coordinator/designee and the campus administration/HR will determine whether a respondent should be removed on an emergency basis. The District must first undertake an individualized safety and **risk analysis** to determine whether an **immediate threat** to the physical health and safety of others, **arising from the alleged sexual harassment**, justifies removal.

*Title IX does not modify the rights of students with disabilities regarding change of placement under the Individuals with Disabilities Education Act and Section 504 still apply.

- Title IX Coordinator
- Campus Administrator
- **Threat Assessment Personnel**

SCENARIO: Reporting sexual harassment...

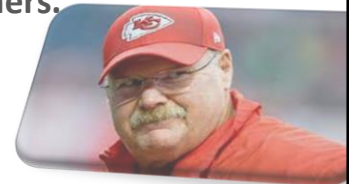
Taylor and John used to date. John has “nudes” of Taylor. After they break up, John sends the pics to other students who show them around school. Taylor’s new boyfriend, Travis, finds out about this and “avenges” Taylor’s honor by punching John in the nose at school.

Both John and Travis play on the football team.

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SCENARIO: Reporting sexual harassment...

After days of trying to avoid school, Taylor finally tells her mother about the photos and begs not to go to school. Taylor's mother sends an email to Coach Reid to report that her daughter is being sexually harassed by his players. Coach Reid says he will handle it and has John and Travis run bleachers.



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SCENARIO: Failing to Report

Relevant Policies: FFI/FFH - Employee report to appropriate official listed in policy

Action Needed: Students: 1) review policy – FFI or FFH?; 2) contact parents/student – offer info about TIX process; 3) offer supportive measures; 4) employee documentation/retraining

Documentation Required/Recommended: 1) supportive measures offered; 2) whether FC filed; 3) if FC filed...

Retention of Documentation: At least 7 years

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SCENARIO:

What do about:

- John
- Travis
- Taylor

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SCENARIO:

Relevant Policies: FFI/FFH

Action Needed: Students: 1) review policy – FFI or FFH? - both; 2) contact parents/student – offer info about FFH process; 3) contact law enforcement; 4) offer supportive measures; 5) determine whether immediate threat to physical health or safety of students

Documentation Required/Recommended: 1) supportive measures offered; 2) that reported to law enforcement; 3) whether FC filed; 3) if FC filed...

Retention of Documentation: At least 7 years (or 2 years passed 18)

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DETERMINING WHETHER TO DISMISS A FORMAL COMPLAINT

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Title IX Discrimination Dismissal Form

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the sex of students in educational institutions that receive federal financial assistance. A Formal Complaint of sexual harassment must be dismissed if alleged conduct, even if proved, would not constitute sexual harassment, did not occur in a school district program or activity, or did not occur in the United States. A Formal Complaint may be dismissed if a Complainant notifies the Title IX Coordinator that he/she would like to withdraw the complaint or any of the allegations therein, the Respondent is no longer enrolled in the district, or specific circumstances prevent the district from gathering evidence sufficient to reach a determination.

COMPLAINANT

Case Number

Complainant

Email

Complainant

Respondent

Email

Respondent

Dismissal

☐ Does not

☐ Did not

☐ Respon

☐ Circums

Reasoning

Dismissal Basis: (Check all that apply)

☐ Does not constitute sexual harassment

☐ Did not occur in the U.S.

☐ Respondent no longer enrolled in district

☐ Circumstances prevent the district from gathering evidence sufficient to reach a determination

☐ Did not occur in district program or activity

☐ Dismissal requested by Complainant

Reasoning for Dismissal: Describe the reasoning behind the dismissal of this complaint.

Name

Title IX Coordinator/designee

Date

Once signed, a copy of this dismissal form will be placed in the file for this complaint and sent to all parties involved.

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My district has dismissed complaints the most due to:

① Start presenting to display the poll results on this slide.

“*The Title IX Coordinator is responsible for effective implementation of remedies.*”

34 C.F.R. § 106.45(b)(7)(iv).

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What are examples of remedies?

- Not defined in Title IX
- No list of examples in regulations
- Money damages were removed as possible remedy in final rules

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Remedies - Purpose

Designed to restore or preserve the complainant's equal access to education

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Remedies for Complainants

- Supportive measures
- Counseling
- Opportunity to make up work, retake exams
- Change of class, lunch period, campus
- Escort on campus
- Increase security
- Training efforts

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Remedies for Complainants

- Disciplinary sanctions against respondent per the Student Code of Conduct (e.g., OSS, DAEP, expulsion)
- Removal of respondent from extracurricular activity/activities
- Unilateral no-contact order on respondent
- Other sanctions applicable to respondent

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Some remedies my district has implemented include:

① Start presenting to display the poll results on this slide.



The Department believes that a complainant entitled to remedies should not need to file an appeal to challenge the recipient's selection of remedies; instead, we have revised [the rules] to require that Title IX Coordinator be responsible for effective implementation of remedies. This permits a complainant to work with the Title IX Coordinator to select and effectively implement remedies designed to restore or preserve the complainant's equal access to education."

p. 940 = Commentary

Selection of Remedies Not Appealable

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Selection of Remedies Not Appealable

Bases for Appeal of Decisions

- **Procedural irregularity**
- **Bias or conflict of interest**
- **That affected the outcome**

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Written Determination must include

- **any sanctions the recipient imposes on the respondent; and**
- **whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided to the complainant**



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REMEDIES

- **Shared with complainant – complainant's remedies and respondent's sanctions**
- **Shared with respondent – sanctions and whether remedies were provided to complainant (not details of the remedy, unless the sanctions overlap with remedies)**



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POSTING TRAINING MATERIALS

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What to post:

- **Notice of non-discrimination policy**
- **Title IX Coordinator's contact information**
- **Links to FFH and DIA – LEGAL, LOCAL, EXHIBIT, REGULATIONS**
- **Training materials used to train T9 Coordinator, Investigators, Decision-Makers, Facilitators**

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Permission from the copyright holder should be obtained, but failure to obtain permission does not relieve a district from the requirement to post.

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Where to post:



- **Non-discrimination policy and Title IX Coordinator's contact information must be prominently displayed.**
- **There is no requirement that the materials be on the homepage or linked to the homepage.**

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Where to post:



- **There is no requirement to have a section of the website dedicated to Title IX requirements.**
- **There is no requirement that Title IX information be located on multiple pages of a district's website.**
- **Title IX information could be added as a drop-down option in any of the following areas: Required Notices, Public Information, Departments, Students, Employees, Community**

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My district has had trouble displaying our training materials

① Start presenting to display the poll results on this slide.

RECORD KEEPING

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DISTRICT LETTERHEAD

Title IX Record Keeping Cover Sheet

*All records related to a report of sexual harassment must be kept for a period of seven (7) years from the date of conclusion of the grievance process.

Date of Initial Complaint: _____

Date of Final Decision: _____

- ☐ Initial Intake Report
- ☐ Response to Sexual Harassment Report – Supportive Measures
- ☐ Formal Complaint, if any
- ☐ Notice to Parties
- ☐ Emergency Removal, if applicable
- ☐ Administrative Leave – Personnel, if applicable
- ☐ Informal Resolution Paperwork
- ☐ Notices to Parties of Interviews
- ☐ Evidence Submitted to Parties, including witness statements, photographs, electronic communications
- ☐ Draft Investigative Report and Notice of Opportunity to Submit Response Sent to Parties
- ☐ Final Investigation Report
- ☐ Notice of Opportunity to Submit Questions
- ☐ Questions Submitted and Answers
- ☐ Determination of Responsibility
- ☐ Documentation of Supportive and Other Measures Imposed After Determination of Responsibility
- ☐ Appeals Documentation, if any
- ☐ Decision on Appeal

* The Title IX Coordinator must also retain copies of materials used to train the Title IX Coordinator, investigators, decision makers, and facilitators for seven (7) years.

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Audience Q&A Session

① Start presenting to display the audience questions on this slide.

The information in this handout was prepared by Eichelbaum Wardell Hansen Powell & Muñoz, P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If special legal advice is sought, consult an attorney.



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