Unionville-Chadds Ford School District

April 15, 2026

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Education Law Department

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Agenda

Part I: Understanding The Current Regulations:

- What is Title IX?
- What Is Its Purpose?
- Key Personnel and Their Roles
- Key Definitions Part I
- What Do the Regulations State?
- Decisions to Be Made: Identifying the Personnel

Part II: Effectively Implementing the Current Regulations:

- From Incident Report to Formal Complaint to Investigation
- Key Definitions Part II: Credibility, Relevance, Standard of Proof
- How to Conduct an Investigation
- Post Investigation: What Needs to Happen and When?
- Hearing or Administrative Outcome Determination Process
- Outcome Determination Letter
- Appeal Process
- Current Administration Updates on Title IX

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Title IX
Part I: Understanding the Regulations

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Title IX Key Questions

- What is Title IX?
- What do the current regulations require?
- Who is responsible?
- How do you effectively implement what is required?

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Key Personnel in Title IX Process

- Title IX Coordinator
  - Depending on the size of the school, may need to designate “Deputy Title IX Coordinator” and/or “Title IX liaison/investigators” in each school building
- Investigator
- Decision Maker(s) (or panel of decision makers)
- Advisor
- Informal Resolution Facilitator
- Appeal Decision Maker
- Possible other involved personnel:
  - HR Director
  - Special Education Director
  - School Counselor
  - School Resource Officers

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What is Title IX?

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

20 USCA Sec. 1681

To enforce Title IX, the U.S. Department of Education maintains an Office for Civil Rights, with headquarters in Washington, DC, and regional offices across the United States.

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Duty to Prohibit Discrimination in Education

Educational institutions have a **responsibility to protect every student's right to learn in a safe environment free from unlawful discrimination and to prevent unjust deprivations of that right**.

The Office for Civil Rights enforces several federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education.

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Current Final Regulations

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The Current Title IX Regulations

- April 19, 2024 – 2024 Title IX Regulations were published by the Biden Administration.
- August 1, 2024 – 2024 Title IX Regulations took effect.
- January 9, 2025 – 2024 Title IX Regulations were vacated by the federal courts.
- January 31, 2025 – TA published a Dear Colleague Letter stating that OCR will enforce the 2020 Title IX Regulations.

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What Do the Final Regulations Require?

Final Regulations require schools to:

1. Respond **Promptly** and **Supportively** to persons alleged to have been victimized by sexual harassment

2. Resolve allegations of sexual harassment **promptly and accurately** under a **predictable, fair grievance process** that provides **due process** protections to the alleged victim and alleged perpetrators of sexual harassment

3. Effectively implement remedies for victims

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Unionville-Chadds Ford School District Board Policies

Here is the District's School Board policy on Title IX. It can be found in BoardDocs.

Policy 103.2 – Title IX Nondiscrimination

Policy 103.2-AG-0 – Discrimination/Harassment Incident Reporting Form

Policy 103.2-AG-1 – Nondiscrimination Based on Sex Procedures

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Purpose and Scope of Title IX

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Understanding Title IX

What Title IX Does

Prohibits discrimination on the basis of sex in:

- Education programs and activities
- Employment (similar to other federal and state laws)

Consequences/Risks for Non-Compliance

- Injury to Student/Complainant
- Potential civil liability
- OCR investigation and possible lengthy oversight
- Potential loss of some, part or all of a recipient's federal funding
- Decrease in public perception of the safety of the school

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Understanding Title IX (Cont'd)

Who Must Follow:	• All recipients of federal financial assistance
Who It Protects:	• Protects students, employees, and third parties from sex discrimination, sexual harassment and violence by any institution employee, another student, or a non-employee third party.

Who Can Report:	• Any person
	  • A harassed student or employee
	  • The student's parent or guardian
	  • A third party

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Understanding Title IX (Cont'd)

How Can a Person Report?

- A report, verbal or written, can be received in any manner
  - In person
  - By mail
  - By e-mail

When Can a Person Report?

- A person can report at any time
- The capability must exist for a person to report at any time, including afterhours.

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Conduct Covered Under Title IX Sexual Harassment

- **Sexual Harassment**
  - Quid pro quo
  - Hostile Environment
  - Physical, Verbal
  - Electronic
- **Sexual Assault**
  - Rape
  - Fondling
  - Incest
  - Statutory rape
- **Stalking**
- **Dating violence**
  - Includes, but is not limited to, sexual or physical abuse OR the threat of such abuse
- **Domestic Violence**
- **Retaliation***

*(see pg. 96, footnote 257 in Final Regulations)

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When and How Must a School Respond to Sexual Harassment?

A school with actual knowledge of Title IX sexual harassment in an education program or activity against a person in the United States MUST respond.

Actual Knowledge is **notice** of sexual harassment or allegations of sexual harassment to ***any school employee.***

Actual knowledge of sexual harassment or a report of sexual harassment triggers a duty to respond:

- Must be prompt
- Must not be deliberately indifferent
- Must provide supportive measures
- Must be confidential
- Must initiate grievance process
- Must conduct an investigation

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How To Report Sexual Harassment:

- School policy **must state how** to report sex discrimination, sexual harassment or violence.

- The name and contact information for the Title IX Coordinator and the policy must be published on the **school district website and in each catalog or handbook** that the school provides to people who are entitled to notice (i.e. students, employees, parents).

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How To Report Sexual Harassment:

Any questions regarding Title IX or the application of this Policy can be directed to the Title IX Coordinator. The following person has been designated as the District's Title IX Coordinator:

Name: Pat Clark

Title: Title IX Coordinator

Address: 740 Unionville Road Kennett Square, PA 19348

Phone Number: 610-347-0970 x3370

Email: pclark@ucfsd.net

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School's Duty to Respond to Sexual Harassment – Required by Law

- An elementary and secondary school **must respond** whenever **any employee** has notice of sexual harassment or allegations of sexual harassment.

  - School employees are mandatory reporters
  - Schools sit "in loco parentis" or "in the place of parents" while students are in their care or being transported to and from school.

§106.44(a)

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School's Duty to Respond to Sexual Harassment: Actual Knowledge

Actual knowledge is defined as **notice** of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any school official who has authority to institute corrective measures on behalf of the school or **to any employee of an elementary or secondary school**.

- Title IX Coordinator
- Any other school official with authority to institute corrective measures
- **K–12: ALL EMPLOYEES**

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Notice

Is whenever any elementary and secondary school employee, any Title IX Coordinator, or any official with authority:

1. Witnesses sexual harassment
2. Hears about sexual harassment or sexual harassment allegations from a Complainant (i.e., a person alleged to be the victim) or a third party (e.g., the Complainant's parent, friend, or peer)
3. Receives a written or verbal complaint about sexual harassment or sexual harassment allegations or
4. By any other means

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Jurisdiction = When do the Title IX Regulations apply?

- Protect any person for conduct that takes place in a School's "education program or activity" **in the United States**
- ***Apply to Students and Employees of the School***
- Include "locations, events, or circumstances over which the recipient exercised substantial control over **both the respondent and the context in which the harassment occurs**"

§106.44(a)

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Jurisdiction (Cont'd)

Title IX obligations extend to sexual harassment incidents that occur off campus **if**:

1. The off-campus incident occurs as part of the school's "operations"

2. The school exercised substantial control over the respondent and the context of the alleged sexual harassment that occurred off campus.

Pgs. 624-625

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Title IX Definitions
34 CFR §106

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Definitions

- Sexual Harassment
- Supportive Measures
- Formal Complaint
- Deliberate Indifference
- Grievance Process
- Standard of Proof: Preponderance of the evidence or clear and convincing
- Formal Resolution
- Informal Resolution: Mediation and/or Restorative Justice
- Due Process
- Outcome Determinations
- Appeal

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Sexual Harassment §106.30

Note: *Sexual harassment is a form of sex discrimination.*

Sexual harassment includes:

- Quid pro quo harassment
- Hostile environment harassment
- Certain specific criminal offenses:
  - Sexual assault
  - Dating violence
  - Domestic violence
  - Stalking

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Quid Pro Quo Sexual Harassment

An employee of the recipient *conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.*

"Something for Something"

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Hostile Environment Harassment

Hostile Environment Harassment includes conduct that is:

(1) Unwelcome;

(2) Sex-based;

(3) *Severe **AND** pervasive;* and

(4) Objectively offensive;

(5) Denies a person equal access to the recipient's education program or activity (*i.e.,* creates a hostile environment).

*Whether a hostile environment has been created is a fact-specific inquiry.

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Unwelcome Conduct.

- Not solicited or invited and the person considers it to be offensive
- Whether conduct is unwelcome depends on the circumstances
- Participation in conduct (like making jokes) or failing to stop the conduct in one situation doesn't mean it was welcome.
- Conduct can become unwelcomed on future occasions

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Based on Sex

- Boys can harass Boys
- Girls can harass Girls (even if they are both heterosexual)
- Boys can harass Girls
- Girls can harass Boys

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Severe

- Defined by the courts.
- Threshold of insults, banter, and teasing based on gender are not necessarily enough.
- Analysis MUST be individual to the circumstances.
- Courts have consistently found that: Schools are not perfectly analogous to a workplace and minor students are not perfectly analogous to adults.

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Pervasive

- Defined by the courts
- Analysis MUST be individual to the circumstances.
- For conduct to be pervasive under Title IX, it typically means multiple incidents of harassment; one incident is not usually enough.
- Most single incidents could potentially be “severe” but you must ask whether the conduct is also widespread?

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Objectively Offensive

- For conduct to be **objectively offensive** under Title IX, it means behavior that is offensive to a "reasonable person" under the circumstances, not subjectively.
- Belief of the complainant is not determinative.
- Must look at a reasonable person of the **same age** under the **same circumstances.**

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Denial of Educational Opportunity

- Analysis MUST be individual to the circumstances.
- Look at the impact of a "reasonable person" under the circumstances and ask would they have been denied equal access to education compared to a **similarly situated person** who did not suffer sexual harassment.
- Examples to look for: Skipping class, lower grades, quitting a club or sports team, regressive behaviors for younger kids, acting out at school or home, withdrawal from friends or family.
- Does not require a complete denial of equal access to an opportunity.
- Ask: would a reasonable person be impacted under the circumstances?

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Hostile Environment Harassment

Consider:

- Type, frequency, and duration of the conduct.
- Degree to which conduct affected complainant's ability to access the school's education program or activity.
- Parties' ages, roles within education program or activity, previous interactions, and other factors about the parties that may be relevant in evaluating the effects of the conduct.
- Location of conduct and context.
- Other sexual harassment in education program or activity.

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Sexual Assault
(as defined in 20 U.S.C. 1092(f)(6)(A)(v))

Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

Sexual assault includes conduct such as rape and criminal sexual contact. **This includes the intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.**

* See June 23, 2025 update to the FBI's National Incident-Based Reporting System.

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Sexual Assault

- Rape: Any act of vaginal or anal penetration, however slight, with any body part or object, or oral genital contact without consent.
- Fondling: Touching of the private body parts of another person for the purposes of sexual gratification, without consent (over or under clothing).
- Incest
- Statutory Rape

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Dating Violence (as defined in 34 U.S.C. 12291(a)(10))

Violence committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(1) The length of the relationship;

(2) The type of relationship; and

(3) The frequency of interaction between the persons involved in the relationship.

**Note: At the time the 2020 regulations were passed, this definition was 34 U.S.C. 12291(a)(10) and has since been moved to (a)(11).*

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Domestic Violence (as defined in 34 U.S.C. 12291(a)(8))

Felony or misdemeanor crimes committed by a person who:

(A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;

(B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(C) Shares a child in common with the victim; or

(D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

**Note: At the time the 2020 regulations were passed, this definition was 34 U.S.C. 12291(a)(8) and has since been moved to (a)(12).*

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Stalking
(as defined in 34 U.S.C. 12291(a)(30))

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for the person's safety or the safety of others; or

(B) Suffer substantial emotional distress.

**Note: At the time the 2020 regulations were passed, this definition was 34 U.S.C. 12291(a)(30) and has since been moved to (a)(36).*

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Complainant/Respondent

- **Complainant:** Individual alleged to be the victim of conduct that could constitute sexual harassment
  - Does not require a formal complaint to use this designation

- **Respondent:** Alleged perpetrator of conduct that could constitute sexual harassment
  - Does not need to be adjudicated or a formal complaint filed to use this designation

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Educational Program or Activity

- Locations, events or circumstances over which the school exercises **substantial control** over both the respondent and the context in which the harassment occurs
- Must be in the United States
- Can be on campus or off campus
- "Program or activity" encompasses "all of the operations" of a recipient, which may **include computer and internet networks, digital platforms and computer hardware or software owned, operated by or used in the operation of the recipient**.

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Supportive Measures

- The Final Rule defines "supportive measures" as **individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome** to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.
- Such measures are designed to **restore or preserve equal access** to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties, the educational environment, or deter sexual harassment.
- **Document all Supportive Measures!**
- If a school **does not provide** a complainant with supportive measures, then it **must** document the reasons why the measures were not reasonable in light of the known circumstances.

§106.3

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Supportive Measures

- Supportive measures may include **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, and other similar measures**.
- The school 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.

§106.3

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Emergency Removal Process

A respondent can be removed if there is an immediate threat to the **physical health or safety of any students or other individuals** arising from the allegations of sexual harassment.

Prior to the emergency removal, a school must:

1. Conduct an individualized ***safety and risk analysis***
    - Must be more than a "generalized, hypothetical, or speculative belief that the respondent may pose a risk to someone's physical health or safety" and
    - Must be individualized with respect to the particular respondent and must examine the circumstances "arising from the allegations of sexual harassment"
2. Determine 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
3. Provide the respondent with notice and an opportunity to challenge the decision immediately following the removal

******* This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act***

§ 106.44(c)

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Retaliation

Retaliation against any person for exercising their rights under Title IX **is prohibited.**

"[N]o recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

Complaints alleging retaliation *may* be filed according to the grievance procedures for sex discrimination required to be adopted under § 106.8(c).

Can also be handled under Policy 103.

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Formal Complaint

- **A Formal Complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.**
- A formal complaint is NOT required in order for a school to have actual knowledge of sexual harassment or allegations of sexual harassment
- Actual knowledge activates a school's legal obligation to respond promptly
  - By offering **supportive measures** to a complainant
  - And explaining to the complainant the process for filing a formal complaint
- A parent or guardian has the legal right to act on behalf of a complainant or respondent (e.g. as an Advisor or filing a formal complaint)

§106.30

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Grievance Process

A consistent and transparent process of adjudication of a complaint:

- Must treat both parties equitably
- Must be free of conflicts of interest or bias
- Must provide Complainant with remedies
- **Must not impose disciplinary sanction against Respondent without following grievance process and only if there is a finding of responsibility**
- Reasonably prompt
- The standard for evidence for UCFSD is Preponderance of the Evidence
- Any provisions, rules, or practices that a school entity adopts as part of its grievance process **must apply equally** to both parties.

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Retaliation

- Retaliation against any person for exercising their rights under Title IX **is prohibited.**
- Retaliation includes attempts to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.
- Complaints alleging retaliation *may* be filed according to the grievance procedures for sex discrimination required to be adopted under § 106.8(c).
- *Can also be handled under Policy 103 or 104.*

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Informal Resolution Process

Mediation or restorative justice may be offered so long as both parties give voluntary, informed written consent to participate in informal resolution. A party can decide at any time before final determination to no longer proceed with the IRP.

- This option is not available and cannot be used for sexual harassment claims involving employees against students.
- School cannot require waiver of formal investigation as condition of enrollment.
- It must be managed by an Informal Resolution Facilitator who must be trained, unbiased and impartial.

§§106.45(b)(9) and 106.45(b)(10)

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Deliberate Indifference

"A recipient (school) acts with deliberate indifference only when it responds to sexual harassment in a manner that is "***clearly unreasonable in light of the known circumstances***... because for a recipient with actual knowledge to respond in a clearly unreasonable manner constitutes the recipient committing intentional discrimination."

- A school's liability is premised on the school's **actual knowledge *and* deliberate choice** to permit sexual harassment.

- A school's decision not to investigate when the complainant does not wish to file a formal complaint will be evaluated by the Department under the deliberate indifference standard.

§106.44(a)

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Roles & Responsibilities

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Title IX Coordinators, Investigators, Decision Makers & Informal Resolution Facilitators

- Responsible for the effective implementation of Title IX protections and the grievance process
- Must be trained on Title IX policies and procedures
  - All training must be posted on school's website
- Title IX Coordinators, investigators and decision makers, and persons who facilitate informal resolution processes are prohibited from having **conflicts of interest or bias** and retaliation is prohibited.

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Title IX Coordinator

Employee designated to ensure compliance with regulations and to receive complaints

Must identify the name, title, office address, email address and telephone number of this employee on the school's website and post all Title IX materials (policy and training)

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What is the Role of the Title IX Coordinator?

- Monitoring the school's/recipients' compliance with Title IX
- Ensuring appropriate education and training is provided
- Coordinating the investigations, responses and resolutions of all reports under this policy
- Ensuring appropriate actions to eliminate sexual harassment, prevent its recurrence and remedy its effects
- Reviewing regularly the effectiveness of the efforts of the recipient to ensure that the educational setting is free from sexual harassment

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Duties of Title IX Coordinator

- Contacts each complainant (i.e., person who is alleged to be the victim of sexual harassment) to discuss supportive measures
- Informs the complainant of the availability of supportive measures with or without the filing of a formal complaint and explains to the complainant the process for filing a formal complaint.

- Must treat complainants and respondents equitably
- If a respondent is found to be responsible for sexual harassment, the school must effectively implement remedies for the complainant, designed to restore or preserve the complainant's equal educational access
- May impose disciplinary sanctions

§106.44(a)

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Investigator

- Assigned by the Title IX Coordinator
  - Title IX Coordinator can serve as the Investigator
- Must be impartial, unbiased and free from conflicts
- Oversees the prompt, thorough gathering of all facts based on the filing of formal complaint
- Effectively communicates with all participants throughout and involved in the investigation
- Provide notice of any good faith delays
- Understands relevance and creates an investigative report that fairly summarizes relevant evidence

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Decision Maker

- Oversees the hearing or administrative determination proceeding or, when applicable, reviews appeals
  - Must be impartial, unbiased and free from conflicts
  - Must receive training on any technology to be used at a live hearing, and on issues of relevance of questions and evidence, including when questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant
  - Title IX Coordinator and Investigators cannot serve as the Decision Maker

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Informal Resolution Facilitator

- Serves as a mediator and oversees the informal resolution process seeking a resolution to a formal complaint that both parties agree, in writing, to resolve using restorative justice or mediation practices
- Must be impartial, unbiased and free from conflict

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Impartiality

- Recipients **are not required** to use outside unaffiliated Title IX personnel to avoid conflicts and may use their own employees to comply with the final regulations.
- Administrative hierarchy, employment relationships and professional experiences or affiliations (such as a self-described survivor or feminist) are not automatically prohibited conflicts of interest.
- Recipients **have discretion to decide how best to implement the prohibition on conflicts of interest and bias**, including providing a process for parties to assert claims of conflict of interest or bias during the investigation.

§106.45(b)(1)(iii)

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Title IX Final Regulations
Part II: Policy, Procedures & Training

Implementing the
Current Regulations

Investigations, Administrative Outcomes & Appeals

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Training: Purpose and Goals

- Training is key to a successful response to reports of alleged sex discrimination or harassment.
- Training is **required by the federal government** to ensure institutional practice consistent with key laws and guidance:
  - On policies, procedures
  - For anyone who is responsible for Title IX in the schools: Title IX Coordinator, Investigator, decision makers and informal resolution facilitators
- All materials used to train Title IX personnel:
  - Must not rely on sex stereotypes
  - Must promote impartial investigations and adjudications of formal complaints of sexual harassment
  - Must be maintained by the school for at least seven years

§106.45(b)(1)(iii) & §106.45(b)(10)(i)(D)

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Training

- The school must ensure these roles are clear of conflict before individuals begin serving in their roles:
  - Title IX Coordinators
  - Investigators
  - Decision makers
  - Facilitators of informal resolution processes
- The school has discretion to impose additional training as needed, including training of other personnel and students.

§106.45(b)(1)(iii)

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Documentation

Document, Document, Document

- It cannot be overstated that school MUST keep accurate records.
- The Who, What, When, How and Why
  - Who received the report
  - Who made the report
  - When was the report received and when any other steps were taken
  - What steps were taken: Notice to Title IX Coordinator, call to parents/legal guardians of student, call to law enforcement, call to Childline
  - What support was provided to the complainant (person reporting)
    - For example, applying interim measures (i.e. putting a safety plan in place) to make sure the complainant is safe in school and not restricted in participating in schools' programs and activities
- Schools **must** also document their reasons why each response to sexual harassment was not deliberately indifferent– clearly unreasonable in light of known circumstances.

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Definitions: Part II

- Relevance
- Credibility
- Rape shield
- Hearing proceeding
- Outcome determination
- Appeal
- Recordkeeping

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Relevance

This term requires that the evidence or testimony directly relate to the issues disputed or discussed.

- Inculpatory and exculpatory evidence is considered relevant.
- Information protected by a legally recognized privilege is not relevant.
- Questions about a Complainant's prior sexual behavior or sexual predisposition are not relevant, unless:
  - Offer to prove someone other than Respondent is responsible
  - Offer to prove the Complainant provided Respondent with prior consent

§106.45(b)(1)(ii) & §106.45(b)(6)

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Inculpatory Evidence

- Inculpatory evidence is evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish guilt.

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Exculpatory Evidence

- Evidence that tends to show a person's innocence is considered exculpatory evidence.

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Credibility

- That quality in a witness which renders their testimony worthy of belief.
- Factors used to assess credibility:
  - Observation of a witness or participant's general demeanor
  - Opportunity for the witness/ participant to observe and provide the information they are giving
  - Noting consistencies or inconsistencies in their narrative
  - Compare or document any prior inconsistent statements
  - Any bias or motive to lie
  - Probability or improbability of the person's description of the event: Does it have the ring of truth or make sense?

"A decision-maker may judge credibility based on, for example, factors of plausibility and consistency in party and witness statements. Specialized legal training is not a prerequisite for evaluating credibility, as evidenced by the fact that many criminal and civil court trials rely on jurors (for whom no legal training is required) to determine the facts of the case including the credibility of witnesses." (pg. 1238)

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Rape Shield

Depending on the particular state law, no testimony or evidence of a Complainant's past sexual behavior shall be permitted.

- unless the questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct or are offered to prove consent. (pg. 2025)

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Outcome Determination

- Issued by the decision maker(s) who oversees and manages the administrative outcome proceeding or live hearing
- Must be a written determination regarding responsibility
- To reach this determination, the decision maker **must apply the standard of evidence**
- The recipient must provide the written determination to the parties **simultaneously**. The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

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Outcome Determination (Cont'd)

- The written determination must include:
  - (A) Identification of the allegations potentially constituting sexual harassment
  - (B) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
  - (C) Findings of fact supporting the determination
  - (D) Conclusions regarding the application of the recipient's code of conduct to the facts
  - (E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary 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 by the recipient to the complainant
  - (F) The recipient's procedures and permissible bases for the complainant and respondent to appeal

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Appeals

Parties are entitled to appeal

- An outcome determination
- A dismissal of a formal complaint
- Dismissal of any allegation in the formal complaint

The (3) three bases for an appeal are:

1. Procedural irregularity that affected the outcome of the matter
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
3. The Title IX Coordinator, investigator(s) 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 of the matter

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Recordkeeping

- A school must maintain for a period of **seven years** records of:
  - Each sexual harassment investigation including any determination regarding responsibility and any required audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity
  - Any appeal and the result therefrom
  - Any informal resolution and the result therefrom
  - All materials used to train Title IX Coordinators, investigators, decision makers and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

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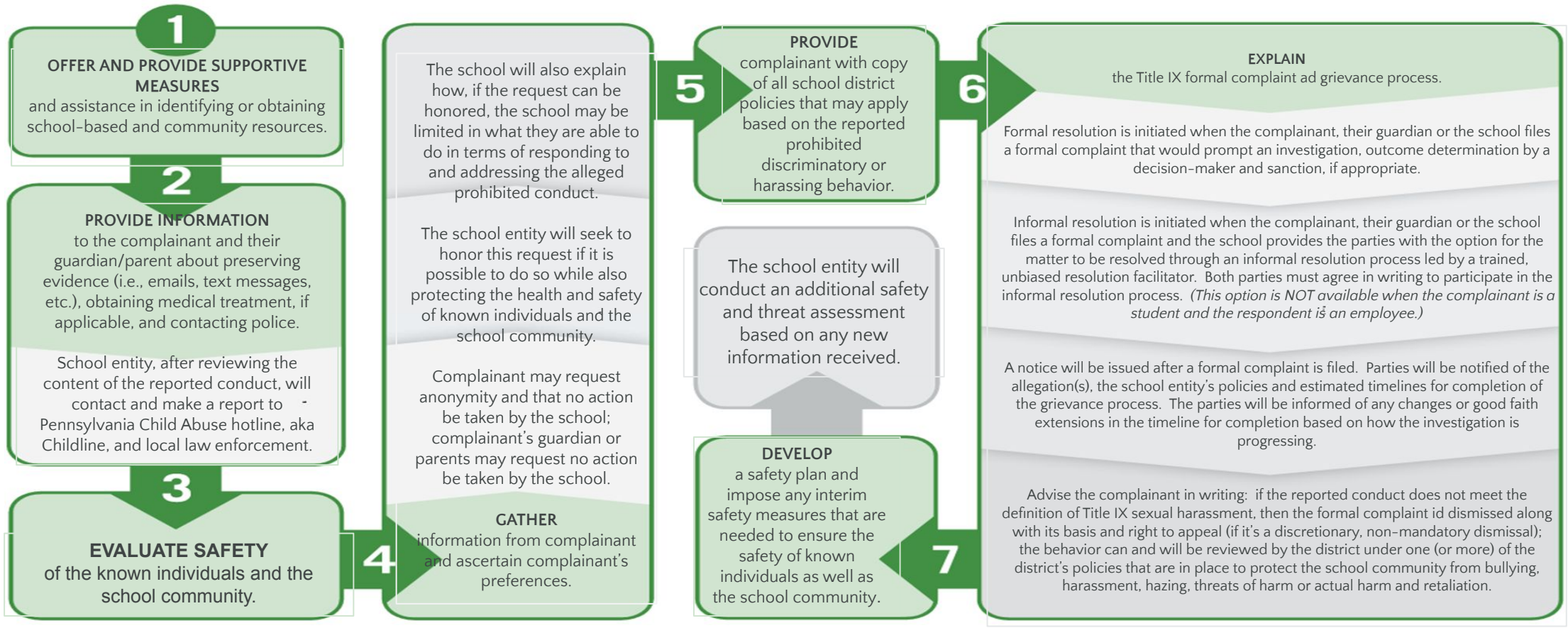
Step by Step: Incident Report to Final Outcome Determination

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The Path of a Report of Harassment or Discriminatory Conduct

Initial Assessment of Report

Upon receiving a report of harassment or discriminatory conduct, the school entity will:



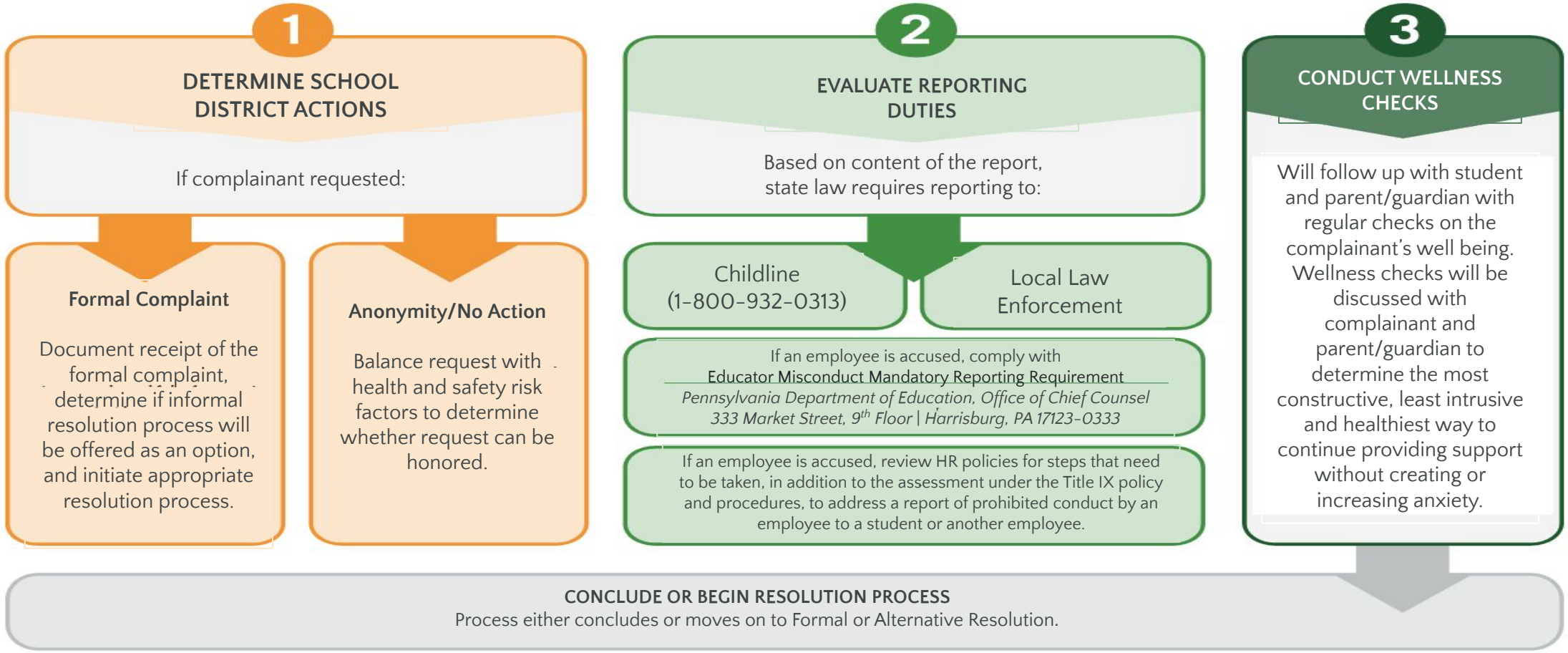
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The Path of a Report of Harassment or Discriminatory Conduct

Initial Assessment of Report



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The Path of a Report of Harassment or Discriminatory Conduct

Initial Assessment of Report

At the beginning of the resolution process:

1 WRITTEN NOTICE

will be provided by the Title IX Coordinator to the complainant(s) and the respondent(s).

2 TRAINED INVESTIGATOR(S)

will conduct a prompt, thorough, fair and impartial investigation. Both parties will have an equal opportunity to be heard, to submit evidence, to identify witnesses, and to submit questions they believe should be directed by the investigator to each other or to any witness.

3 ADVISOR OF CHOICE

may accompany, support and advise each party throughout the investigation and resolution process.

4 CONFIDENTIALITY

will be explained and maintained to the extent possible by the school entity and in compliance with state and federal laws that ensure educational privacy (i.e. FERPA). Only those individuals who need to know will be contacted and given appropriate and limited information that is necessary to conduct a fair, thorough and impartial grievance process.

5 RETALIATION

is prohibited and all participants are reminded that retaliation will not be tolerated and is a separate violation of the school district's policies.

At the conclusion of an investigation:

The investigator(s) will give all parties and advisors the opportunity to review the evidence and submit a written response which will be considered *prior* to completion of the investigative report.

The investigator will prepare an **Investigation Report** that will be provided to all parties and advisors and the decision-maker. The parties will have an opportunity to present questions to the decision-maker and provide answers to relevant questions *before* the decision-maker reaches a determination regarding responsibility.

The decision-maker reaches a **Finding of Responsibility or Non-Responsibility** on any or all of the allegations.

Complainant and Respondent may **appeal** the outcome determination of the decision-maker.

If no appeal is filed, then the matter is concluded and sanction, if applicable, is imposed.

If an appeal is filed, an appeal decision-maker reviews all of the information gathered and the written statements (if any) provided by the parties as to the basis for the appeal and renders a decision.

The appeal decision-maker will provide a written decision describing the result on appeal and the rationale for the result.

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Grievance Process

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No Contact Orders

Mutual vs. One Way

- Mutual No Contact Orders are permissible an on the lists of possible supportive measures
  - Dept. of Education does not see a mutual no contact order as retaliatory
- However, the inclusion of "mutual restrictions on contact between the parties" on the list of possible supportive measures **does not mean** that one-way no-contact orders are never appropriate.
- One Way No Contact Orders are permissible and may be appropriate. A fact-specific inquiry **is required** into whether a carefully crafted no-contact order restricting the actions of only one party would meet the definition of supportive measures.
  - If a recipient/school issues a one-way no-contact order to help enforce a restraining order, preliminary injunction, or other order of protection issued by a court
  - Restore or preserve equal access to educational activity or program
  - Must not unreasonably burden the other party

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Confidentiality

- Schools must maintain confidentiality of anyone who makes a report or complaint about sex discrimination.
  - Includes: anyone who makes the report, the complainant, any witness, any person who is reported to be the perpetrator, and the respondent (except as permitted by FERPA). §106.71(a)
  - *However*, a party such as a complainant or respondent **must** know who the other parties in a formal complaint are in order to support or challenge the allegations in the formal complaint. 85 CFR 30424.
- Consider:
  - Respondents are not entitled to know the identity of all complainants, witnesses and other participants without limitation.
  - Redacting names and/or a non-disclosure agreement.
- Schools (and, as applicable, parties) must follow relevant state and federal health care privacy laws throughout the grievance process. Nothing in the notice should divulge the complainant's (or respondent's) medical information or other sensitive information.

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FERPA

- FERPA continues to apply in the context of enforcing Title IX, but if there is a **direct conflict** between FERPA's requirements and Title IX's requirements, such that enforcing FERPA would interfere with Title IX's primary purpose to eliminate sex-based discrimination in schools, Title IX overrides FERPA. 85 CFR 30424.
  - This is a fact-specific determination that should be addressed on a case-by-case basis.
- *The Title IX regulations do not interfere with a parent's or guardian's rights under FERPA to obtain records or access information involving their child.*

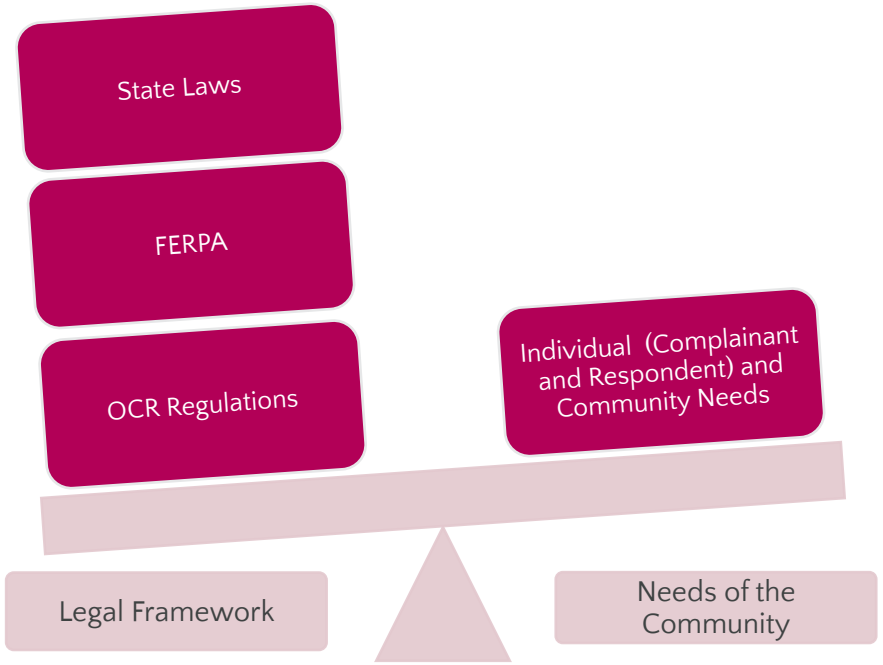
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Parallel Processes/Other Federal or State Obligations

- Law enforcement
- Unions/Collective bargaining agreements
- HR/EEOC
- Special education

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Key Elements in Enforcing Title IX



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Title IX & Law Enforcement: Two Distinct Systems

"A law enforcement investigation **does not relieve the school of its independent Title IX obligation** to investigate the conduct" and "resolve complaints promptly and equitably."

"Police investigations may be useful for fact-gathering, but because the standards for criminal investigations are different, **police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX**."

"Conduct **may constitute unlawful sexual harassment** under Title IX **even if the police do not have sufficient evidence** of a criminal violation."

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Delays: Law Enforcement Investigation

- The Department **does not require** a school to delay Title IX grievance during a law enforcement investigation.
  - Recipient must respond promptly to every complainant, with or without the filing of a grievance. The duty to respond is triggered when recipient is on notice .
- A school **may only delay short-term** based on "good cause," which may include concurrent law enforcement investigation, but it should not be a long or indefinite delay.
- A school must notify the parties in writing of any reasonable delays that occur due to a law enforcement investigation.

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Title IX Protections & Other Federal, State and Local Laws

- **Constitutional protections:**
  - Nothing in §106 requires a school to:
    1. Restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution
    2. Deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and 14th Amendments of the U.S. Constitution
    3. Restrict any other rights guaranteed against government action by the U.S. Constitution
- To the extent that these final regulations provide the same protections as state laws governing student discipline already provide, these final regulations pose no challenge for recipients (schools); **to the extent that a recipient (school) cannot comply with both state law and these final regulations, these final regulations, as federal law, would control.**
- ***Conflicts with state laws:*** To the extent there is a conflict that cannot be resolved**, the regulations control.**

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State Laws Governing Disciplinary Proceedings

- The Public School Code and its regulations deal with the due process and hearing requirements to expel students and the termination of most school employees.
- The Title IX grievance procedure is mandatory for the resolution of all allegations of sexual harassment under Title IX.
- In some cases, the Title IX grievance procedure may provide the same protections as state law.
- Often, **school entitles will run parallel disciplinary proceedings** to address the requirements of disciplinary policies, collective bargaining agreements and state law.

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State Laws Governing Disciplinary Proceedings (Cont'd)

- To the extent the school entity cannot comply with both state law and the Title IX regulations, the Title IX regulations would control.
- The area of special education and student rights under the IDEA and Section 504 requires a careful analysis.
- This is an area where a school entity should consult with its local solicitor or special counsel.

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Individuals With Disabilities

- In response to commenters' concerns, the final regulations revised §106.44(a) to require schools to offer supportive measures as part of the recipient's prompt, non-deliberately indifferent response.
- The prompt response **must** include:
  - Title IX Coordinator promptly contacting complainant to discuss available supportive measures
  - Inform the complainant of the supportive measures available with or without the filing of a formal complaint
  - Explain the process for filing a formal complaint
- Recipients must meet these requirements while also complying with disability laws (IDEA, Section 504, ADA). These regulations do not address a recipient's obligations under applicable disability laws.
- To the extent that there is an overlap between supportive measures with Title IX and disability laws, the Title IX Coordinator is responsible for the implementation of such supportive measure.

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Individuals With Disabilities (Cont'd)

- Any disability of Respondent or Complainant is part of the "surrounding circumstances" to be taken into considering when determining if conduct rises to sexual harassment.
- When the conduct of a Respondent with a disability is determined to be sexual harassment, the recipient has flexibility to impose consequences for action. The Department "does not second guess whether the recipient imposes a disciplinary sanction."
  - Keep in mind:
    - Complainant is still entitled to remedies that restore or preserve the right to equal educational access
    - There can be no disciplinary sanctions without following the grievance process in §106.45

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Special Education Considerations

- Notify Special Education Director and/or 504 Coordinator as soon as possible if a special education student is involved in any way in an investigation – whether an accused, accuser, witness, etc.
- Impact on IEP Team and Offers of FAPE
  - Special Ed team should be aware of any Title IX implications in the event the actions at issue prompt the need for changes to a student's IEP – FBA and other behavioral supports, schedule or program changes, a new evaluation, etc.
  - If your Title IX investigation of unidentified students produces information that could be relevant to a school's child find obligations, share the concern with the special education team to see if it warrants an IDEA and/or 504 Evaluation.

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Special Education Considerations (Cont'd)

- Disciplinary Protections:
  - Schools cannot change the placement of a student (removal for more than 10 consecutive school days or a pattern of shorter removals cumulating to 10–15 school days) in response to an offense that is a manifestation of the student's disabilities. This applies to students eligible for services or protection under the IDEA and Section 504.
  - Schools can generally remove students for shorter periods of time that do not amount to a "change in placement" and should use those days strategically throughout the investigatory process.
  - Consulting special education administrators will ensure your investigatory procedures and ultimate determinations do not run afoul of these protections for identified students, while also honoring its obligations under Title IX.
- The two processes can likely run parallel to each other when coordination occurs early on in the process.

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Section 106.45 Recipient's Response to Formal Complaints How to Serve Impartially and Free from Bias

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Treatment of Complainants or Respondents

Treatment of a complainant or respondent in response to a formal complaint *may* constitute sex discrimination under Title IX.

- Any person, regardless of sex, may be a victim or perpetrator of sexual harassment.
- Allegations of sexual harassment present inherent risks of sex-based biases, stereotypes and generalizations that could impact the grievance process.
- Different treatment of victims and perpetrators due to sex-based stereotypes about how men or women behave with respect to sexual violence violates Title IX's non-discrimination mandate.

§106.45(a)

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Equitable Treatment of Complainants & Respondents

- Any rules a recipient chooses to adopt that are not already required under Title IX must be applied equally to both parties.
- Equitable treatment of the parties:
  - Equitable treatment of a **Complainant**
    - Providing remedies where a respondent has been determined to be responsible
  - Equitable treatment of a **Respondent**
    - Imposing disciplinary sanctions only after following the §106.45 grievance process or other actions that are not "supportive measures"

§106.45(b)(1)(i)

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Reasonably Prompt Time Frames

Delays or extensions of the designated timeframes are permitted, but not required, so long as they are:

- Temporary and limited
- Supported by good cause (i.e., concurrent police activity or absence of a witness)
- Communicated in writing to the parties with an explanation for the delay

§106.45(b)(1)(v)

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Written Notice of Allegations

After receiving a formal complaint, a recipient must provide written notice to the parties of the recipient's grievance procedures and the allegations. Such notice also requires:

- Sufficient details
  - The parties involved, date, and location of incident (if known at the time)
  - The section of the recipient's code of conduct allegedly violated (if applicable), and
  - The alleged conduct constituting sexual harassment
- A statement that the respondent is presumed not responsible and that a determination regarding responsibility is made at the conclusion of the grievance process.

§106.45(b)(2)

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Written Notice of Allegations (Cont'd)

- The notice must also inform the parties:
  - That they may request to inspect and review evidence
  - That each party has a right to an advisor of choice
  - Of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process
    - If the recipient's code of conduct is silent on false statements and/or submitting false information, this reference is not required in the written notice.
- If the school decides later to investigate allegations not included in the original notice, the school must provide notice of the additional allegations to the parties.

§106.45(b)(2)

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Written Notice of Allegations (Cont'd)

- The recipient **must** send notice to the parties regarding essential case developments, such as where:
  - Additional allegations become part of the investigation
  - Allegations or the entire formal complaint have been dismissed
  - Any short-term delay or time frame extension has been granted
  - The determination regarding responsibility has been made

§106.45(b)(2)

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Mandatory Dismissal of Formal Complaints

- Not Title IX Sexual Harassment: A school must dismiss the allegations where, if true, the allegations would not qualify as sexual harassment under Title IX.
- Lack of Jurisdiction: The conduct did not take place in the school's education program or activity or did not occur in the United States
- Dismissal under Title IX does not prevent action under a recipient's code of conduct or other provision.

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Discretionary Dismissal of Formal Complaints

- Recipients are allowed, but not required, to dismiss formal complaints under three circumstances:
  1. Where a complainant notifies the Title IX Coordinator, in writing, that they would like to withdraw the formal complaint or any allegations
  2. Where the respondent is no longer enrolled or employed by the recipient
  3. Where specific circumstances prevent the recipient from gathering sufficient evidence to reach a determination on the allegations in the formal complaint

Discretionary dismissals are not appropriate in situations where the recipient does not know whether it can meet the burden of proof.

§106.45(b)(3)(ii)

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What Should a Title IX Investigation Include?

The specific steps in a school's Title IX investigation will vary depending on the nature of the allegation, the age of the student or students involved, the size and administrative structure of the school, state or local legal requirements (including mandatory reporting requirements for schools working with minors), and what it has learned from past experiences.

Definition:

- The term *"investigation"* refers to the process the school uses to resolve sexual violence complaints.

This includes the fact-finding investigation and any hearing and decision-making process the school uses to determine:

- **(1) whether or not the conduct occurred; and,**
- **(2) if the conduct occurred, what actions the school will take to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, which may include imposing sanctions on the perpetrator and providing remedies for the complainant and broader student population.**

The investigation must be adequate, reliable, impartial and prompt and include an opportunity for both parties to present witnesses and other evidence

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Burdens of Proof and Gathering Evidence

It is the recipient's burden to impartially gather evidence and present it so that the decision-maker can determine whether the recipient has shown that the weight of the evidence is sufficient to reach the selected standard of proof.

- **There is no burden of proof on complainants or respondents.**

§ 106.45(b)(5)(i)

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Objective Evaluation of All Relevant Evidence

- An investigator must gather evidence directly related to the allegations even if the recipient does not intend to rely on such evidence.
  - The recipient must objectively evaluate evidence that is available in a particular case. The evidence itself need not be "objective" (i.e., corroborating evidence).
  - Recipients must not base evaluations of testimony based on inferences of a person's status as a complainant, respondent or witness.

§106.45(b)(1)(ii)

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Presumption of Non-Responsibility

The respondent is presumed **not responsible** for the alleged conduct until a determination has been made at the end of the grievance process.

Purpose of the presumption:

- To ensure the burden of proof remains on the recipient (not on the respondent or complainant)
- To ensure the applicable standard of evidence is correctly applied
- To ensure the recipient does not treat the respondent as responsible until the conclusion of the grievance process

§106.45(b)(1)(iv)

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Investigation: Interviewing

Sample of general questioning:

- What happened?
- When did it happen?
- Where did it happen?
- If a witness, do you know what is alleged to have happened?
  - If so, where were you when it happened?
- If a witness, do you know the respondent and complainant?
  - If so, how long have you known them and how would you describe them (friend, acquaintance)?
- Have talked to others about what happened? Who and when?
- Did you write down what happened? (diary [video or otherwise], notes, blog)
- Have you posted or seen anything posted on social media about this incident?

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Equal Opportunity to Present Witnesses & Other Inculpatory/Exculpatory Evidence

Each party must have the opportunity to present fact and expert witnesses.

- Recipients may adopt rules governing how admissible relevant evidence is evaluated for weight or credibility by the decision maker.
  - Any rules adopted must be applied equally to both parties

§106.45(b)(5)(ii)

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Recipients Must Not Restrict Ability of Either Party to Discuss Allegations or Gather and Present Relevant Evidence

- This applies to discussions of "the allegations under investigation," which means a formal complaint has been filed.
- The regulations do not require recipients to give respondents a copy of the formal complaint.

§106.45(b)(5)(iii)

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Advisors of Choice

Each party is entitled to an advisor throughout the grievance process.

- The recipient **may not limit the choice or presence** of an advisor.
- The advisor of choice may be, but is not required to be, a lawyer.
- Recipients may impose certain requirements on advisors:
  - Require advisors to use the evidence received for inspection and review as well as the investigative report only for purposes of the grievance process
  - Require advisors not to further disseminate or disclose these materials
  - Recipients may use a non-disclosure agreement that complies with the final regulations and other applicable laws

§106.45(b)(5)(iv)

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Advisors of Choice (Cont'd)

- **Union Representative**: Where an advisor is a union representative and there is a conflict between a union contract or practice and the final regulations, the **final regulations will have preemptive effect.**
- The prohibition on having conflicts of interest or bias does *not* apply to party advisors.
  - For example, the existence of a possible conflict of interest where an advisor is assisting one party and also expected to give a statement as a witness does not violate the final regulations.

§106.45(b)(5)(iv)

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Inspection & Review of Evidence Directly Related to the Allegations

Complainants and Respondents must have an equal opportunity to inspect and review the relevant and potentially relevant evidence.

- Both parties must be given sufficient time to meaningfully prepare arguments based on the evidence that further each party's view of the case
  - The parties may also present additional relevant facts and witnesses that the decision-maker should objectively evaluate before reaching a determination on responsibility.
- A recipient may require parties and advisors to refrain from disseminating the evidence reviewed
- A recipient may also permit or require the investigator to redact information not directly related to the allegations or that is barred from use

§106.45(b)(5)(vi)

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Inspection & Review of Evidence Directly Related to the Allegations (Cont'd)

The recipient is **required** to provide *at least 10 days* for inspection and review, but may give the parties more than 10 days to respond

- The recipient must still conclude the grievance process within the reasonably prompt time frames to which they have committed.
- The recipient may decide whether the number of days provided are counted as business days, school days, calendar days or otherwise.

- A school may require all parties to submit any evidence that they would like the investigator to consider prior to the time for inspection
- A school may also choose to allow both parties to provide additional evidence in response to their inspection and review of the evidence as well as an opportunity to respond to the other party's additional evidence
- Similarly, a recipient may choose whether to provide a copy of each party's written response to the other party to ensure fairness, transparency, and allow the parties to adequately prepare for any hearing

§106.45(b)(5)(vi)

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An Investigative Report That Fairly Summarizes Relevant Evidence

The school entity must send the parties and their advisors **an investigative report that fairly summarizes relevant evidence,** in an electronic format or a hard copy, **for their review and written response, with at least 10 days for the parties to respond before any hearing** (if a hearing is provided) **or the determination of responsibility.**

- Where there are multiple complainants, respondents, or both, a recipient may issue a single investigative report

- A party can request that the report not be sent to their advisor, but **the default practice** should be to send it to the advisor to avoid shortening the 10-day review period

§106.45(b)(5)(vii)

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Informal Resolution Process

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Informal Resolution: §106.45(b)(9)

- Final regulations support and expand informal resolution:
- **Pros:** Benefits of informal resolution
  - Empowers victims to pursue a grievance without the possible discomfort of a full formal process
  - Increases flexibility to address unique situations
  - Increases choice by allowing both parties to choose the option that is right for them to resolve the grievance.
  - Can enhance party anonymity
- **Cons:** Limitations of informal resolution
  - Lacks procedural safeguards of a more formal grievance process
  - Less appropriate mechanism to address allegations of sexual misconduct than a more formal grievance process
- No requirement that recipients establish or offer an informal resolution process

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Informal Resolution: When Available?

Informal resolution available when:

- Formal complaint has been filed
- Recipient determines that informal resolution is appropriate
- Both parties provide fully informed written consent for informal resolution

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Informal Resolution: When Unavailable?

- Informal resolution is never available to resolve a formal complaint that an employee sexually harassed a student.
- Either party can withdraw their consent for the informal resolution process at any time and resume the grievance process with respect to a formal complaint.
- Recipients are prohibited from forcing students or employees to waive their right to a formal grievance process or requiring the parties to participate in an informal resolution process.

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Informal Resolution: How Does it Work?

- After a formal complaint is filed, written notice of the allegations is sent to both parties.
- The written notice must include the informal resolution processes the recipient has chosen to make available.
- Both parties must provide informed and voluntary written consent.

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Informal Resolution: Who May Facilitate?

- Individuals facilitating informal resolution must be free from conflicts of interest, bias and trained to serve impartially.
- Must have completed the anti-conflict of interest, anti-bias and all training requirements under §106.45(b)(1)(iii)
- Note: An individual facilitating an informal resolution may become a witness in a subsequent formal grievance proceeding
  - Provided that possibility was explained to the parties in the written notice and the parties provided their prior express consent. (p. 1367)

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Informal Resolution: Greater Sense of Autonomy

- Nothing in the informal process requires that the parties confront each other or even be in the same room.
- Mediation often involves the parties in separate rooms and the mediator conversing with each party separately.
- Increased confidentiality
  - Recipients must fulfill recordkeeping and disclosure requirements of Title IX
  - Recipients must disclose to the parties prior to obtaining their express consent of the records that will be maintained and those that can and cannot be shared
  - And the possibility of confidentiality requirements as a condition of the final agreement

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Informal Resolution: Restorative Justice

- Nothing in the regulations prohibit recipients from using restorative justice as an information resolution process to address sexual misconduct incidents.
- Generally, the respondent admits responsibility at the start of the restorative justice process.
- Nothing in the final regulations dictates the form of disciplinary sanctions a recipient may or must impose on a respondent.

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Decision Making: Objective & Unbiased

- The school entity's decision maker needs to objectively evaluate the relevant evidence and reach conclusions about whether the respondent is responsible for the alleged sexual harassment.
- Decision makers need to use independent judgment and be free from conflicts of interest and bias.
- Decision makers will weigh the relevant evidence and decide whether it meets the standard of evidence for sexual harassment allegations.
- Who are appropriate decision makers within your school entity?

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Final Outcome Decisions: When “Final”?

- **A Written Determination becomes “final” only after:**
  - The time period to file an appeal has expired, or
  - If a party does file an appeal, after the appeal decision has been sent to the parties
- **Timing of appeal**:
  - Final regulations require recipients designate “reasonably prompt” time frames for concluding appeals
- **Final outcome decision becomes final when:**
  - The date on which written determination of appeal is simultaneously provided to both parties; or
  - The date on which the appeal rights lapse if no appeal is taken

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Appeals: §106.45(b)(8)

- Recipients MUST offer both parties an appeal from the following decisions/determinations:
  - Determination regarding responsibility, or
  - Recipient's dismissal of formal complaint, or
  - Recipient's dismissal of any allegations contained in a formal complaint.

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Appeals: Grounds for Appeal

- Recipients MUST offer appeals on AT LEAST the following three grounds:
  - Procedural irregularity that affected the outcome
  - Newly obtained evidence that was not reasonably available when the determination of responsibility was made
  - The Title IX Coordinator, investigator, or decision-maker had a general or specific conflict of interest or bias against either party that affected the outcome

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Sanctions on Respondents

- The department believes that recipients should have the flexibility and discretion to suspend or expel a Respondent from campus as a disciplinary sanction.
- Expulsion or suspension may follow a determination of the Respondent's responsibility following informal resolution or the formal grievance process.

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Medical Records

- A school cannot access, consider, disclose or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional capacity **unless with recipient obtains the party's voluntary written consent.**
- If a party would like the school to consider, access or otherwise use medical records in a grievance process, the party must give the recipient prior written consent.
- If a Complainant or Respondent provides sensitive records such as medical records as part of an investigation, then both parties must have equal opportunity to inspect and review the information directly related to the investigation. Consider redactions.

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Updates on Title IX under the Trump Administration

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How do the changes impact pregnancy protections?

Title IX and the Pennsylvania Human Relations Act prohibit sex discrimination, which includes pregnancy and discrimination based on the medical conditions related to pregnancy.

However, the definition of "sexual harassment" under the 2020 Title IX Regulations does not include pregnancy in the definition of sex harassment that requires a school to use the formal Title IX grievance procedures.

So, how should a School handle a pregnancy related request or complaint?

- Complaints alleging sex discrimination that do not constitute "sexual harassment" under the 2020 regulations may be referred to the Title IX Coordinator to be addressed under a school's complaint procedures, such as Policy 103 or Policy 104. (85 CFR 30071)

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What about LGBTQ Protections?

- **How does this align with the January 20, 2025 Executive Order titled Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government?**
  - The Trump Administration does not interpret Title IX to provide protections to transgender students or employees.
- **How should schools address allegations of sex discrimination for transgender students?**
  - PHRA prohibits sex discrimination, which includes sex assigned at birth, sexual orientation, gender identity, gender expression, affectional or sexual orientation and differences of sex development, variations of sex characteristics, or other intersex characteristics.
  - Schools should respond to allegations of sex discrimination for transgender students under Policy 103 as non-Title IX sex discrimination and/or harassment, which is often a more inclusive harassment definition.

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Questions



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