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# The Title IX Team and Process for K-12 Districts

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PRESENTED BY:
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Christine Galdston, Of Counsel

Cerritos • Fresno • Irvine • Marin • Pasadena • Pleasanton • Riverside • Sacramento • San Diego • Westlake Village

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## Agenda

- Legal Update
- Review Title IX Regulations: Scope and Definitions
- Roles of Title IX Team
- Intake Process for Reports of Sexual Harassment
- Title IX Grievance Process
- Retaliation
- Practical Application

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# Current Legal Landscape of Title IX: *Nationwide*

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## Title IX – Legal Update

- *August 2020* – 2020 Title IX Regulations go into effect
- *August 1, 2024* – First effective date of the 2024 Title IX Regulations
- *January 9, 2025* – *Cardona* Decision (Vacatur of 2024 Regulations)
- *January 20, 2025* – E.O. 14168—Defending Women From Gender Ideology Extremism & Restoring Biological Truth to Federal Government
- *January 31, 2025* – OCR's DCL confirmed return to 2020 Title IX Regulations
- *February 4, 2025* – Additional DCL Re: 2020 Title IX Regulations
- *February 5, 2025* – Executive Order from President Trump – "Keeping Men Out of Women's Sports"
- *February 12, 2025* – OCR opened an investigation into the California Interscholastic Federation (CIF)
- *Spring 2025* – New definition of Fondling per NIBRS
- *July 9, 2025* – DOJ filed a civil lawsuit against CIF and CDE

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# TITLE IX SCOPE AND DEFINITIONS

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## Federal Law - 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.

(Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681 et seq.) and related regulations (34 C.F.R. Part 106).)

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## 2020 Title IX Regulations

1. **Regulations and Guidance**
   - Text of regulations contained in ***34 C.F.R. Part 106*** have the full force and effect of law
2. **Overall Intent of Changes**
   - Strengthen/Clarify Title IX protections for sexual misconduct Complainants & provide due process protections to Respondents facing accusations of sexual misconduct
3. **Scope Under Title IX Regulations**
   - 2020 sexual harassment definitions, clarified jurisdiction & confirmed that Title IX sex discrimination includes sexual harassment and other sexual misconduct

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## *Davis v. Monroe County Board of Education* 526 U.S. 629 (1999)

- Ruling: For student-on-student sexual harassment, the educational institution will be liable for damages when:
  - The institution has ***"actual notice"*** of the harassment; and
  - The institution responded to the harassment with "***deliberate indifference***."
  - Harassment must be ***"severe, pervasive, and objectively offensive,"*** and the institution's indifference was "systemic" so that the victim is deprived of educational opportunities or services.
  - ***Deliberate indifference*** defined as a response that is ***"clearly unreasonable in light of the known circumstances."***
- These Regulations apply the *Davis* standard for OCR compliance reviews and for finding institutional liability

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## Response to Sexual Harassment

According to **34 C.F.R. §106.44(a):** A recipient with **actual knowledge** of sexual harassment in an education program or activity of the recipient against a person in the United States must **respond promptly in a manner that is not deliberately indifferent** (e.g., clearly unreasonable in light of the known circumstances).

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## Actual Knowledge

- Actual knowledge for **K-12 educational institutions** occurs when ***any employee*** has notice of sexual harassment or allegations of sexual harassment.
- Best practice to provide annual training to K-12 employees about reporting responsibilities to the Title IX Coordinator or other designated Title IX Team Member.

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## Education Program or Activity

- Per **34 C.F.R. § 106.44(a):** An education program or activity includes locations, events, or circumstances over which the recipient exercised ***substantial control over both the Respondent and the context in which the sexual harassment occurs***, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.
- At time of filing the formal complaint, the Complainant must be participating or attempting to participate in recipient's education program or activity.

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## Sexual Harassment Defined

According to **34 C.F.R. § 106.30,** sexual harassment means conduct on the ***basis of sex*** under one or more of following:

**1. Quid Pro Quo Harassment**

– **Employee** conditions the provision of an aid, benefit, or service of the recipient on the Complainant's participation in unwelcome sexual conduct

**2. Hostile Environment Sexual Harassment**

– Unwelcome conduct determined by a reasonable person to be **so severe, pervasive *and* objectively offensive** that it effectively denies Complainant equal access to the recipient's education program or activity

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## Sexual Harassment Defined, Cont.

Conduct on the ***basis of sex*** under one of following:

**3. Other Sexual Acts**

- **Sexual assault** per 20 U.S.C. 1092(f)(6)(A)(v): Includes Forcible and Nonforcible Sex Offenses
- **Dating violence** per 34 U.S.C. 12291(a)(10)
- **Domestic violence** per 34 U.S.C. 12291(a)(8)
- **Stalking** per 34 U.S.C. 12291(a)(30)

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## Other Sexual Acts as Sexual Harassment under Title IX

1. **Sexual Assault**
   - **Forcible:**
     - Any sexual act directed against Complainant, forcibly, against Complainant's will, or without consent, including rape, sodomy, sexual assault with an object, and criminal sexual contact (formerly "fondling".)
     - Seek legal advice re definition of fondling
   - **Nonforcible:**
     - Offenses that do not involve force where the Complainant is incapable of giving consent, including statutory rape and incest

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## Other Sexual Acts

**2. Dating Violence (34 U.S.C. 12291(a)(10))**

Violence (on the basis of sex) committed by Respondent:

- Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
- Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - (i) The length of the relationship
  - (ii) The type of relationship
  - (iii) The frequency of interaction between the persons involved in the relationship

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## Other Sexual Acts

**3. Domestic Violence (34 U.S.C. 12291(a)(8))**

Felony or misdemeanor crimes of violence (on the basis of sex) committed by:

- A current or former spouse or intimate partner of the Complainant
- A person with whom the Complainant shares a child in common
- A person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner
- A person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- Any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

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## Other Sexual Acts

**4. Stalking (34 U.S.C. 12291(a)(30))**

The term "stalking" means engaging in a course of conduct (on the basis of sex) directed at Complainant that would cause a reasonable person to:

- **Fear** for their safety or the safety of others; or
- Suffer substantial **emotional distress**

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# ROLES OF THE TITLE IX TEAM

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## Who's on the Title IX Team?

1. Title IX Coordinator, per 34 C.F.R. §106.8(a)
2. Investigator
3. Decision Maker
4. Appeal Officer
5. Informal Resolution Process Facilitator

– ***All team members must be impartial, unbiased, and free from conflicts.***
– ***All team members must be trained in the new Title IX Regulations.***

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## Title IX Team: Title IX Coordinator

**Title IX Coordinator Duties:**

- Coordinates Title IX compliance and training
- Conducts intake meeting with Complainant
- Offers supportive measures to Complainant & Respondent
- Explains grievance process, accepts formal complaint & determines mandatory dismissal
- Evaluates emergency removal
- Evaluates use of informal resolution process
- Assigns unbiased investigator free from conflicts
- Sends notices (e.g., Notice of Allegations)
- Considers permissive dismissal of complaint

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## Title IX Team: Title IX Coordinator

**Title IX Coordinator duties, continued:**

- Reviews investigative reports, written decision, & appeal decision, but ***does not make decision*** about responsibility
- Drafts letter of outcome after written decision issued
- *Likely does **not*** determine sanctions
- If applicable, ensures effective implementation of remedies for Complainant, sanctions for Respondent, and overall corrective plan
- *May* investigate when needed
- *May* act as facilitator of an informal resolution process

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## Title IX Team: Investigator

**Investigator Role:**

- Trained and knowledgeable
- Impartial, unbiased, & free from general or specific conflicts of interest
- Investigates formal complaint
  - Reviews complaint
  - Gathers, reviews, weighs, and synthesizes evidence
  - Interviews parties and witnesses
  - Assesses relevance and credibility
- Coordinates two review processes and assesses responses
- Prepares a written investigative report and compiles evidence
- Investigator does ***not*** make decision about whether Respondent is "responsible" for violation of sexual harassment policy

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## Title IX Team: Decision Maker

**Decision Maker Role:**

- Reviews Final Investigative Report with "fresh eyes" to see if information is missing or incomplete
- Facilitates relevant written questions & "cross-examination" from parties for parties and witnesses
- Makes conclusions about whether alleged conduct occurred and determines responsibility
- Prepares written determination with findings of fact, policy conclusions, and rationale for the result as to each allegation
- If applicable, recommends sanctions for Respondent and remedies for Complainant
- Provides written determination and appeal rights to the parties and advisors simultaneously

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## Title IX Team: Appeals Officer

**Appeal Officer Role:**

- Provides written notice of right to appeal to both parties based on three grounds for appeal
- If an appeal is filed, the Appeal Officer evaluates the appeal request(s) to determine if within the scope of appeal
- Provides a written Notice of Appeal to both parties
- Reviews both written statements and arguments from the parties
- Renders written decision on appeal and explains rationale for the result
- Provides the written decision to parties at same time

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## Title IX Team: Informal Resolution Process Facilitator

**Informal Resolution Process Facilitator Role:**

- Cannot require the parties to participate in informal process or to waive the right to an investigation
- Obtains voluntary, written consent of the parties to resolve the matter anytime before a determination of responsibility is made
- Process does not involve full investigation or adjudication, but includes a written notice to the parties disclosing the allegations, the requirements of the process, and notice that the parties can withdraw and resume the grievance process
- May consider the use of a trained mediator or trained restorative justice facilitator, if requested and appropriate
- Process cannot be used where an employee is alleged to have sexually harassed a student

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## INTAKE PROCESS FOR REPORTS OF SEXUAL HARASSMENT

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## Meeting with Complainant

**The Title IX Coordinator:**

- Promptly schedules a meeting with Complainant and listens to allegations and concerns
- If Complainant describes sexual harassment allegations, the Title IX Coordinator explains the Title IX grievance process
- Informs Complainant of the right to file or ***not*** to file a formal complaint and the right to supportive measures even if a formal complaint is not filed
- If ***no*** formal complaint is filed, the Title IX Coordinator informs Complainant of right to file a formal complaint at a later time. The Title IX Coordinator also assesses, despite Complainant's decision, whether to independently initiate a complaint if the failure to initiate an investigation would be clearly unreasonable considering the circumstances* (e.g., based on a safety threat)

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## Meeting with Complainant

**The Title IX Coordinator:**

- If a formal complaint is filed, Title IX Coordinator gathers the signature of Complainant, parent/guardian and/or Title IX Coordinator
- Informs Complainant of right to request an informal resolution process after submission of a formal complaint and the right to exit informal resolution process at any time
- If a formal complaint is filed, Title IX Coordinator determines if the complaint falls within the scope of mandatory dismissal and simultaneously informs Complainant and Respondent in writing
- Best practice to provide a written summary of the intake meeting to the Complainant

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## Supportive Measures

**1. Requirement to Offer Supportive Measures per 34 C.F.R. §106.30 & §106.44**

– Must be offered to Complainant as soon as District has notice of possible Title IX issue and to Respondent after complaint filed

**2. Avoid Burden on Parties**

– Supportive Measures must be non-punitive, non-disciplinary, and not unreasonably burdensome to the other party

**3. Individualized**

– Supportive Measures must ensure equal educational access, protect safety, and/or deter sexual harassment

**4. Examples of Supportive Measures**

– Counseling, course-related adjustments, modify schedule, extend deadlines, campus escort, increased security and monitoring, and/or mutual restrictions on contact between the parties

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## Discuss Advisor of Choice

- The Title IX regulations provide the Complainant and Respondent with the same opportunities to have "others present" during any grievance proceeding
  - An advisor may be a parent, family member, attorney, or other person
  - The advisor may be present with the person they are advising for any meeting, interview, or hearing, and for the inspection and review of the evidence obtained as part of the investigation
  - The advisor may assist with a written cross-examination process and ***shall*** ask the cross-examination questions if recipient opts for a live hearing process
    - If a party does not have an advisor to conduct cross-examination at a live hearing, the institution must provide one to the party
  - The institution may establish restrictions on the extent of an advisor's participation, if restrictions apply equally to both parties

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## Emergency Removal Option for Students

1. Institution may remove Respondent per § 106.44(c) by undertaking an individualized safety & risk analysis of Respondent:
   – The analysis determines if there is an ***immediate threat to the physical health or safety*** of any student or other individual arising from the allegations to justify removal
2. Notice to Respondent of Emergency Removal and opportunity to challenge decision immediately following the removal
3. Process ***cannot*** modify Respondent rights under IDEA, Section 504, or ADA
4. Emergency removal under Title IX is a safety measure; suspension under Ed. Code § 48900 et seq. is a disciplinary measure
5. Provide education to Respondent while removed

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## Administrative Leave Option

1. Institution may place a non-student employee Respondent on administrative leave, per 34 C.F.R. §106.44(d) during the pendency of a grievance process that complies with 34 C.F.R. §106.45
2. This administrative leave option cannot be construed to modify any rights under Section 504 or the Americans with Disabilities Act

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# TITLE IX GRIEVANCE PROCESS

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## Grievance Process

1. Basic Requirements
2. Notice of Allegations
3. Dismissal of Formal Complaint
4. Consolidation
5. Investigation
6. Written Questions Between Parties
7. Determination of Responsibility
8. Appeals
9. Informal Resolution
10. Recordkeeping

**See *34 C.F.R. § 106.45(b)***

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## Basic Requirements (34 C.F.R. § 106.45(b)(1)(i))

1. Treat Complainant and Respondent equitably in the grievance process and related to remedies and sanctions, if any
2. Require objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence
3. Cannot make credibility decisions based on a person's status as Complainant, Respondent, or witness
4. Presume that Respondent is not responsible until a determination is made
5. Follow reasonably prompt time frames (estimate 45-90 days)
6. State a standard of evidence (preponderance or clear and convincing). Most K-12 use preponderance of evidence

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## Notice of Allegations

- **Provide Notice of Allegations to Each Party**
  - **Notice of the institution's grievance process and informal resolution process**
    - Identification of relevant Board Policies & Administrative Regulations which contain the grievance process and informal resolution process
    - Identification of standard of evidence
    - Right to inspect and review evidence
  - **Notice of allegations with sufficient details, including:**
    - Identification of the parties
    - Description of alleged conduct allegedly constituting sexual harassment and the date and location of alleged incident

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## Notice of Allegations

- **Provide Notice of Allegations to Each Party, continued**
  - **Additional Items in Notice of Allegations**:
    - Identification of potential policy violations (not just Title IX)
    - Identification of the range of possible disciplinary sanctions and remedies
    - Statement that Respondent is presumed not responsible
    - Notification that a determination of responsibility will be made at the conclusion of the grievance process
    - Notification that each party may have an advisor of choice, who may be an attorney
    - Prohibition against parties knowingly making false statements or knowingly submitting false information

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## Notice of Allegations

- **If additional allegations are discovered, provide written Notice of *Additional* Allegations**
- **Provide written notice of any changes in the process, including:**
  - Delays
  - Meetings
  - Interviews
  - Hearings
  - Appeals
  - Decisions
  - Other Updates

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## Dismissal of Formal Complaint

- **Required Dismissal per 34 C.F.R. §106.45(b)(3)**
  - **Recipient must dismiss the formal complaint *if* the conduct alleged :**
    - Would not constitute sexual harassment as defined in 34 C.F.R. §106.30, even if proved; OR
    - Did not occur in the District's education program or activity; OR
    - Did not occur against a person in the United States
  - Such dismissal does **not** preclude action under another provision of recipient's Code of Conduct, Board Policy/Administrative Regulation or California law (Uniform Complaint Procedures)

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## Dismissal of Formal Complaint

- **Permissive Dismissal per 34 C.F.R. §106.45(b)(3)**
  - **Recipient may dismiss the formal complaint or allegations any time during the investigation or hearing *if* :**
    - The Complainant notifies the Title IX Coordinator in writing to withdraw the complaint; OR
    - The Respondent is no longer enrolled or employed; OR
    - Special circumstances prevent the District from gathering evidence in order to reach a determination
- **All dismissals require written notice & reasons delivered to the parties at the same time**
- **Either party has the right to appeal any dismissal**

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## Consolidation of Formal Complaints

- **A recipient may consolidate formal complaints as to allegations of sexual harassment where the allegations arise out of the same facts or circumstances**
  - Against more than one Respondent; OR
  - By more than one complainant against one or more respondents; OR
  - By one party against the other party (cross-claims)

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## Investigation

**1. Presumption**

– The District must presume Respondent is *not responsible* for the alleged conduct

**2. Evidence Gathering**

– Investigator for the educational institution has the burden to gather sufficient evidence; the burden to gather evidence is ***not*** on the Complainant or Respondent

– Investigator cannot gather privileged information without voluntary, written consent (e.g., physician or psychiatrist records, etc.)

**3. Written Notice with Time to Prepare**

– Provide written notice to the parties for all interviews with sufficient time for the party to prepare to participate

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## Investigation, continued

**4. Equal Opportunity for Parties**

- To present witnesses, including fact & expert witnesses and other inculpatory and exculpatory evidence
- To have an advisor present for any meeting, interview or hearing

**5. No "Gag" Orders or Directives**

- Cannot restrict the ability of the Complainant or Respondent to discuss the allegations under investigation or to gather and present relevant evidence
- Likely can direct parties and witnesses not to tamper with evidence

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## Investigation, continued

**6. Equal Opportunity to Inspect and Review Evidence**

- Provide parties with opportunity to meaningfully respond to the evidence *before* the conclusion of the investigation
- Parties may review evidence that is relevant and directly related to the allegations, including evidence which the investigator does *not* intend to rely upon as well as inculpatory and exculpatory evidence regardless of where it was obtained

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## Investigation, continued

**7. Prepare and Share Draft Report of Evidence**

- Before completing the Investigative Report, provide a ***Draft*** **Report of Evidence and Attachments** to both parties and their advisors, if any, via electronic format or a hard copy.
- Provide the parties and advisors, if any, with at least 10 days to review the Draft Report of Evidence and Attachments & submit written responses
- Share any new evidence with the parties and continue the investigation related to new information, if needed
- Consider and incorporate new information and responses in the ***Final Investigative Report***

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## Investigation, continued

**8. Investigator Prepares Final Investigative Report**

- Fairly summarize relevant evidence
- Relevant evidence may include credibility assessments

**9. Provide Investigative Report to Parties**

- At least 10 days prior to a determination regarding responsibility, send the investigative report to each party and the party's advisor, if any, in an electronic format or a hard copy, for their review and written response
- Review parties' written response(s), revise investigation report if needed, and attach written response(s) to the Investigative Report

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## Written Questions Between Parties

**Before making a decision, the Decision-Maker will facilitate:**

**1. Written Questions (e.g., Written Cross Examination)**

- ***With or without a hearing***, after the investigator has sent the investigative report to the parties and before the decision-maker(s) has reached a determination regarding responsibility, the decision-maker(s) must afford ***each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness***, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
- The decision-maker(s) must explain any decision to exclude questions as not relevant

**2. Rape Shield Protections**

- ***With or without a hearing***, evidence about Complainant's prior sexual behavior is ***irrelevant*** unless offered to prove someone else committed the conduct or if offered to prove consent

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## Determination of Responsibility

**1. Decision-Maker Determines Responsibility per 34 C.F.R. §106.45(b)(7):**

- Decision-maker must be trained to rule on relevance of questions and repetitive questions
- Must understand the “preponderance of the evidence” or “clear and convincing evidence” standard
- Reminder: The Title IX Coordinator or Investigator cannot determine responsibility

**2. Written Decision**

- The written decision must include the findings of fact, conclusion, and the rationale
- If the Decision-Maker finds responsibility, the written decision should include recommendations for disciplinary sanctions for Respondent, remedies to the Complainant, and how to file an appeal

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## Informal Resolution Process

1. **Optional Process per 34 C.F.R. §106.45(b)(9)**
   - May use informal resolution process on a case-by-case basis after formal complaint is filed
2. **Informed, Mutual Consent**
   - Both parties must give voluntary, informed, and written consent but cannot be required as a condition of enrollment/employment
3. **Right to Withdraw from Informal Process**
   - Either party can withdraw from informal process at any time and resume formal process
4. **Not Suitable for Student vs. Employee Matters**
   - No informal process for allegations that an ***employee*** harassed a student

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## Recordkeeping

1. **A recipient must maintain records for 7 years, including records of:**
   - Each sexual harassment investigation, including:
     - Determination regarding responsibility
     - Audio or audiovisual recording or transcript, if any, for K-12
     - Any disciplinary sanctions imposed on Respondent, if applicable
     - Any remedies provided to Complainant, if applicable

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## Recordkeeping

**2. A recipient must maintain records for 7 years, including records of:**

- Any appeal and the result of the appeal
- Any informal resolution and the result of the informal process
- All materials used to train Title IX Coordinators, investigators, decision-makers, appeal officers, and any person who facilitates an informal resolution process
  - These training materials must be publicly available on the institution's website
  - If no website, training materials must be available upon request for inspection by the public

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## Recordkeeping

**3. For each response required under 34 C.F.R. §106.44, a recipient must create and maintain records for 7 years, including records of:**

- Any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment.
  - If the recipient did not provide supportive measures, it must document why that decision was not clearly unreasonable in light of the known circumstances
- In each instance, recipient must document:
  - Why its response was not deliberately indifferent
  - The measures taken which were designed to restore or preserve equal access to the education program or activity

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# RETALIATION

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## Retaliation

1. **34 C.F.R. § 106.71(a) – Retaliation Prohibited**
   - No 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 because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing.
2. **Avoiding the Title IX Process May Be Retaliation**
   - If the alleged behavior falls under 34 C.F.R. § 106.30 definitions, a recipient cannot use the student conduct process as a way to avoid the rigorous Title IX grievance procedures; such a decision may constitute retaliation.
3. **Retaliation Complaints Filed Under Same Process**
   - Retaliation complaints may be filed under the 34 C.F.R. § 106.8(c) grievance process.

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## Retaliation, Continued

**4. Confidentiality Required by Recipient**

- Recipient must keep identity of Complainant, Respondent, and witness(es) confidential unless required by law "or as necessary to carry out Title IX proceeding"
- Regulations imply that the improper release of this confidential information could be retaliation

**5. First Amendment Rights**

- Parties exercising their 1st Amendment rights does not constitute retaliation under 34 C.F.R. § 106.71(a)

**6. False Statement Charge**

- Recipient charging an individual with making a false statement in bad faith during Title IX process is ***not*** retaliation
- A responsibility determination (or no responsibility determination) is not sufficient evidence to conclude there was a bad faith false statement

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## PRACTICAL APPLICATION

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## Hypotheticals 1-3

1. **Student A offers to name Student B the Vice President of the Chess Club if Student B kisses Student A.**
   – Is this sexual harassment under Title IX?
2. **Teacher A offers Student B extra credit if the student buys the teacher groceries.**
   – Is this sexual harassment under Title IX?
3. **Coach A suggests Student Player B wear tight clothes to school and to practice because it will "help with the student's future prospects."**
   – Is this sexual harassment under Title IX?

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## Hypothetical 1 - Discussion

1. **Student A offers to name Student B the Vice President of the Chess Club if Student B kisses Student A.**
   – Is this sexual harassment under Title IX?
   - This will not qualify as "quid pro quo" harassment under Title IX because the condition must be offered by ***an employee***.
   - However, this may be evidence of hostile environment sexual harassment under Title IX and warrants more questions to determine if there was additional sex-based behavior from Student A towards Student B.
   - Even if this action does not rise to the level of Title IX's definition of sexual harassment, this action may be a violation of the institution's Board Policy/Administrative Regulations prohibiting sexual harassment under California law.
   - Thus, consider notifying the parties of all potential policy violations implicated by the complaint in the Notice of Allegations.

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## Hypothetical 2 - Discussion

**2. Teacher A offers Student B extra credit if the student buys the teacher a special gift**

– Is this sexual harassment under Title IX?

- No. Under these facts alone, this is not enough to demonstrate "quid pro quo" sexual harassment because this alleged behavior is not "on the basis of sex."
- Similarly, this behavior, by itself, is not enough to demonstrate a hostile environment because it is not based on sex nor is it conduct of a sexual nature.
- The teacher's behavior may be addressed as unprofessional and/or inappropriate conduct based on the Board Policy regarding Professional Standards or the Code of Ethics.
- PRACTICE TIP: The administrator fielding this allegation must ask questions to understand the full context of the matter.

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## Hypothetical 3 - Discussion

**3. Coach A suggests Student Player B wear tight clothes to school and practice because it will "help with the student's future prospects."**

– Is this sexual harassment under Title IX?

- This is likely an example of "quid pro quo" harassment. The conditioning behavior need not be explicit. The conditioning behavior can be implied.
- May be unprofessional or inappropriate conduct under Professional Standards Policy or Code of Ethics.
- Query: Must the evidence demonstrate the conditioning behavior is "unwelcome" to the Complainant?
  - The Title IX definition describes an employee who "conditions" the provision of an aid, benefit, or service of the recipient on an individual's participation in the ***unwelcome*** sexual conduct. Prior legal analysis of "quid pro quo" indicates that "going along" with the condition does not necessarily mean it was welcome. Analyze on a case-by-case basis.

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## Hypotheticals 4-5

4. **Student A enters your office and tells you that another student touched Student A's buttocks, which made Student A uncomfortable.**
   - What do you need to know?
   - What should you do?
5. **Student A enters your office and tells you that a teacher touched Student A's buttocks in the classroom and made a kissing sound, which scared Student A.**
   - What do you need to know?
   - What should you do?

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## Hypothetical 4 - Discussion

4. **Student A enters your office and tells you that Student B touched Student A's buttocks, which made Student A uncomfortable.**
   - What do you need to know?
     - Where did it happen? Is it on campus or in a location where recipient exercised substantial control over Student B/Respondent and the context in which the sexual harassment occurred?
     - Was the conduct based on sex? What's the nature of the touch?
     - Was the conduct against Student A's will?
   - What should you do?
     - Contact Title IX Coordinator as this may be sexual harassment or other sexual acts under Title IX
     - Likely contact parents
     - Explain Title IX complaint process and how to file a formal complaint
     - Offer Supportive Measures with or without a formal complaint
     - If formal complaint filed, begin the complaint process

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## Hypothetical 5 - Discussion

**5. Student A enters your office and tells you that a teacher touched Student A's buttocks in the classroom and made a kissing sound, which scared Student A.**

– What do you need to know?
- Gather additional information as soon as possible about whether the teacher's actions were based on sex or of a sexual nature and how it made the student feel

– What should you do?
- Contact Title IX Coordinator as may be sexual harassment or other sexual acts under Title IX
- Contact parents
- Consider filing CPS/CWS report or contact local law enforcement
- Consider Paid Administrative Leave
- Initiate intake meeting, an investigation, and complaint process, but ok to delay a reasonable time if law enforcement has to gather any evidence

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# Question & Answer Session

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# Thank You

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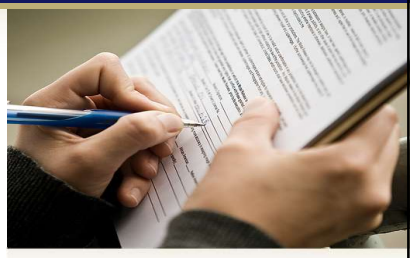

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