TITLE IX: 2020 REGULATION UPDATES

October 30, 2026
13:30PM - 3:30PM

VALLEJO CITY UNIFIED SCHOOL DISTRICT

Presented by:
Dora J. Dome, Esq.

Dora Dome Law
http://www.doradomelaw.com
dora@doradomelaw.com



Dora Dome Law

Dora J. Dome is an education law attorney with more than 30 years of experience advising on student issues and special education. She earned her J.D. from the University of Hawaii, William S. Richardson School of Law and her B.A. from the University of California, Los Angeles. In 2021 she completed a certificate in Diversity and Inclusion from Cornell University.

Since 2016 Ms. Dome has published a practical series of resources for educators, administrators, and parents. Her books include **Student Discipline, Special Education Discipline, Anti-Bullying and Other Relevant Student Issues** (2016); **Understanding Student Discipline in California Schools: A Parent's Guide** (2017), which has also been translated into Spanish; and multiple volumes in her Tools for the Trade series, including **Student Discipline Resource Binder**; **Improving Student Achievement Through the Creation of Relationships: A Critical Race Theory Counter-Story**; and **Student Speech and Expression in Public Schools** (2020). In 2024 she released three additional Tools for the Trade titles addressing teacher guidance on discipline, school board and administrative panel procedures for expulsions, and procedural guidance for Section 504 compliance. The **second edition of Student Discipline Resource Binder was released in August 2026** with updated legal and procedural guidance for K–12 schools.

Admitted to the Hawaii State Bar in 1996 and the California Bar in 2003, Ms. Dome served as a special education consultant and trainer for the Hawaii State Department of Education and the Hawaii Department of Health. She also practiced with the education law firm Dannis Woliver Kelley (formerly Miller Brown & Dannis) for eight years.

A certified Cultural Diversity Trainer through the National Coalition Building Institute, Ms. Dome develops and leads trainings for school districts and boards on student discipline, special education, bullying, Section 504, and related issues. Her teaching appointments include Lecturer at UC Berkeley's Principal Leadership Institute, Adjunct Professor in the administrative credential program at Mills College, and Distinguished Lecturer at the University of Hawaii Richardson School of Law, where she taught Education Law and Policy.

TITLE IX:
2020 REGULATION UPDATES

October 30, 2026
12:30PM – 3:30PM

VALLEJO CITY UNIFIED SCHOOL DISTRICT

Presented by:
Dora Dome, Attorney At Law

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Agenda

- ❑ Definitions
- ❑ Response to Sexual Harassment
- ❑ Roles of Title IX Team
- ❑ Grievance Process for Title IX Complaints
- ❑ Appeals
- ❑ Informal Resolution Process
- ❑ Recordkeeping
- ❑ Retaliation
- ❑ Investigations
- ❑ Required Training
- ❑ Hypotheticals

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DEFINITIONS

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Definitions: Sexual Harassment

- Conduct **on the basis of sex** that satisfies one or more of the following:
  - **Quid Pro Quo: Employee** conditions the provision of an aid, benefit, or service of the recipient on the Complainant's participation in unwelcome sexual conduct;
  - **Hostile Environment**: Unwelcome conduct determined by a reasonable person to be so **severe, pervasive *and* objectively offensive** that it effectively denies a person equal access to the recipient's education program or activity; or
  - **Sexual Assault** (20 U.S.C. 1092(f)(6)(A)(v))
    - **Forcible -** Any sexual act directed against Complainant, forcibly, against Complainant's will, **or** without consent, including rape, sodomy, sexual assault with an object, and fondling
    - **Nonforcible -** Offenses that do not involve force where the Complainant is incapable of giving consent, including statutory rape and incest

- **34 CFR 106.30**

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Definitions: Sexual Harassment

- Conduct **on the basis of sex** that satisfies one or more of the following:
  - **Dating violence** (34 U.S.C. 12291(a)(10))
    - Violence 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:
        - The length of the relationship;
        - The type of relationship;
        - The frequency of interaction between the persons involved in the relationship

- **34 CFR 106.30**

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Definitions: Sexual Harassment

- Conduct **on the basis of sex** that satisfies one or more of the following:
  - **Domestic Violence (34 U.S.C. 12291(a)(8))**
    - Felony or misdemeanor crimes of violence 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.

- **34 CFR 106.30**

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Definitions: Sexual Harassment

- Conduct **on the basis of sex** that satisfies one or more of the following:
  - **Stalking** (34 U.S.C. 12291(a)(30))
    - The term "stalking" means engaging in a course of conduct directed at Complainant that would cause a reasonable person to:
      - Fear for their safety or the safety of others; or
      - Suffer substantial emotional distress

- **34 CFR 106.30**

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Definitions: Actual Knowledge

- **Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to a recipient's:
  - Title IX Coordinator, or
  - Any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or
  - **Any employee** of an elementary and secondary school.

- **34 CFR 106.30**

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Definitions: Complainant and Respondent

- **Complainant:**
  - An individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- **Respondent:**
  - An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

- **34 CFR 106.30**

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Definitions: Formal Complaint

- **Formal Complaint**:
  - A document filed by a complainant, or
  - A document signed by the Title IX Coordinator
    - Alleging sexual harassment against a respondent, **and**
    - Requesting that the recipient investigate the allegation of sexual harassment.
  - At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.
  - May be filed with the Title IX Coordinator in person, by mail, or by electronic mail and by any additional method designated by the recipient.
  - "**Document filed by a complainant**" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

- **34 CFR 106.30**

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Definitions: Supportive Measures

- Means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent
- Offered before or after the filing of a formal complaint or where no formal complaint has been filed.
- Such measures are designed to restore or preserve equal access to the education program or activity without **unreasonably** burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or deter sexual harassment.
- 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 locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- **34 CFR 106.30**

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RESPONSE TO SEXUAL HARASSMENT

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Response to Sexual Harassment

❑ **General Response**:

- 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.)
- "**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.
- A recipient's response must **treat complainants and respondents equitably** by offering supportive measures to a complainant, and by following a grievance process that complies with §106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

• **34 CFR §106.44(a):**

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Response to Sexual Harassment

❑ **General Response**:

- The **Title IX Coordinator** must promptly contact the complainant to discuss:
  - The availability of supportive measures.
  - Consider the complainant's wishes with respect to supportive measures,
  - Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and
  - Explain to the complainant the process for filing a formal complaint.

34 CFR §106.44(a):

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Response to Sexual Harassment

❑**Response To A Formal Complaint**:

- A recipient must follow a grievance process that complies with §106.45. (e.g.; AR5145.71)
- With or without a formal complaint, a recipient must comply with the requirements under "General Response to sexual harassment." §106.44(a)

❑**Emergency removal**

- Recipient undertakes an individualized safety and risk analysis,
- Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and
- Provides 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.[15] **34 CFR §106.44(a):**

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Response to Sexual Harassment

❑**Administrative leave.**

- A **non-student employee** respondent may be placed on administrative leave during the pendency of a grievance process that complies with §106.45.
- This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

34 CFR §106.44(a):

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ROLES OF THE TITLE IX TEAM

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Roles of the Title IX Team

- ❑ Title IX Coordinators
- ❑ Informal Resolution Process Facilitator
- ❑ Investigators
- ❑ Decision-makers
- ❑ Appeals Officer

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Roles of the Title IX Team

- **Title IX Coordinator**:
  - Conducts Intake meeting with Complainant
  - Offers/coordinates 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

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Roles of the Title IX Team

- **Title IX Coordinator:**
  - Sends notices (e.g., Notice of Allegations)
  - Considers permissive dismissal of complaint
  - Responsible for effective implementation of any remedies
  - Coordinates Title IX compliance and training

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Roles of the Title IX Team

- **Informal Resolution Process Facilitator**:
  - 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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Roles of the Title IX Team

- **Investigator**:
  - Trained on issues of "relevance"
  - 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
  - Provides the evidence subject to inspection and review to the parties with at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report
  - Prepares a written investigative report that fairly summarizes relevant evidence
  - Investigator does **not** make decision about whether Respondent is "**responsible**" for violation of sexual harassment policy

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Roles of the Title IX Team

- **Decision Maker:**
  - Reviews Final Investigative Report with "fresh eyes" to see if any information is missing or incomplete
  - Facilitates written "cross-examination" between parties and explains a decision to exclude a question as "not relevant"
  - Makes conclusions about whether alleged conduct occurred and the decision about responsibility
  - Prepares written determination with findings of fact, conclusions, and rationale for the result as to each allegation
  - If applicable, recommends sanctions for Respondent and remedies for Complainant
  - Provides written notice of right to appeal to both parties and the allowable grounds for appeal

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Roles of the Title IX Team

- **Decision Maker - Appeals**
  - 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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GRIEVANCE PROCESS FOR TITLE IX COMPLAINTS

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Grievance Process For Formal Complaints

- ❑ Basic Requirements For Grievance Process
- ❑ Notice of Allegations
- ❑ Dismissal of Formal Complaint
- ❑ Consolidation of Formal Complaints
- ❑ Investigation of a Formal Complaint
- ❑ Determination of Responsibility
- ❑ Appeals
- ❑ Informal Resolution
- ❑ Recordkeeping

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Basic Requirements For Grievance Process

- Treat complainants and respondents equitably
  - Remedies when there is a determination of "responsibility"
  - Follow grievance process, before disciplinary sanctions
    - Remedies may be disciplinary, punitive, and/or burden the respondent
- Require objective evaluation of all relevant evidence
  - Inculpatory and exculpatory evidence
  - Cannot make credibility decisions based on a person's status as Complainant, Respondent, or witness
- Require that Title IX Team members do not have a conflict of interest or bias for or against complainants or respondents
- Presume that Respondent is not responsible until a determination of "responsibility" is made at conclusion of grievance process

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Basic Requirements For Grievance Process

- Written Decision Concluding grievance process within **45 calendar days** (Federal Title IX Complaint Procedures – AR 5145.71)
  - "**Good Cause**" delays/extensions with written notice/reasons
    - The absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities
- Describe the range of possible disciplinary sanctions and remedies
- **Preponderance** of evidence (e.g.; More likely than not)

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Basic Requirements For Grievance Process

- Include the procedures and permissible bases for the complainant and respondent to appeal
- Describe the range of supportive measures available to complainants and respondents
- Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege

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Notice of Allegations

- Provide Written Notice of Allegations to Known Parties
  - Notice of the grievance process and informal resolution process
    - Federal Title IX Complaint Procedures – AR 5145.71
- Content of Notice of Allegations
  - Sufficient time to prepare a response before any initial interview
  - Sufficient details, including:
    - Identification of the parties
    - Description of conduct allegedly constituting sexual harassment and the date and location of alleged incident

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Notice of Allegations

- Content of Notice of Allegations
  - A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process
  - Inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney
  - May inspect and review evidence
  - Inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process
  - Notice of the additional allegations not included in the notice

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Dismissal of A Formal Complaint

- **Required Dismissal**
  - ***if*** the conduct alleged:
    - Would not constitute sexual harassment as defined in §106.30 even if proved;
    - Did not occur in the recipient'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 Ed Code, Code of Conduct, Board Policy/Administrative Regulation

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Dismissal of A Formal Complaint

- **Permissive Dismissal**
  - 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 any allegation therein;
    - The Respondent is no longer enrolled or employed; or
    - Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the complaint or allegations therein
  - All dismissals require written notice & reasons sent to the parties simultaneously

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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;
  - 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 Of A Formal Complaint

- The **burden of proof** and the **burden of gathering evidence** sufficient to reach a determination regarding responsibility **rest on the recipient**
  - Investigator cannot gather privileged information without voluntary, written consent (e.g., physician, psychiatrist, psychologist, etc.)
- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence
- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence

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Investigation Of A Formal Complaint

- Provide the parties with the same opportunities to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney
  - May establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties
- Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate

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Investigation Of A Formal Complaint

- Provide both parties an equal opportunity to inspect and review any evidence that is directly related to the allegations
  - Including the evidence upon which the recipient does not intend to rely in reaching a determination
  - Inculpatory or exculpatory evidence whether obtained from a party or other source
  - Allow each party to meaningfully respond to the evidence prior to conclusion of the investigation

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Investigation Of A Formal Complaint

- **Prior to completion of the investigative report**, the recipient must send to each party and the party's advisor:
  - The evidence subject to inspection and review in an electronic format or a hard copy
  - The parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report
  - Share any new evidence with the parties and, if needed, continue the investigation related to new information
  - Consider and incorporate new information and responses into the Final Investigative Report

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Investigation Of A Formal Complaint

- Finalize the investigative report that fairly summarizes relevant evidence
  - At least 10 days prior to a determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.
  - After the Decision Maker has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker 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

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Investigation Of A Formal Complaint

- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are **not relevant**, unless:
  - Such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
  - If the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

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Determination of Responsibility

- Decision-Maker Determines Responsibility:
  - Decision-maker must be trained on issues of relevance of questions and evidence
    - Including when questions and evidence about the complaint's sexual predisposition or prior sexual behavior are NOT relevant
  - Must understand the "preponderance of the evidence" standard
  - The Title IX Coordinator or investigator cannot determine responsibility

§106.45(b)(7)

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Determination of Responsibility

- Written Decision must include:
  - Identification of the allegations
  - 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
  - Findings of fact supporting the determination
  - Conclusions
  - A statement of, and rationale for, the result as to each allegation
    - Determination of responsibility, disciplinary sanctions, remedies, appeal

§106.45(b)(7)

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Determination of Responsibility

- Written Decision becomes final either:
  - On the date that the recipient provides the parties with the written decision 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

§106.45(b)(7)

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APPEALS

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Appeals

- Offered to both parties:
  - From a determination regarding responsibility, and
  - From a recipient's dismissal of a formal complaint or any allegations therein, on the following bases:
    - Procedural irregularity that affected the outcome of the matter;
    - 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; and
    - 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
  - May offer an appeal equally to both parties on additional bases

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Appeals

- **Procedures**
  - Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
  - Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator
  - Ensure that the decision-maker(s) for the appeal understands the "preponderance of the evidence" standard
  - Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
  - Issue a written decision describing the result of the appeal and the rationale for the result
  - Provide the written decision simultaneously to both parties

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INFORMAL RESOLUTION PROCESS

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Informal Resolution Process

- Cannot be a condition of enrollment or employment
- Must be optional to parties with voluntary, written consent
- **Requires** the filing of a Formal Complaint
- Offered prior to reaching a determination of responsibility
  - Provide to the parties a written notice disclosing:
    - The allegations
    - The circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations
    - Any time prior to agreeing to a resolution, any party has the right to withdraw
    - Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared
  - **Cannot be used** to resolve allegations that an employee sexually harassed a student

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RECORDKEEPING

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Recordkeeping

- Must maintain for a period of seven years records of:
  - Each sexual harassment investigation including;
    - Any determination regarding responsibility
    - Any audio or audiovisual recording or transcript
    - Any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant
  - Any appeal and the result
  - Any informal resolution and the result
  - All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process
    - Must make these training materials publicly available on its website, or
    - If no website, must make these materials available upon request for inspection by members of the public

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Recordkeeping

- Must maintain for a period of seven years records of:
  - Records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment
  - In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and
  - Document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity.
  - If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.
  - May, in the future, provide additional explanations or details of additional measures taken

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RETAILATION

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Retaliation

- 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.
- 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.
- Retaliation complaints must be filed using the grievance process.

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Retaliation

- Improper release by recipient of the identity of a Complainant, Respondent, or witness(es), unless required by law, "or as necessary to carry out Title IX proceeding," may be considered retaliation
- Parties exercising their 1st Amendment rights is not retaliation
- A Recipient charging an individual with making a false statement in "bad faith" during Title IX process is not retaliation
- A responsibility determination is not sufficient evidence to conclude there was a bad faith false statement

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INVESTIGATIONS

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Investigation: Best Practice

- ❑ Interview the Complainant
- ❑ Interview the Respondent
- ❑ Interview relevant witnesses
- ❑ Gather physical evidence, if applicable
  - ➢ Document methods used to gather evidence
- ❑ Document interviews via recording (with consent) and/or investigative notes
  - ➢ Note name of witness, date, time, location, individuals present, if applicable
  - ➢ Avoid making conclusions or judgments – You are only a fact finder

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Investigation: Complainant Interview

- ❑ Interview the Complainant
  - ➢ Explain your role as an impartial fact finder
  - ➢ Tell her/his story
  - ➢ Ask open-ended, clarifying questions
- ❑ Clarify allegations in the Complaint
  - ➢ Conduct
  - ➢ Time
  - ➢ Location, witnesses (fact/expert), etc.
  - ➢ Discuss supportive measures
  - ➢ Opportunity to present evidence or information that supports allegations
  - ➢ Opportunity to provide written statement
    - ➢ Make sure signed and dated

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Investigation: Respondent Interview

- ❑ Interview the Respondent
  - ➢ Explain your role as an impartial fact finder
  - ➢ Tell his/her story
  - ➢ Present evidence or information that supports his/her version of the events.
  - ➢ Ask accused if there are witnesses he/she believes should be interviewed…Interview them!
  - ➢ Opportunity to provide written statement
    - ➢ Make sure signed and dated
  - ➢ Advise the accused of the prohibition against retaliation!

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Investigation: Witness Interviews

- ❑Interview and obtain written statements from all percipient witnesses (including staff)
  - Percipient – firsthand knowledge
  - Use Sworn Declarations
  - Include all versions of statement
  - Make sure signed and dated
- ❑Interview and obtain written statements from any witness who may have information relevant to the allegations

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Investigation: Physical Evidence

- ❑Obtain the actual or copies of the Physical Evidence immediately!
  - Obtain photos
  - Screen shots of posts
- ❑Visit location where conduct alleged to have occurred, if applicable
- ❑Obtain copy of surveillance tape, if applicable
- ❑Obtain copy of medical records, with voluntary consent, if applicable

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Investigation: Relevance Determinations

- Relevance
  - Having relevancy or a reasonable connection with the matter in issue or at trial. Having probative value. That which is applicable to the issue and which ought to be received.
  - The kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs
- Considerations
  - Rape Shield Laws
  - Treatment records
  - Privileged documents

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Investigation: Credibility Determinations

- Credible:
  - Worthy of belief; entitled to credit. Credible person. One who is trustworthy and entitled to be believed; in law and legal proceedings, one who is entitled to have his oath or affidavit accepted as reliable, not only on account of his good reputation for veracity; but also on account of his intelligence, knowledge of the circumstances, and disinterested relation to the matter in question
    - Factors
      - Probability
      - Bias
      - Prejudice
      - Consistency

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Bias, Prejudgment, Conflict of Interest, and Impartiality

- Bias:
  - A particular tendency, trend, inclination, feeling, or opinion, especially one that is preconceived or unreasoned
- Prejudgment:
  - An opinion about a situation or a person that is formed before knowing or considering all of the facts
- Conflict of Interest:
  - A conflict between the private interests and the official responsibilities of a person in a position of trust
- Impartial:
  - Not directly involved in a particular situation, and is therefore able to give a fair opinion or decision about it.

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Investigation: Report

- Relevant policies and procedures
- Summary of Investigative process
- List of Allegations
- Unbiased summary of the witnesses interviewed and the evidence obtained
- Credibility determination

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Title IX v. CA Education Code

- Title IX
  - More restrictive definition
    - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the recipient's education program or activity
  - Requires use of AR 5145.71 – Title IX Sexual Harassment Complaint Procedures
- CA Education Code Sec.212.5 & Sec. 48900.2
  - Broader definition
    - Considered by a reasonable person of the same gender as the victim to be sufficiently severe **or** pervasive to have a negative impact upon the individual's academic performance **o**r to create an intimidating, hostile, or offensive educational environment
    - Requires use of AR 1312.3 – Uniform Complaint Procedures

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REQUIRED TRAINING

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Required Training

- Title IX Team:
  - Training on the definition of sexual harassment in §106.30,
  - The scope of the recipient's education program or activity,
  - How to conduct an investigation and grievance process including appeals and informal resolution processes, as applicable, and
  - How to serve impartially, by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

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Required Training

- Investigator:
  - Issues of relevance to create an investigative report that fairly summarizes relevant evidence
    - When questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
- Decision-Maker:
  - Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
- Informal Resolution Process Facilitator
  - "Well trained"

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HYPOTHETICALS

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Hypotheticals: Elementary

A 5th grade student gets a failing grade on her test. The teacher invites her to stay after school for additional help. During the after school session, the teacher sits very close to her, rubs her neck and touches her hand and arm when he speaks to her.

- ❑ Is this a Title IX Violation?
- ❑ Is this sexual harassment under CA Ed Code?
- ❑ What do you do?

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Hypotheticals: Elementary

Mike, a second grader, has a crush on Patricia. Everyday he tells her how pretty she is and he brings her little gifts. He follows her around during breaks and always sits next to her during class activities. You receive a call from Patricia's mother that Mike's attention is making Patricia uncomfortable and that she thinks he is a bit "creepy." You speak to Mike and let him know that his attention makes Patricia uncomfortable. Mike stops for a couple of days, but then starts back up again.

- ❑ Is this a Title IX Violation?
- ❑ Is this sexual harassment under CA Ed Code?
- ❑ What do you do?

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Hypotheticals: Middle School

A group of 7th graders decide they want to play "slap ass Friday." However, they don't want to get in trouble, so they all get matching wristbands to identify who is playing. They agree that they will only play the game with other students wearing the wristband. On Friday during lunch, ten 7th graders (boys and girls) are running around the playground slapping each other's bottoms, laughing and having a fun time. They do not slap the bottoms of anyone not wearing a wristband.

- ❑ Is this a Title IX Violation?
- ❑ Is this sexual harassment under CA Ed Code?
- ❑ What do you do?

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Hypotheticals: Middle School

A PE teachers tells Alex that if he massages her shoulders during class everyday, he will get an A in the class. Though not totally comfortable with it, Alex goes along with it since he hates PE and it's an easy A.

- ❑ Is this a Title IX Violation?
- ❑ Is this sexual harassment under CA Ed Code?
- ❑ What do you do?

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Hypotheticals: High School

Tom is a transgender male and in 11th grade. There are a group of boys who suspect that Tom really is a girl. One day they follow Tom into the boy's bathroom and corner him. They begin verbally taunting him with anti-gay slurs and grab his breast area to "prove" he is not a boy. Another student walks into the bathroom, the boys stop their harassment of Tom and leave. Tom reports the incident to you.

- ❑ Is this a Title IX Violation?
- ❑ Is this sexual harassment under CA Ed Code?
- ❑ What do you do?

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Hypotheticals: High School

Peter meets Jan on social media. They text each other for a couple of weeks, with the texts becoming more and more flirtatious over time. They agree to meet on campus in person. Peter and Jan walk to a secluded area of campus and start kissing each other. As they are kissing, Peter begins squeezing Jan's bottom. Jan does not protest, but she is starting to feel uncomfortable. He then moves his hand to her breast and Jan pushes his hand away, but she still does not tell him she is feeling uncomfortable, and continues to kiss him. Peter then slides his hand into her pants and touches her private area. Jan allows him for several minutes, until her phone rings and she uses it as an excuse to leave. Jan reports to the administrator what happened and that she did not consent to his touching her in her private places.

- ❑ Is this a Title IX Violation?
- ❑ Is this sexual harassment under CA Ed Code?
- ❑ What do you do?

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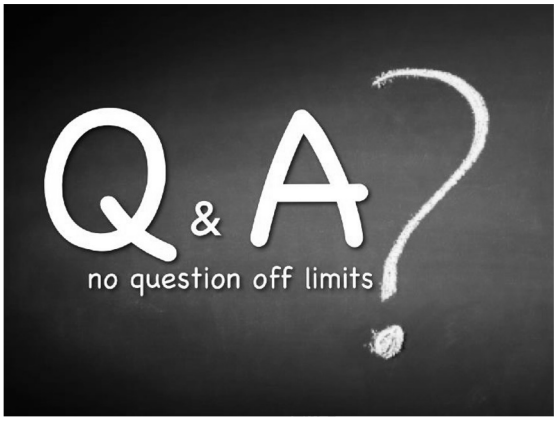
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Evaluation

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Thank you!

Dora Dome Law
5111 Telegraph Ave., #164
Oakland, California 94609



Phone: 510.301.6667
Fax: 510.291.9599
dora@doradomelaw.com

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