

# Title IX Coordinator Responsibilities

from the 2020 Sexual Harassment Regulations



Holly Doyd Wardell  
Oct. 20, 2020



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## New Regulations

- Published May 19, 2020
- Effective August 14, 2020
- 34 C.F.R. Part 106
- 25 pages of new regulations
- 2000 pages of commentary

## By the Numbers



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## T9 Coordinator Responsibilities Under New Regulations

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



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*Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the "Title IX Coordinator."*

Designation of coordinator, dissemination of policy, and adoption of grievance procedures. 34 C.F.R. § 106.8(a).

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### Title IX Coordinator Responsibilities

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

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

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### Title IX Coordinator Responsibilities

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

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

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

 <b>Name or Title</b>	 <b>Office address</b>	 <b>E-mail address</b>	 <b>Telephone number</b>
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Applicants for admission and employment

Students and parents or legal guardians of elementary and secondary students

Employees

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

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**Reporting sexual harassment...**

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



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

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**Reporting sexual harassment...**

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

34 C.F.R. § 106.8(a).

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## Dissemination of policy

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

Applicants for admission and employment

Students and parents or legal guardians of elementary and secondary students

Employees

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

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34 C.F.R. § 106.8(b).

August 2010

### Sample Notice of Non-discrimination

The following sample notice of non-discrimination meets the minimum requirements of the regulations enforced by OCR:

The (Name of Recipient) does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following person has been designated to handle inquiries regarding the non-discrimination policies:

Name and/or Title  
Address  
Telephone No.

<https://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html>  
Accessed 2020-10-11

## Publications

Must promptly display Title IX Coordinator's contact information:

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

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34 C.F.R. § 106.8(b).

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

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

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34 C.F.R. § 106.8(b).

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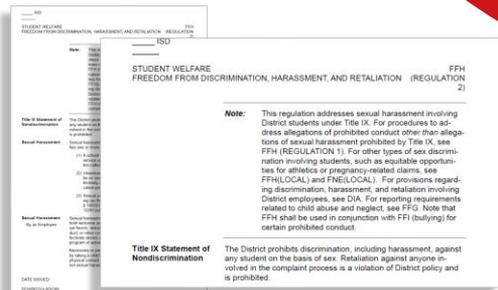
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## The new regulations...

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

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While it is best to separate roles...

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

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

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

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

34 C.F.R. § 106.44(a).

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

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## CONTACTING THE COMPLAINANT

*Regulations do not dictate the medium of contact.*

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## CONTACTING THE COMPLAINANT

### K-12 SETTING

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

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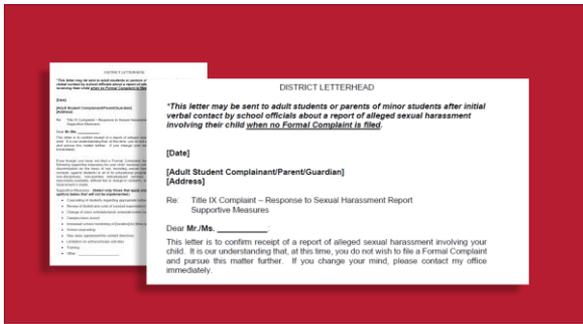
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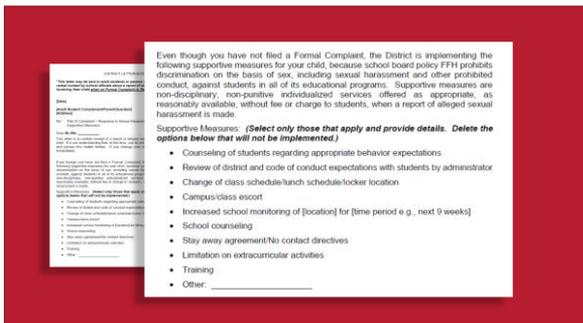
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# SUPPORTIVE MEASURES

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## Supportive Measures means...

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

34 C.F.R. § 106.30

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## Supportive Measures examples

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

34 C.F.R. § 106.30

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



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

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### Supportive Measures means...

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

34 C.F.R. § 106.30

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

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## DETERMINING WHETHER TO DISMISS A FORMAL COMPLAINT

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**Title IX Discrimination Dismissal Form**  
 This form is for the Education Department of 2012 (20 U.S.C. § 1061) in a federal law that prohibits  
 discrimination based on sex in education. It is intended to be used by the Title IX Coordinator to determine  
 whether a formal complaint of sexual harassment meets the standard of alleged conduct, even if  
 a formal complaint meets the standard of alleged conduct, even if a formal complaint meets the  
 standard of alleged conduct. A formal complaint may be dismissed if a complainant makes the Title IX  
 Coordinator that makes it not to initiate the complaint or any of the allegations therein, the  
 respondent is no longer enrolled in the district, or specific circumstances prevent the district from gathering  
 evidence sufficient to reach a determination.

**CONCLUSION**

**Dismissal Basis:** (Check all that apply)

Complainant:  Does not constitute sexual harassment  Did not occur in district program or activity

Respondent:  Did not occur in the U.S.  Dismissal requested by Complainant

Respondent:  Respondent no longer enrolled in district

Respondent:  Circumstances prevent the district from gathering evidence sufficient to reach a determination.

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 Title IX Coordinator/Designee

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

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

34 C.F.R. § 106.45(b)(7)(iv).

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## What are examples of remedies?

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

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## Remedies - Purpose

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

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## Remedies for Complainants

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

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## Remedies for Complainants

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

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

p. 940 = Commentary

**Selection of Remedies  
Not Appealable**

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## Selection of Remedies Not Appealable

### Bases for Appeal of Decisions

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

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### Written Determination must include



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

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### REMEDIES



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

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### POSTING TRAINING MATERIALS

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**What to post:**

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

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

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**Where to post:**



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

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<https://www2.ed.gov/about/offices/list/ocr/blog/index.html>



<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html>

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



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## QUESTIONS?



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

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**Title IX Statement of Nondiscrimination**

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

**Sexual Harassment**

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) A school employee conditioning an educational benefit or service upon a student's participation in sexual conduct (often called "quid pro quo" harassment);
- (2) 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 District's education programs or activities; or
- (3) Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a)).

**Sexual Harassment  
By an Employee**

Sexual harassment of a student by a District employee includes both welcome and unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature that effectively denies a student equal access to the District's education program of activity.

Necessary or permissible physical contact such as assisting a child by taking a child's hand, comforting a child with a hug, or other physical contact not reasonably construed as sexual in nature is not sexual harassment.

However, romantic or inappropriate social relationships between students and District employees are strictly prohibited. Any sexual relationship between a student and a District employee is always prohibited, even if consensual. [See DH]

By Others

Sexual harassment of a student includes harassment committed by another student, unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct when the conduct is severe, pervasive, and objectively offensive to the point it denies a student equal access to the District's education programs or activities.

**Gender-Based Harassment**

Gender-based harassment includes physical, verbal, or nonverbal conduct based on the student's gender, the student's expression of characteristics perceived as stereotypical for the student's gender, or the student's failure to conform to stereotypical notions of masculinity or femininity. For purposes of this policy, gender-based harassment is considered prohibited sexual harassment if the conduct is so severe, pervasive, and objectively offensive that the conduct effectively denies a student equal access to the District's education programs or activities.

**Dating Violence**

Dating violence occurs when a person in a current or past dating relationship uses physical, sexual, verbal, or emotional abuse to harm, threaten, intimidate, or control the other person in the relationship. Dating violence also occurs when a person commits these acts against a person in a marriage or dating relationship with the individual who is or was once in a marriage or dating relationship with the person committing the offense.

For purposes of this policy, dating violence is considered prohibited harassment if the conduct is so severe, pervasive, and objectively offensive that the conduct effectively denies a student equal access to the District's education program or activity.

Dating violence is defined as "an act, other than a defensive measure to protect oneself, by an actor that:

(1) is committed against a victim or applicant for a protective order:

(A) with whom the actor has or has had a dating relationship; or

(B) because of the victim's or applicant's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and

(2) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim

or applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault.

Tex. Family Code section 71.0021.

**Retaliation**

The District prohibits retaliation by a student or District employee against an individual alleged to have experienced sexual harassment, an individual who makes a good faith report of sexual harassment, serves as a witness, or participates or refuses to participate in an investigation.

Any person who believes he or she has been retaliated against may file a complaint in accordance with the grievance process described in this regulation.

**False Claim**

A student or employee who intentionally makes a false claim or provides a materially false statement shall be subject to appropriate disciplinary action as defined in this regulation.

**Prohibited Conduct**

The term “prohibited conduct” includes sex discrimination, harassment, sexual assault, dating violence, domestic violence, stalking, and retaliation as defined by this regulation, even if the behavior does not rise to the level of unlawful conduct.

**Reporting Procedures**

Student Report

Any student who believes that he or she has experienced prohibited conduct or believes that another individual has experienced prohibited conduct should immediately report the alleged acts to a teacher, school counselor, principal, assistant principal, or the Title IX Coordinator/designee.

Employee Report

Any District employee who suspects or receives notice that a student, group of students, or other individual in the school has or may have experienced prohibited conduct shall promptly notify a campus administrator or the Title IX Coordinator.

Definition of District Officials

For the purposes of this regulation, District officials are the Title IX Coordinator/designee and campus administrators.

Title IX Coordinator

Reports of discrimination based on sex, including sexual harassment or gender-based harassment, may be directed to the designated Title IX coordinator for students. [See FFH(EXHIBIT)]

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

Definition of Complainant	A complainant is an individual who is alleged to be the victim of prohibited conduct under this policy.
Definition of Respondent	A respondent is the person who has been reported to be the perpetrator of prohibited conduct under this policy.
Definition of Formal Complaint	A formal complaint means a document filed by a complainant (or complainant's parent/guardian) or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment.
Alternate Reporting Procedures	A student shall not be required to report prohibited conduct to the person alleged to have committed the conduct. Reports concerning prohibited conduct, including reports against the Title IX coordinator, may be directed to the Superintendent.  A report against the Superintendent may be made directly to the Board. If a report is made directly to the Board, the Board shall appoint an appropriate person to conduct an investigation.
<b>Timely Reporting</b>	Reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act. A failure to promptly report may impair the District's ability to investigate and address the prohibited conduct.
<b>Notice to Parents</b>	Upon receipt of a formal complaint, the District official or designee shall promptly notify the parents of any student alleged to have experienced prohibited conduct and the parents of a student who is alleged to have engaged in prohibited conduct with notice in compliance with the Written Notice section below.  [For parental notification requirements regarding an allegation of educator misconduct with a student, see FFF.]
<b>Supportive Measures</b>	The District shall offer the parties supportive measures. Supportive measures may include individualized services that are non-punitive, non-disciplinary, and do not unreasonably burden the other party yet are designed to restore or preserve a student's equal access to education. Supportive measures may include but are not limited to counseling, extensions of deadlines or other class-related adjustments, modifications of class schedules, campus escort services, mutual restrictions on contact between the parties, increased monitoring of certain areas of the campus, and other similar measures. The District must maintain as confidential any supportive measures provided to the parties to the extent this would not impair the ability of the District to provide supportive measures.

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

FFH

**Grievance  
Procedure:**

A formal complaint alleging prohibited conduct under this policy shall be in writing. A formal complaint may be made by the complainant-student, a parent, or legal guardian. In cases where an alleged victim doesn't file a formal complaint, the Title IX Coordinator may initiate grievance procedures where warranted (e.g., allegations of sexual assault or abuse, improper relationship between employee and student). The grievance process shall be engaged with all deliberate speed for resolving formal complaints of sexual harassment. Temporary delays shall be permitted only for good cause. Good cause can include but is not limited to law enforcement activities, the absence of a party or witness, the absence of a party's advisor of choice, or the need to provide language assistance or accommodation of disabilities.

Equitability and  
Objectivity

Both the complainant and the respondent are to be treated equitably in the grievance process. The District must ensure an objective evaluation of all relevant evidence including inculpatory and exculpatory evidence.

Credibility and  
Presumption of  
Innocence

Credibility determinations shall not be made on the basis of a person's status as a complainant, respondent, or witness. The respondent is presumed not responsible, and any finding of responsibility comes only at the conclusion of a grievance process.

No Conflicts of  
Interest

The individuals directly involved in the grievance process ( Title IX Coordinator or designee, investigator, decision-maker, and facilitator of informal resolution efforts) must not have any bias or conflict of interest. These individuals shall also be trained. The materials used to train Title IX personnel may not rely on sex stereotypes, must promote impartial investigations and adjudications, and must be posted on the District's website.

Standard of  
Evidence

The standard of evidence the District will use to reach a determination regarding responsibility shall be the preponderance of the evidence standard *[or clear and convincing evidence standard]*.

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

Privileges	No information protected by a legal privilege, such as the attorney-client privilege or the doctor-patient privilege, can be used during an investigation unless the person holding that privilege has waived it. Neither a party nor the District is allowed to seek, permit questions about, or allow the introduction of evidence that is protected by a recognized privilege. Individuals can always opt to waive their own privileges.
Emergency Removals	<p>The District may remove a respondent from the District's education programs or activities on an emergency basis if the District undertakes an individualized safety and risk analysis and determines that an immediate threat, arising from the allegations of sexual harassment, to anyone's physical health or safety justifies removal. The District must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision does not override or modify the rights of individuals under the Individuals with Disabilities Education Act, Section 504, or the Americans with Disabilities Act.</p> <p>If the respondent is a District employee, the employee may be placed on administrative or other district initiated leave during the investigation.</p>
Initial Assessment Dismissal Option	<p>Upon receipt of a formal complaint, the District official or designee shall determine whether the allegations, if proven, would constitute prohibited conduct as defined by this policy. The District official/designee <u>must</u> dismiss a complaint:</p> <ol style="list-style-type: none"><li>(1) that does not describe conduct that meets the definition of sexual harassment;</li><li>(2) that alleges sexual harassment that did not occur in the District's education program or activity;</li><li>(3) that alleges sexual harassment that did not occur in the United States.</li></ol> <p>Such dismissal does not preclude the District taking disciplinary action under the Student Code of conduct for non-sexual harassment misconduct.</p> <p>The District <u>may</u> dismiss a complaint:</p> <ol style="list-style-type: none"><li>(1) if the complainant notifies the Title IX Coordinator in writing that he/she wishes to withdraw the formal complaint or any allegations therein;</li><li>(2) if the respondent is no longer enrolled in the District; or</li><li>(3) if circumstances prevent the District from gathering evidence sufficient to reach a determination about the allegations.</li></ol>

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

Such dismissal does not preclude the District taking disciplinary action under the Student Code of conduct for non-sexual harassment misconduct.

If the District official dismisses a formal complaint or any allegations in it, the District official shall promptly send written notice of the dismissal and the reasons to the parties. Both parties have the right to appeal a dismissal decision.

The District will not dismiss a complaint involving an alleged improper relationship between an employee and student.

If the District official determines that the allegations, if proven, would not constitute prohibited conduct as defined by this policy but might constitute bullying, the District official shall refer the complaint for consideration under FFI.

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Written Notice

When an investigation begins, the parties will receive written notice. Included in the notice shall be a copy of this regulation and policy FFH. Written notice shall also include:

- (1) The actual allegations and facts that would constitute sexual harassment, including the date and location of the alleged incident(s), if known.
- (2) A statement that the respondent is presumed to be innocent and that a determination regarding responsibility is made at the conclusion of the grievance process.
- (3) A statement that the parties are entitled to an advisor of their choice who may be a parent/guardian or who may be, but is not required to be, an attorney.
- (4) A statement that the parties can inspect and review relevant evidence
- (5) Information from the District's code of conduct about making false statements.
- (6) *Information about the opportunity to engage in informal resolution.*

This written notice must be provided to allow the parties sufficient time to prepare a response before any initial interview.

If, in the course of the investigation, the District decides to investigate allegations about the complainant or respondent that were not included in the original notice, the District must provide notice of the additional allegations to the parties.

Informal Resolution

The District may offer informal resolution in appropriate cases except where the respondent is an employee of the District. Informal resolution may be attempted only if each party enters the process completely voluntarily. The District shall never force, threaten, or require any party to participate in an informal resolution process.

The District shall provide a specially trained facilitator who is free from conflicts of interest or bias. All parties shall be provided with notice of the allegations, notice of their rights, information about whether an informal process is confidential, and about withdrawing from the process.

The District may abate the investigation for two weeks for the parties to engage in informal resolution or longer if by agreement of the parties.

District Investigation  
The Investigator

DATE ISSUED:

ADOPTED:

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FFH(REGULATION)

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The investigation may be conducted by a trained District official or a designee, such as a principal, an assistant principal, a central administrator, or by a third party designated by the District, such as an attorney. When appropriate, the principal shall be involved in or informed of the investigation.

The District shall provide an equal opportunity for the parties to present witnesses to be interviewed and evidence to be considered, including information from fact and expert witnesses, as well as inculpatory or exculpatory evidence.

The District cannot restrict the ability of a party to discuss the allegations under investigation or to gather and present relevant evidence.

Representation

Both parties shall have the opportunity to have an advisor of choice accompany them to any meetings [or hearings] throughout the grievance process. A parent/guardian may serve as a student's advisor. A student may also have an advisor in addition to his/her parent present at meetings in the grievance process. However, parents and advisors cannot interfere with interviews. Advisors may only observe.

The Investigation

The District shall provide written notice of the date, time, location, participants, and purpose of all [hearings,] interviews, or other meetings with sufficient time for the party to prepare.

The District shall provide equal opportunities for the parties and their advisors to inspect and review the evidence obtained as part of its investigation, if the information is directly related to the allegations raised in the formal complaint.

Every party has the right to choose to participate, or not participate, in any part of a grievance process. No party shall be forced, threatened, coerced, discriminated against, or retaliated against for choosing not to be part of the grievance process.

The investigation may consist of personal interviews with the person making the report, the complainant, the respondent, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.

Prior to the completion of the investigative report, the District shall send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The District may use an electronic format that prevents the parties from being able to download or copy the evidence in order to ensure confidentiality. The parties must have at least 10 days to

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submit a written response, which the investigator will consider prior to completing the investigative report.

If a response is submitted, the investigator shall consider that response before finalizing the investigative report. The investigative report can then be finalized and provided to the parties.

That report shall be circulated to the parties at least another 10 days before any determination of responsibility [*, or 10 days before a hearing*].

Before making a determination of responsibility, the parties shall be given an opportunity to submit relevant, written questions to each other. The decision maker may establish a deadline for a party to respond to questions posed by another party. Responses may be verbal or written at the decision-maker's discretion. Parents/guardians may respond in writing for their children. The decision maker may ask additional questions of the parties and witnesses before making a determination of responsibility.

Questions and evidence about a complainant's prior sexual history are not relevant with two limited exceptions: to prove someone other than the respondent committed the alleged misconduct or to prove consent.

If a law enforcement or regulatory agency notifies the District that a criminal or regulatory investigation has been initiated, the District shall confer with the agency to determine if the District investigation would impede the criminal or regulatory investigation. The District shall proceed with its investigation only to the extent that it does not impede the ongoing criminal or regulatory investigation. After the law enforcement or regulatory agency has finished gathering its evidence, the District shall promptly resume its investigation.

*Hearing*

*The District may offer the parties a hearing as part of the grievance process. Any hearing must give the parties an equal opportunity to present evidence and witnesses. The parties shall be entitled to an advisor of their choice. The parties shall be given an opportunity to submit relevant, written questions to each other. Questions and evidence about a complainant’s prior sexual history are not relevant, with two limited exceptions: to prove someone other than the respondent committed the alleged misconduct or to prove consent.*

*The District may hold the entire live hearing virtually or the District may allow some participants to appear virtually, with technology that allows everyone to see and hear each other.*

Disability  
Accommodations

The District shall ensure that individuals with disabilities who participate in a District grievance process are appropriately accommodated, including with respect to the use of technology and reliance on visual, auditory, or written modes of communication.

Concluding the  
Investigation

Absent extenuating circumstances, such as a request by a law enforcement or regulatory agency for the District to delay its investigation, the investigation should be completed with all deliberate speed from the date of the formal complaint; the investigator shall take the time necessary to complete a thorough investigation.

The investigator shall prepare a final written report of the investigation. The report shall not include a determination of whether prohibited conduct occurred but may include recommended findings of fact. The report shall be filed with the Title IX Coordinator and the decision-maker.

*Written  
Determination of  
Responsibility  
and Notification of  
Outcome*

**Decision-maker**

Notification of the outcome of the investigation shall be provided to both parties in compliance with FERPA.

The decision-maker shall objectively evaluate the relevant evidence and reach conclusions about whether the respondent is responsible for the alleged sexual harassment. The decision-maker shall use independent judgment and shall not be the same person who conducted the investigations or the Title IX Coordinator.

Decision-makers shall be free from conflicts of interest or bias for or against complainants or respondents and shall have received special training about how to be impartial and how to decide what evidence is relevant. The decision-maker will weigh the relevant evidence and decide whether it meets the District’s standard of evidence for sexual harassment allegations.

After the evidence has been weighed, the decision-maker shall issue a written decision. It shall include:

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- (1) Identification of the allegations potentially constituting sexual harassment.
- (2) A description of the procedural steps taken from the formal complaint through determination of responsibility, including notifications to parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held, if any.
- (3) Findings of fact supporting the determination.
- (4) Conclusions regarding the application of the District's code of conduct to the facts.
- (5) A statement and rationale for the ultimate determination of responsibility.
- (6) Any disciplinary sanctions that will be imposed on the respondent and state whether the District will provide remedies to the complainant.
- (7) A statement and rationale for any remedies for the complainant, addressing how those remedies will restore or preserve equal access to District activities.
- (8) A statement of the District's procedures, a statement that the parties have a right to appeal the initial determination regarding responsibility, and the permissible bases for appeal.

The District shall send the written determination to the parties simultaneously, along with information about how to appeal the determination.

The Title IX coordinator is responsible for implementing the remedies contained in the written decision if there is no timely appeal or once the appeal process is completed.

*Corrective  
Action/Remedies*

The District's remedies are to be designed to restore or preserve equal access to the District's education programs or activities. Disciplinary sanctions for students will range from a verbal warning to expulsion. Examples of corrective action may include a training program for those involved in the complaint, a comprehensive education program for the school community, counseling to the complainant and the respondent who engaged in prohibited conduct, follow-up inquiries to determine if any new incidents or any instances of retaliation have occurred, involving parents and students in efforts to identify problems and improve the school climate, increasing staff monitoring of areas where prohibited conduct has occurred, and reaffirming the District's policy against

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discrimination and harassment. Respondents who are employees may be subject to a range of discipline from a written warning up to and including termination of employment.

**Bullying**

If the results of an investigation indicate that bullying occurred, as defined by FFI, the District official shall refer to FFI for appropriate notice to parents and District action. The District official shall refer to FDB for transfer provisions.

**Improper Conduct**

If the investigation reveals improper conduct that did not rise to the level of prohibited conduct or bullying, the District may take disciplinary action in accordance with the Student Code of Conduct or other corrective action reasonably calculated to address the conduct, if it has not already done so.

**Confidentiality**

To the greatest extent possible, the District shall respect the privacy of the complainant, respondent, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation, comply with applicable law, and to implement supportive measures. The District shall maintain the identities of parties and witnesses as confidential, unless disclosure of someone's identity is required under other laws or is necessary in order to conduct the grievance process, including the implementation of supportive measures.

**Appeal**

An appeal must be in writing (on a form provided by the District) and filed with the Title IX Coordinator within ten calendar days of issuance of the determination of responsibility. Appeals can be taken from two different points in the process: after a dismissal of a complaint (whether mandatory or discretionary) or after the issuance of the determination of responsibility. Grounds for appeal are limited to:

- (1) A procedural irregularity that affected the outcome of the matter.
- (2) New evidence was discovered that was not reasonably available at the time of the determination of responsibility or dismissal.
- (3) A conflict of interest on the part of a Title IX Coordinator, an investigator, or a decision-maker that affected the outcome.

The person who decides the appeal shall not be the same person who reached the determination regarding responsibility, the investigator, or the Title IX Coordinator.

After considering the parties' written statements, the decision-maker on appeal shall issue a written decision and send it to the parties simultaneously.

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The District's determination about whether the respondent is responsible for the sexual harassment allegations becomes final after appeal. A respondent who is an employee may be subject to disciplinary actions pursuant to the District's employment policies.

A student or parent/guardian shall be informed of his or her right to file a complaint with the United States Department of Education Office for Civil Rights.

**SBEC and Do Not Hire Registry**

Respondent employees who are found to have engaged in Reportable Misconduct under DFB shall be reported to the State Board of Educator Certification or the Texas Education Agency for the Do Not Hire Registry consistent with state regulations.

**Records Retention**

The District shall retain copies of each sexual harassment investigation, including the allegations; witness statements; relevant evidence relied upon; investigation reports; any appeal and the materials associated with an appeal; records of any informal resolution process; all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution; records of the supportive measures taken in response to a report or complaint of sexual harassment; and related records regarding any prohibited conduct in accordance with the District's records retention schedules for no less than 7 years. [See CPC]

**Access to Procedures**

Information regarding this regulation shall be included in the employee and student handbooks.

DISTRICT LETTERHEAD

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

[Date]

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

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

Dear **Mr./Ms.** \_\_\_\_\_:

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

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

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

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

The District's goal is for you/your child to feel safe and comfortable on campus. If you have questions about the District's Title IX grievance process or supportive measures, please contact the Title IX Coordinator's Office at **(XXX) XXX-XXXX** or **[email]**.

Sincerely,

---

**[Name]**  
Title IX Coordinator/designee

Enclosure: FFH(LOCAL)

## DISTRICT LETTERHEAD

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

[Date]

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

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

Dear **Mr./Ms.** \_\_\_\_\_:

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

The District's Title IX sexual harassment grievance process includes an opportunity to participate in an informal resolution process at any time prior to a determination regarding responsibility. During the grievance process, the filer of the complaint is called the Complainant, and the accused is called the Respondent.

The first step in the grievance process is an investigation. I have appointed \_\_\_\_\_[name], \_\_\_\_\_[title] to serve as investigator, and he/she will be in contact with you.

Please be aware that, by law, the Respondent is presumed not responsible for the alleged conduct and a determination regarding responsibility is made only at the conclusion of the grievance process by a decision-maker other than the investigator. I have appointed \_\_\_\_\_ [name], \_\_\_\_\_ [title] as the decision-maker in this complaint.

You are allowed an advisor to assist you in this process. This may be any adult whom you wish to help you through the process or represent your student. This person may be an attorney but does not have to be. If you would prefer, you may proceed without an advisor. You are also entitled to inspect and review all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the District does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that you can meaningfully respond to the evidence prior to conclusion of the investigation.

Please also be aware that provision **XX** of the District's code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If you have any questions regarding this information, please let me know. Thank you for your cooperation during this grievance process to ensure that our students experience an education environment free from discrimination on the basis of sex.

Sincerely,

---

[Name],  
Title IX Coordinator/designee

Enclosures: FFH(LEGAL) & (LOCAL)  
FFH(Regulation 2)  
Formal Complaint Form

## DISTRICT LETTERHEAD

### Title IX Record Keeping Cover Sheet

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

Date of Initial Complaint: \_\_\_\_\_

Date of Final Decision: \_\_\_\_\_

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

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

# U.S. Department of Education Title IX Final Rule Overview

## GUIDING PRINCIPLES

- **Historic Recognition of Sexual Harassment as Sex Discrimination**

For the first time, the Department’s Title IX regulations recognize that sexual harassment, including sexual assault, is unlawful sex discrimination. The Department previously addressed sexual harassment only through guidance documents, which are not legally binding and do not have the force and effect of law. Now, the Department’s regulations impose important legal obligations on school districts, colleges, and universities (collectively “schools”), requiring a prompt response to reports of sexual harassment. The Final Rule improves the clarity and transparency of the requirements for how schools must respond to sexual harassment under Title IX so that every complainant receives appropriate support, respondents are treated as responsible only after receiving due process and fundamental fairness, and school officials serve impartially without bias for or against any party.

- **Supporting Complainants & Respecting Complainants’ Autonomy**

Under the Final Rule, schools must offer free supportive measures to every alleged victim of sexual harassment (called “complainants” in the Final Rule). Supportive measures are individualized services to restore or preserve equal access to education, protect student and employee safety, or deter sexual harassment. Supportive measures must be offered even if a complainant does not wish to initiate or participate in a grievance process. Every situation is unique, and individuals react to sexual harassment differently. Therefore, the Final Rule gives complainants control over the school-level response best meeting their needs. It respects complainants’ wishes and autonomy by giving them the clear choice to file a formal complaint, separate from the right to supportive measures. The Final Rule also provides a fair and impartial grievance process for complainants, and protects complainants from being coerced or threatened into participating in a grievance process.

- **Non-Discrimination, Free Speech, and Due Process**

The Final Rule reflects core American values of equal treatment on the basis of sex, free speech and academic freedom, due process of law, and fundamental fairness. Schools must operate free from sex discrimination, including sexual harassment. Complainants and respondents must have strong, clear procedural rights in a predictable, transparent grievance process designed to reach reliable outcomes. The Final Rule ensures that schools do not violate First Amendment rights when complying with Title IX.

## A SCHOOL’S RESPONSE TO SEXUAL HARASSMENT

- Under the Final Rule, any of the following conduct on the basis of sex constitutes sexual harassment:
  - A school employee conditioning an educational benefit or service upon a person’s participation in unwelcome sexual conduct (often called “*quid pro quo*” harassment);
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity; or
  - Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a)).

## U.S. Department of Education Title IX Final Rule Overview

- Consistent with Supreme Court precedent and the text of Title IX, a school must respond when: (1) the school has actual knowledge of sexual harassment; (2) that occurred within the school's education program or activity; (3) against a person in the United States. The Final Rule expands "actual knowledge" to include notice to any elementary or secondary school employee, and states that any person (*e.g.*, the alleged victim or any third party) may report to a Title IX Coordinator in person or by e-mail, phone, or mail. The Final Rule also specifies that a school's "education program or activity" includes situations over which the school exercised substantial control, and also buildings owned or controlled by student organizations officially recognized by a postsecondary institution, such as many fraternity and sorority houses.
- Consistent with Supreme Court precedent, a school violates Title IX when its response to sexual harassment is clearly unreasonable in light of the known circumstances, and the Final Rule adds mandatory response obligations such as offering supportive measures to every complainant, with or without a formal complaint.
- Schools must investigate every formal complaint (which may be filed by a complainant or by a school's Title IX Coordinator). If the alleged conduct does not fall under Title IX, then a school may address the allegations under the school's own code of conduct and provide supportive measures.

### A FAIR GRIEVANCE PROCESS

The Final Rule requires schools to investigate and adjudicate formal complaints of sexual harassment using a grievance process that incorporates due process principles, treats all parties fairly, and reaches reliable responsibility determinations. A school's grievance process must:

- Give both parties written notice of the allegations, an equal opportunity to select an advisor of the party's choice (who may be, but does not need to be, an attorney), and an equal opportunity to submit and review evidence throughout the investigation;
- Use trained Title IX personnel to objectively evaluate all relevant evidence without prejudice of the facts at issue and free from conflicts of interest or bias for or against either party;
- Protect parties' privacy by requiring a party's written consent before using the party's medical, psychological, or similar treatment records during a grievance process;
- Obtain the parties' voluntary, written consent before using any kind of "informal resolution" process, such as mediation or restorative justice, and not use an informal process where an employee allegedly sexually harassed a student;
- Apply a presumption that the respondent is not responsible during the grievance process (often called a "presumption of innocence"), so that the school bears the burden of proof and the standard of evidence is applied correctly;
- Use either the preponderance of the evidence standard or the clear and convincing evidence standard (and use the same standard for formal complaints against students as for formal complaints against employees);
- Ensure the decision-maker is not the same person as the investigator or the Title IX Coordinator (*i.e.*, no "single investigator models");
- For postsecondary institutions, hold a live hearing and allow cross-examination by party advisors (never by the parties personally); K-12 schools do not need to hold a hearing, but parties may submit written questions for the other parties and witnesses to answer;
- Protect all complainants from inappropriately being asked about prior sexual history ("rape shield" protections);

## **U.S. Department of Education Title IX Final Rule Overview**

- Send both parties a written determination regarding responsibility explaining how and why the decision-maker reached conclusions;
- Effectively implement remedies for a complainant if a respondent is found responsible for sexual harassment;
- Offer both parties an equal opportunity to appeal;
- Protect any individual, including complainants, respondents, and witnesses, from retaliation for reporting sexual harassment or participating (or refusing to participate) in any Title IX grievance process;
- Make all materials used to train Title IX personnel publicly available on the school's website or, if the school does not maintain a website, make these materials available upon request for inspection by members of the public; and
- Document and keep records of all sexual harassment reports and investigations.

### **SEX DISCRIMINATION REGULATIONS**

Relating to sex discrimination generally, and not only to sexual harassment, the final regulations also:

- Affirm that the Department may require schools to take remedial action for discriminating on the basis of sex or otherwise violating the Department's Title IX regulations;
- Expressly state that in response to any claim of sex discrimination under Title IX, schools are never required to deprive an individual of rights guaranteed under the U.S. Constitution;
- Account for the interplay of Title IX, Title VII, and FERPA, as well as the legal rights of parents or guardians to act on behalf of individuals with respect to exercising Title IX rights;
- Update the requirement for schools to designate and identify a Title IX Coordinator, disseminate their non-discrimination policy and the Title IX Coordinator's contact information to ensure accessible channels for reporting sex discrimination (including sexual harassment), and notify students, employees, parents, and others of how the school will respond to reports and complaints of sex discrimination (including sexual harassment); and
- Clarify that an institution controlled by a religious organization is not required to submit a written statement to the Department to qualify for the Title IX religious exemption.

## **PRESIDENT DONALD J. TRUMP IS WORKING TO PROTECT STUDENTS FROM SEXUAL MISCONDUCT AND RESTORE FAIRNESS AND DUE PROCESS TO OUR CAMPUSES**

*"With today's action and every action to come, the Trump administration will fight for America's students." – President Donald J. Trump*

**TAKING HISTORIC ACTION: President Donald J. Trump is ensuring that all students are safe to learn and achieve without facing sexual harassment and sexual assault in our Nation's schools.**

- Today, the Department of Education is issuing a final regulation to strengthen Title IX protections for survivors of sexual misconduct and fight sex misconduct in schools.
- For the first time in history, the new regulation will codify that sexual harassment, including sexual assault, dating violence, domestic violence, and stalking, is prohibited under Title IX.
- This new regulation will hold schools accountable for failures to respond equitably and promptly to incidents of sexual misconduct.
  - The action also empowers survivors to make decisions about how a school responds to incidents of sexual harassment.
- This rulemaking follows years of wide-ranging research, careful deliberation, and careful input from stakeholders – including survivors – and over 124,000 public comments.

**ENSURING EVEN-HANDED JUSTICE: The President's new rules will also ensure that schools can no longer inflict longstanding harm against students before providing basic, fair procedures.**

- Today's final regulation will also provide due process protections to students facing accusations of sexual misconduct.
  - Bureaucracy created in our Nation's institutions of higher education have often stacked the deck against the accused, failing to offer protections such as a presumption of innocence or adequate ability to rebut allegations.
- The regulation prescribes a transparent grievance process that treats the accused as innocent until proven guilty, requires the school to state a standard of evidence, and requires the school to provide a written decision and rationale.
- Recognizing that colleges often fail to provide due process, Federal courts reviewing campus adjudications have stepped in to issue more than 100 decisions favorable to the accused.
- Today's protections will legitimize the process and support survivors, including by ensuring that final findings of responsibility are credible.

**MAKING OUR SCHOOLS SAFER: The Trump Administration is working every day to protect America's students and survivors of sexual misconduct.**

- Under the President's leadership, the Department of Education has aggressively worked to hold schools accountable for sexual harassment in their education programs and activities.
  - Already, the Trump Administration has required sweeping reforms at educational institutions, including Michigan State University, Pennsylvania State University, the University of Southern California, and Chicago Public Schools.
- The Department of Education has led implementation of Every Student Succeeds Act rules that prohibit elementary and secondary school district administrators from shifting from one school to another employees who sexually abuse students.
- Over the last three years, the Department of Education's Office for Civil Rights has closed a total of 172 sexual violence cases with change, a 375 percent increase over the prior 8 years.

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule

Issue	The Title IX Final Rule: Addressing Sexual Harassment in Schools
<p><i>1. Notice to the School, College, University (“Schools”): Actual Knowledge</i></p>	<p>The Final Rule requires a K-12 school to respond whenever <i>any</i> employee has notice of sexual harassment, including allegations of sexual harassment. Many State laws also require all K-12 employees to be mandatory reporters of child abuse. For postsecondary institutions, the Final Rule allows the institution to choose whether to have mandatory reporting for all employees, or to designate some employees to be confidential resources for college students to discuss sexual harassment without automatically triggering a report to the Title IX office.</p> <p>For all schools, notice to a Title IX Coordinator, or to an official with authority to institute corrective measures on the recipient’s behalf, charges a school with actual knowledge and triggers the school’s response obligations.</p>
<p><i>2. Definition of Sexual Harassment for Title IX Purposes</i></p>	<p>The Final Rule defines sexual harassment broadly to include any of three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect: Any instance of <i>quid pro quo</i> harassment by a school’s employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).</p> <ul style="list-style-type: none"> <li>- The Final Rule prohibits sex-based misconduct in a manner consistent with the First Amendment. <i>Quid pro quo</i> harassment and Clery Act/VAWA offenses are <u>not</u> evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, because such misconduct is sufficiently serious to deprive a person of equal access.</li> <li>- The Final Rule uses the Supreme Court’s <i>Davis</i> definition (<i>severe and pervasive and objectively offensive</i> conduct, effectively denying a person equal educational access) as one of the three categories of sexual harassment, so that where unwelcome sex-based conduct consists of speech or expressive conduct, schools balance Title IX enforcement with respect for free speech and academic freedom.</li> <li>- The Final Rule uses the Supreme Court’s Title IX-specific definition rather than the Supreme Court’s Title VII workplace standard (<i>severe or pervasive</i> conduct creating a hostile work environment). First Amendment concerns differ in educational environments and workplace environments, and the Title IX definition provides First Amendment protections appropriate for educational institutions where students are learning, and employees are teaching. Students, teachers, faculty, and others should enjoy free speech and academic freedom protections, even when speech or expression is offensive.</li> </ul>

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule

<p><i>3. Sexual Harassment Occurring in a School’s “Education Program or Activity” and “in the United States”</i></p>	<p>The Title IX statute applies to persons in the United States with respect to education programs or activities that receive Federal financial assistance. Under the Final Rule, schools must respond when sexual harassment occurs in the school’s education program or activity, against a person in the United States.</p> <ul style="list-style-type: none"> <li>- The Title IX statute and existing regulations contain broad definitions of a school’s “program or activity” and the Department will continue to look to these definitions for the scope of a school’s education program or activity. Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution (such as a fraternity or sorority house).</li> <li>- Title IX applies to all of a school’s education programs or activities, whether such programs or activities occur on-campus or off-campus. A school may address sexual harassment affecting its students or employees that falls outside Title IX’s jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.</li> </ul>
<p><i>4. Accessible Reporting to Title IX Coordinator</i></p>	<p>The Final Rule expands a school’s obligations to ensure its educational community knows how to report to the Title IX Coordinator.</p> <ul style="list-style-type: none"> <li>- The employee designated by a recipient to coordinate its efforts to comply with Title IX responsibilities must be referred to as the “Title IX Coordinator.”</li> <li>- Instead of notifying only students and employees of the Title IX Coordinator’s contact information, the school must also notify applicants for admission and employment, parents or legal guardians of elementary and secondary school students, and all unions, of the name or title, office address, e-mail address, and telephone number of the Title IX Coordinator.</li> <li>- Schools must prominently display on their websites the required contact information for the Title IX Coordinator.</li> <li>- Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.</li> <li>- Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address, listed for the Title IX Coordinator.</li> </ul>
<p><i>5. School’s Mandatory Response Obligations: The Deliberate Indifference Standard</i></p>	<p>Schools must respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means a response that is not clearly unreasonable in light of the known circumstances. Schools have the following mandatory response obligations:</p> <ul style="list-style-type: none"> <li>- Schools must offer supportive measures to the person alleged to be the victim (referred to as the “complainant”).</li> </ul>

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule

	<ul style="list-style-type: none"> <li>- The Title IX Coordinator must promptly contact the complainant confidentially 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.</li> <li>- Schools must follow a grievance process that complies with the Final Rule before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent.</li> <li>- Schools must not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, when complying with Title IX.</li> <li>- The Final Rule requires a school to investigate sexual harassment allegations in any formal complaint, which can be filed by a complainant, or signed by a Title IX Coordinator.</li> <li>- The Final Rule affirms that a complainant’s wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.</li> <li>- If the allegations in a formal complaint do not meet the definition of sexual harassment in the Final Rule, or did not occur in the school’s education program or activity against a person in the United States, the Final Rule clarifies that the school must dismiss such allegations <i>for purposes of Title IX</i> but may still address the allegations in any manner the school deems appropriate under the school’s own code of conduct.</li> </ul>
<p>6. <i>School’s Mandatory Response Obligations:</i>  <i>Defining</i>  <i>“Complainant,”</i>  <i>“Respondent,”</i>  <i>“Formal Complaint,”</i>  <i>“Supportive Measures”</i></p>	<p>When responding to sexual harassment (e.g., by offering supportive measures to a complainant and refraining from disciplining a respondent without following a Title IX grievance process, which includes investigating formal complaints of sexual harassment), the Final Rule provides clear definitions of complainant, respondent, formal complaint, and supportive measures so that recipients, students, and employees clearly understand how a school must respond to sexual harassment incidents in a way that supports the alleged victim and treats both parties fairly.</p> <p>The Final Rule defines “complainant” as an individual <i>who is alleged to be the victim</i> of conduct that could constitute sexual harassment.</p> <ul style="list-style-type: none"> <li>- This clarifies that any third party as well as the complainant may report sexual harassment.</li> <li>- While parents and guardians do not become complainants (or respondents), the Final Rule expressly recognizes the legal rights of parents and guardians to act on behalf of parties (including by filing formal complaints) in Title IX matters.</li> </ul> <p>The Final Rule defines “respondent” as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.</p>

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule

	<p>The Final Rule defines “formal complaint” as a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment and states:</p> <ul style="list-style-type: none"> <li>- 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 school with which the formal complaint is filed.</li> <li>- A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under the Final Rule, and by any additional method designated by the school.</li> <li>- The phrase “document filed by a complainant” means a document or electronic submission (such as by e-mail or through an online portal provided for this purpose by the school) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.</li> <li>- Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during a grievance process, and must comply with requirements for Title IX personnel to be free from conflicts and bias.</li> </ul> <p>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.</p> <ul style="list-style-type: none"> <li>- The Final Rule evaluates a school’s selection of supportive measures and remedies based on what is not clearly unreasonable in light of the known circumstances, and does not second guess a school’s disciplinary decisions, but requires the school to offer supportive measures, and provide remedies to a complainant whenever a respondent is found responsible.</li> </ul>
<p>7. <i>Grievance Process, General Requirements</i></p>	<p>The Final Rule prescribes a consistent, transparent grievance process for resolving formal complaints of sexual harassment. Aside from hearings (see Issue #9 below), the grievance process prescribed by the Final Rule applies to all schools equally including K-12 schools and postsecondary institutions. The Final Rule states that a school’s grievance process must:</p> <ul style="list-style-type: none"> <li>- Treat complainants equitably by providing remedies any time a respondent is found responsible, and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process prescribed in the Final Rule.</li> <li>- Remedies, which are required to be provided to a complainant when a respondent is found responsible, must be designed to maintain the complainant’s equal access to education and may include the same individualized services described in the Final Rule as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.</li> <li>- Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person’s status as a complainant, respondent, or witness.</li> </ul>

## Summary of Major Provisions of the Department of Education's Title IX Final Rule

- Require Title IX personnel (Title IX Coordinators, investigators, decision-makers, people who facilitate any informal resolution process) to be free from conflicts of interest or bias for or against complainants or respondents.
- Training of Title IX personnel must include training on the definition of sexual harassment in the Final Rule, the scope of the school's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- A school must ensure that decision-makers receive training on any technology to be used at a live hearing.
- A school's decision-makers and investigators must receive training on issues of relevance, including how to apply the rape shield protections provided only for complainants.
- Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- Recipients must post materials used to train Title IX personnel on their websites, if any, or make materials available for members of the public to inspect.
- Include reasonably prompt time frames for conclusion of the grievance process, including appeals and informal resolutions, with allowance for short-term, good cause delays or extensions of the time frames.
- Describe the range, or list, the possible remedies a school may provide a complainant and disciplinary sanctions a school might impose on a respondent, following determinations of responsibility.
- State whether the school has chosen to use the preponderance of the evidence standard, or the clear and convincing evidence standard, for all formal complaints of sexual harassment (including where employees and faculty are respondents).
- Describe the school's appeal procedures, and the range of supportive measures available to complainants and respondents.
- A school's grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- Any provisions, rules, or practices other than those required by the Final Rule that a school adopts as part of its grievance process for handling formal complaints of sexual harassment, must apply equally to both parties.

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule

<p><i>8. Investigations</i></p>	<p>The Final Rule states that the school must investigate the allegations in any formal complaint and send written notice to both parties (complainants and respondents) of the allegations upon receipt of a formal complaint. During the grievance process and when investigating:</p> <ul style="list-style-type: none"> <li>- The burden of gathering evidence and burden of proof must remain on schools, not on the parties.</li> <li>- Schools must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.</li> <li>- Schools must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no “gag orders”).</li> <li>- Parties must have the same opportunity to select an advisor of the party’s choice who may be, but need not be, an attorney.</li> <li>- Schools must send written notice of any investigative interviews, meetings, or hearings.</li> <li>- Schools must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence.</li> <li>- Schools must send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond.</li> <li>- Schools must dismiss allegations of conduct that do not meet the Final Rule’s definition of sexual harassment or did not occur in a school’s education program or activity against a person in the U.S. Such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner the school deems appropriate.</li> <li>- Schools may, in their discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.</li> <li>- Schools must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.</li> <li>- Schools may, in their discretion, consolidate formal complaints where the allegations arise out of the same facts.</li> <li>- The Final Rule protects the privacy of a party’s medical, psychological, and similar treatment records by stating that schools cannot access or use such records unless the school obtains the party’s voluntary, written consent to do so.</li> </ul>
<p><i>9. Hearings:</i></p>	<p>The Final Rule adds provisions to the “live hearing with cross-examination” requirement for postsecondary institutions and clarifies that hearings are optional for K-12 schools (and any other recipient that is not a postsecondary institution).</p>

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule

<p>(a) <i>Live Hearings &amp; Cross-Examination (for Postsecondary Institutions)</i></p>	<p>(a) For postsecondary institutions, the school’s grievance process must provide for a live hearing:</p> <ul style="list-style-type: none"> <li>- At the live hearing, the decision-maker(s) must permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.</li> <li>- Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party’s advisor of choice and never by a party personally.</li> <li>- At the request of either party, the recipient must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other.</li> <li>- Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain to the party’s advisor asking cross-examination questions any decision to exclude a question as not relevant.</li> <li>- If a party does not have an advisor present at the live hearing, the school must provide, without fee or charge to that party, an advisor of the school’s choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party.</li> <li>- If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.</li> <li>- Live hearings may be conducted with all parties physically present in the same geographic location or, at the school’s discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually.</li> <li>- Schools must create an audio or audiovisual recording, or transcript, of any live hearing.</li> </ul>
<p>(b) <i>Hearings are Optional, Written Questions Required (for K-12 Schools)</i></p>	<p>(b) For recipients that are K-12 schools, and other recipients that are not postsecondary institutions, the recipient’s grievance process may, <i>but need not</i>, provide for a hearing:</p> <ul style="list-style-type: none"> <li>- With or without a hearing, after the school has sent the investigative report to the parties and before reaching 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.</li> </ul>
<p>(c) <i>Rape Shield Protections for Complainants</i></p>	<p>(c) The Final Rule provides rape shield protections for complainants (as to all recipients whether postsecondary institutions, K-12 schools, or others), deeming irrelevant questions and evidence about a complainant’s prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.</p>

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule

<p><i>10. Standard of Evidence &amp; Written Determination</i></p>	<p>The Final Rule requires the school’s grievance process to state whether the standard of evidence to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard. The Final Rule makes each school’s grievance process consistent by requiring each school to apply the same standard of evidence for all formal complaints of sexual harassment whether the respondent is a student or an employee (including faculty member).</p> <ul style="list-style-type: none"> <li>- The decision-maker (who cannot be the same person as the Title IX Coordinator or the investigator) must issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant.</li> <li>- The written determination must be sent simultaneously to the parties along with information about how to file an appeal.</li> </ul>
<p><i>11. Appeals</i></p>	<p>The Final Rule states that a school must offer both parties an appeal from a determination regarding responsibility, and from a school’s dismissal of a formal complaint or any allegations therein, on the following bases: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.</p> <ul style="list-style-type: none"> <li>- A school may offer an appeal equally to both parties on additional bases.</li> </ul>
<p><i>12. Informal Resolution</i></p>	<p>The Final Rule allows a school, in its discretion, to choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. Any person who facilitates an informal resolution must be well trained. The Final Rule adds:</p> <ul style="list-style-type: none"> <li>- A school may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. Similarly, a school may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed.</li> <li>- At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.</li> <li>- Schools must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.</li> </ul>

## Summary of Major Provisions of the Department of Education's Title IX Final Rule

<p><i>13. Retaliation Prohibited</i></p>	<p>The Final Rule expressly prohibits retaliation.</p> <ul style="list-style-type: none"><li>- Charging an individual with code of conduct violations that do not involve sexual harassment, but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation.</li><li>- The school must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding.</li><li>- Complaints alleging retaliation may be filed according to a school's prompt and equitable grievance procedures.</li><li>- The exercise of rights protected under the First Amendment does not constitute retaliation.</li><li>- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.</li></ul>
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## Summary of Major Provisions of the Department of Education’s Title IX Final Rule and Comparison to the NPRM

Issue	Provisions in Final Rule (Bold typeface indicates language added in the Final Rule, responsive to public comment)	Provisions in NPRM (Bold typeface indicates language not included in the Final Rule, responsive to public comment)
<p>1. <i>Notice to Schools, Colleges, Universities, and other Recipients of Federal Funds (“Schools”):</i></p> <p>Actual Knowledge</p>	<p>Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a school’s Title IX Coordinator or any official of the school who has authority to institute corrective measures on behalf of the school, or to <b>any employee of an elementary and secondary school</b>.</p> <p>- “Notice” <b>includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in the Final Rule.</b></p>	<p>Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a school’s Title IX Coordinator or any official of the school who has authority to institute corrective measures on behalf of the school, or to <b>a teacher in the elementary and secondary context with regard to student-on-student harassment.</b></p>
<p>2. <i>Definition of Sexual Harassment for Title IX Purposes</i></p>	<p>Sexual harassment means <b>conduct on the basis of sex that satisfies one or more of the following:</b></p> <p>(i) A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., <i>quid pro quo</i>); or</p> <p>(ii) Unwelcome conduct <b>that a reasonable person would determine</b> is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity; or</p> <p>(iii) Sexual assault (as defined in the Clery Act), <b>dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).</b></p>	<p>Sexual harassment means:</p> <p>(i) A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., <i>quid pro quo</i>); or</p> <p>(ii) Unwelcome conduct <b>on the basis of sex</b>, that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity; or</p> <p>(iii) Sexual assault (as defined in the Clery Act <b>regulations</b>).</p>

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule and Comparison to the NPRM

<p>3. <i>Sexual Harassment Occurring in a School’s “Education Program or Activity” and “in the United States”</i></p>	<p>Schools must respond when sexual harassment occurs in the school’s education program or activity, against a person in the United States. <b>Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.</b></p>	<p>School must respond when sexual harassment occurs in the school’s education program or activity, against a person in the United States.</p>
<p>4. <i>Accessible Reporting to Title IX Coordinator; Adoption &amp; Publication of Title IX Procedures</i></p>	<p>The Final Rule expands a school’s obligations to ensure its educational community knows how to report to the Title IX Coordinator by stating:</p> <ul style="list-style-type: none"> <li>- Each school must designate <b>and authorize</b> at least one employee to coordinate its efforts to comply with its Title IX responsibilities, <b>which employee must be referred to as the “Title IX Coordinator.”</b></li> <li>- The school must notify <b>applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions</b>, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated <b>as the Title IX Coordinator.</b></li> <li>- <b>Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.</b></li> </ul>	<p>The NPRM stated:</p> <ul style="list-style-type: none"> <li>- Each school must designate at least one employee to coordinate its efforts to comply with its Title IX responsibilities.</li> <li>- The school must notify <b>all its</b> students and employees of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated <b>pursuant to this paragraph.</b></li> </ul>

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule and Comparison to the NPRM

	<ul style="list-style-type: none"> <li>- Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.</li> <li>- Schools must prominently display on their websites the required contact information for the Title IX Coordinator.</li> </ul>	
<p>5. <i>School’s Mandatory Response Obligations:</i></p> <p>Deliberate Indifference Standard</p>	<p>A school must respond <b>promptly</b> to Title IX sexual harassment in a manner that is not deliberately indifferent, which means in a way that is not clearly unreasonable in light of the known circumstances.</p> <p>A school’s mandatory response must include:</p> <ul style="list-style-type: none"> <li>- <b>Offering supportive measures to the complainant</b> (i.e., the person alleged to be the victim).</li> <li>- <b>The Title IX Coordinator promptly contacting 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.</b></li> <li>- <b>Following a grievance process that complies with the Final Rule before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent.</b></li> <li>- <b>Must not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, as a way of responding in a non-deliberately indifferent manner.</b></li> </ul>	<p>A school must respond to Title IX sexual harassment in a manner that is not deliberately indifferent, which means in a way that is not clearly unreasonable in light of the known circumstances.</p> <p>The NPRM offered postsecondary institutions a “safe harbor” against a finding of deliberate indifference where, in the absence of a formal complaint, a postsecondary institution implemented supportive measures for the complainant. <b>This “safe harbor” has been removed in the Final Rule.</b> The Final Rule requires all schools to offer supportive measures to every complainant, eliminating the need to incentivize supportive measures through a safe harbor.</p>

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule and Comparison to the NPRM

<p>6. <i>School’s Mandatory Response Obligations:</i></p> <p>Investigating a Formal Complaint</p>	<p>The Final Rule requires schools to investigate formal complaints of sexual harassment and does not offer schools any safe harbors against the Department finding that a school responded deliberately indifferently or otherwise in a manner that constitutes sex discrimination or violates Title IX or Title IX regulations. <b>In response to a formal complaint, a recipient must follow a grievance process that complies with the Final Rule. With or without a formal complaint, a recipient must comply with all the mandatory response obligations described in Issue #5 above.</b></p>	<p>The NPRM required schools to investigate and adjudicate formal complaints of sexual harassment <b>consistent with the grievance procedures described in § 106.45.</b></p> <ul style="list-style-type: none"> <li>- The NPRM offered schools a “safe harbor” against a finding of deliberate indifference (or other finding that the school committed sex discrimination) if schools followed procedures consistent with § 106.45 in response to a formal complaint. <b>This “safe harbor” has been removed in the Final Rule.</b></li> <li>- The NPRM required a school’s Title IX Coordinator to file a formal complaint any time the school had notice of multiple reports of sexual harassment against a particular respondent (and then offered a “safe harbor” for following procedures consistent with § 106.45). <b>This mandate for the Title IX Coordinator to file a formal complaint, and corresponding “safe harbor,” have been removed in the Final Rule.</b></li> </ul>
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## Summary of Major Provisions of the Department of Education’s Title IX Final Rule and Comparison to the NPRM

<p>7. <i>School’s Mandatory Response Obligations:</i></p> <p>Defining “Complainant,” “Respondent,” “Formal Complaint” and “Supportive Measures”</p> <p>“Complainant”</p> <p>“Respondent”</p> <p>“Formal Complaint”</p>	<p>When responding to sexual harassment (e.g., by offering supportive measures to a complainant, refraining from disciplining a respondent without following a Title IX grievance process, or investigating formal complaints of sexual harassment), the Final Rule clarifies the definitions of complainant, respondent, and formal complaint so that schools, students, and employees clearly understand how a school must respond to sexual harassment incidents in a way that supports the alleged victim and treats both parties fairly.</p> <p>The Final Rule defines “complainant” as an individual who <b>is alleged to be</b> the victim of conduct that could constitute sexual harassment. - <b>The Final Rule expressly recognizes the legal rights of parents and guardians to act on behalf of parties (including by filing formal complaints) in Title IX matters.</b></p> <p>The Final Rule defines “respondent” as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.</p> <p>The Final Rule defines “formal complaint” as a document <b>filed</b> by a complainant or <b>signed</b> by the Title IX Coordinator alleging sexual harassment against a respondent <b>and requesting that the school investigate the allegation of sexual harassment.</b> - <b>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 school with which the formal complaint is filed.</b></p>	<p>The NPRM defined complainant, respondent, formal complaint, and supportive measures as follows:</p> <p>The NPRM defined “complainant” as an individual who <b>has reported being</b> the victim of conduct that could constitute sexual harassment, <b>or on whose behalf the Title IX Coordinator has filed a formal complaint. For purposes of this definition, the person to whom the individual has reported must be the Title IX Coordinator or another person to whom notice of sexual harassment results in the school’s actual knowledge.</b></p> <p>The NPRM defined “respondent” as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.</p> <p>The NPRM defined “formal complaint” as a document <b>signed</b> by a complainant or by the Title IX Coordinator alleging sexual harassment against a respondent <b>about conduct within its education program or activity and requesting initiation of the school’s grievance procedures consistent with § 106.45.</b></p> <p>The Final Rule expands the definition of the kind of document that may constitute a formal complaint, and expands the ways in which a formal complaint may be</p>
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## Summary of Major Provisions of the Department of Education’s Title IX Final Rule and Comparison to the NPRM

<p>“Supportive Measures”</p>	<ul style="list-style-type: none"> <li>- <b>A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under the Final Rule, and by any additional method the school designates.</b></li> <li>- <b>The phrase “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 school) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.</b></li> <li>- <b>Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party during a grievance process, and must comply with requirements for all Title IX personnel to be free from conflicts and bias.</b></li> </ul> <p>The Final Rule retains the NPRM’s definition of “supportive measures” but clarifies that the purpose of supportive measures is <b>equal access</b> to education.</p> <ul style="list-style-type: none"> <li>- The Final Rule clarifies that a school must treat a person as a complainant any time the school has notice that the person is alleged to be the victim of conduct that could constitute sexual harassment (regardless of whether the person themselves reported, or a third party reported the sexual harassment), and irrespective of whether the complainant ever chooses to file a formal complaint.</li> <li>- There is no time limit or statute of limitations on a complainant’s decision to file a formal complaint.</li> <li>- When a Title IX Coordinator signs a formal complaint, such action is not taken on behalf of a complainant, and the Title IX Coordinator does not become a party.</li> </ul>	<p>filed, so that the school and complainant clearly understand when a complainant desires the school to investigate sexual harassment allegations, and complainants (including parents and guardians, as applicable) have accessible options for filing a formal complaint.</p> <p>The NPRM defined “supportive measures” to mean:</p> <ul style="list-style-type: none"> <li>- Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge, to the complainant or respondent, before or after the filing of a formal complaint or where no formal complaint has been filed.</li> <li>- Such measures are designed to restore or preserve <b>access</b> to the recipient’s education program or activity, without unreasonably burdening the other party; protect the safety of all parties and the recipient’s educational environment; and deter sexual harassment.</li> <li>- Supportive measures may include counseling, course-related adjustments, modifications of work or class schedules, campus escort services, increased security and monitoring of certain areas of campus, and mutual restrictions on contact between the parties.</li> </ul>
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## Summary of Major Provisions of the Department of Education’s Title IX Final Rule and Comparison to the NPRM

<p>8. <i>Investigations</i></p>	<p>Similarly to the NPRM, the Final Rule states that the school must investigate the allegations in any formal complaint, send written notice to both parties of the allegations upon receipt of a formal complaint.</p> <p>The Final Rule adds the following privacy protection for parties during a Title IX sexual harassment investigation:  <b>- The Final Rule states that the 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 acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the school obtains that party’s voluntary, written consent to do so.</b></p>	<p>The NPRM required school to investigate the allegations in a formal complaint, send written notice of the allegations to both parties upon receipt of a formal complaint, and investigate under specified procedures. The Final Rule retains those required procedures and adds protection against using a party’s treatment records during a grievance process.</p>
<p>9. <i>Hearings:</i></p> <p>(a) Live Hearings &amp; Cross-Examination (for Postsecondary recipients)</p>	<p>The Final Rule adds provisions to the “live hearing with cross-examination” requirement for postsecondary institutions, and clarifies that hearings are optional for K-12 schools (and any other recipient that is not a postsecondary institution).</p> <p>(a) For <b>postsecondary institution recipients</b>, the school’s grievance <b>process</b> must provide for a live hearing:          - At the <b>live</b> hearing, the decision-maker(s) must permit <b>each party’s advisor</b> to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.          - Such cross-examination <b>at the live hearing</b> must be conducted <b>directly, orally, and in real time</b> by the</p>	<p>Under the NPRM, adjudication of formal complaints differed for postsecondary institution recipients, and K-12 schools. The Final Rule retains this approach with clarifications.</p> <p>(a) For <b>institutions of higher education</b> the school’s grievance <b>procedure</b> must provide for a live hearing:          - At the hearing the decision-maker must permit each <b>party</b> to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.          - Such cross-examination must be conducted by the party’s advisor of choice; if a party does not have an advisor present at the hearing, the school must provide <b>that party</b></p>

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule and Comparison to the NPRM

	<p>party’s advisor of choice <b>and never by a party personally.</b></p> <ul style="list-style-type: none"> <li>- At the request of either party, the recipient must provide for <b>the live hearing</b> to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party answering questions.</li> <li>- <b>Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.</b></li> <li>- If a party does not have an advisor present at the <b>live hearing</b>, the recipient must provide <b>without fee or charge to that party, an advisor of the school’s choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.</b></li> <li>- If a party or witness does not submit to cross-examination at the <b>live hearing</b>, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; <b>provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.</b></li> <li>- <b>Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the school’s discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with</b></li> </ul>	<p><b>an advisor aligned with that party</b> to conduct cross-examination.</p> <ul style="list-style-type: none"> <li>- At the request of either party the recipient must provide for <b>cross-examination</b> to occur with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party answering questions.</li> </ul> <p>The Final Rule removes the “aligned with that party” language. If a school must provide a party with an advisor, such a provided advisor need not be an attorney providing legal representation to the party. No training or qualification is necessary for a person to serve as a provided advisor. Parties retain the opportunity to select their own advisor of choice. If a party does not exercise that opportunity then the school must provide an advisor of the school’s own choosing, to that party, merely for the purpose of relaying the party’s cross-examination questions to the other party and witnesses so that a party never personally conducts cross-examination.</p> <ul style="list-style-type: none"> <li>- If a party or witness does not submit to cross-examination at the hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility.</li> </ul>
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## Summary of Major Provisions of the Department of Education’s Title IX Final Rule and Comparison to the NPRM

<p>(b) Hearings are Optional, Written Questions Required (for K-12 schools)</p>	<p><b>technology enabling participants simultaneously to see and hear each other.</b>  <b>- Schools must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.</b></p> <p>(b) For recipients that are elementary and secondary schools, <b>and other recipients that are not postsecondary institutions</b>, the school’s grievance process may, <b>but need not, provide for a hearing:</b>  <b>- With or without a hearing, after the school has sent the investigative report to the parties and before reaching 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.</b></p> <p>- The decision-maker(s) must explain to the party proposing the questions any decision to exclude questions as not relevant.</p>	<p>(b) For recipients that are elementary and secondary schools the school’s grievance procedure may <b>require a live hearing:</b></p> <p>- With or without a hearing, the decision-maker must, <b>after the school has incorporated the parties’ responses to the investigative report, ask each party and any witnesses any relevant questions and follow-up questions, including those challenging credibility</b>, that a party wants asked of any party or witness. If no hearing is held, the decision-maker must afford each party the opportunity to submit written questions, provide each party with the answers, and allow for additional, limited follow-up questions.          - The decision-maker must explain to the party proposing the questions any decision to exclude questions as not relevant.</p>
<p>(c) Rape Shield Protections for Complainants</p>	<p>(c) The Final Rule keeps the rape shield protections for complainants (as to all recipients whether postsecondary, K-12 or others), clarified to state: Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior <b>are not relevant</b>, unless such questions and evidence about the complainant’s <b>prior</b> 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</p>	<p>(c) The NPRM provided rape shield protections for complainants in postsecondary institutions and K-12:</p> <p>All questioning <b>must exclude</b> evidence of the complainant’s sexual behavior or predisposition, unless such evidence about the complainant’s sexual behavior is offered to prove someone other than the respondent committed the conduct alleged by the complainant, or if the evidence concerns specific incidents of the complainant’s</p>

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule and Comparison to the NPRM

	complainant’s <b>prior</b> sexual behavior with respect to the respondent and are offered to prove consent.	sexual behavior with respect to the respondent and is offered to prove consent.
<i>10. Standard of Evidence</i>	The Final Rule requires the school’s grievance process to state whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty. - The Final Rule removes the NPRM’s restriction on use of the preponderance of the evidence standard.	The NPRM proposed that to reach the determination regarding responsibility, the decision-maker must apply either the preponderance of the evidence standard or the clear and convincing evidence standard, <b>although the recipient may employ the preponderance of the evidence standard only if the school uses that standard for conduct of code violations that do not involve sexual harassment but carry the same maximum sanction.</b>
<i>11. Appeals</i>	The Final Rule states that a school <b>must offer both parties</b> an appeal from a determination regarding responsibility, <b>and from a school’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/or the Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome of the matter.</b> - <b>A school may offer an appeal equally to both parties on additional bases.</b>	The NPRM provided that <b>a school may choose to offer an appeal:</b> - <b>If a school offers an appeal</b> , it must allow both parties to appeal. - <b>Although a complainant may appeal on the ground that the remedies are not designed to restore or preserve the complainant’s access to the school’s education program or activity, a complainant is not entitled to a particular sanction against the respondent.</b>  - The Final Rule removes the NPRM’s restriction on complainants appealing the severity of sanctions.
<i>12. Informal Resolution</i>	The Final Rule retains a school’s discretion to choose to offer informal resolution options, if both parties give voluntary, informed, written consent. The Final Rule adds: - <b>A school may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints.</b>	The NPRM allowed schools to choose to offer informal resolution options, only with the voluntary, informed, written consent of all parties.

## Summary of Major Provisions of the Department of Education’s Title IX Final Rule and Comparison to the NPRM

	<ul style="list-style-type: none"> <li>- A school may not require the parties to participate in informal resolution and may not offer informal resolution unless a formal complaint is filed.</li> <li>- At any time prior to agreeing to a resolution, any party has the right to withdraw from informal resolution and resume the grievance process with respect to the formal complaint.</li> <li>- Schools must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.</li> </ul>	
<p><i>13. Retaliation Prohibited</i></p>	<p>The Final Rule expressly prohibits retaliation against any individual for exercising Title IX rights:</p> <ul style="list-style-type: none"> <li>- No school or 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 any manner in a Title IX investigation, proceeding, or hearing.</li> <li>- 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, constitutes retaliation.</li> <li>- The school must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, or as required by law, or as necessary to carry out a Title IX proceeding.</li> <li>- Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination that schools must adopt and publish.</li> </ul>	

**Summary of Major Provisions of the Department of Education's Title IX Final Rule  
and Comparison to the NPRM**

	<ul style="list-style-type: none"><li>- The exercise of rights protected under the First Amendment does not constitute retaliation.</li><li>- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.</li></ul>	
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UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION IV

61 FORSYTH ST., SOUTHWEST, SUITE 19T10  
ATLANTA, GA 30303-8927

REGION IV  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

August 31, 2020

By U.S. Mail & E-mail

[REDACTED]

Re: OCR Complaint No. 04-20-1409  
Letter of Notification

Dear [REDACTED]:

On June 11, 2020, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received your complaint against Shelby County Schools (District). You (Complainant) allege that the District discriminated against your [REDACTED] (the Student), a rising [REDACTED] School (School), on the basis of her sex. Specifically, you allege that the School denied the Student the [REDACTED] for the 2020-2021 school year due to “homophobic bigot[ry]” and because the Student “didn’t date guys” and “likes girls.” You also allege that the head coach of the [REDACTED] discriminated against the Student by selecting someone else [REDACTED] “that isn’t gay.”

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

Title IX does not mention discrimination on the basis of a student’s sexual orientation. However, the U.S. Supreme Court recently held that discrimination on the basis of an individual’s status as homosexual constitutes sex discrimination within the meaning of Title VII of the Civil Rights Act of 1964. *See Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1741 (2020) (“[I]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”).

The Department does not enforce Title VII. Indeed, Congress specifically designed Title VII to apply only to workplaces. *Bostock*, 140 S. Ct. at 1737 (“[I]n Title VII, Congress outlawed discrimination in the workplace.”). By contrast, in cases addressing educational environments

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by fostering educational excellence and ensuring equal access.*

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[OCR-000119]

under Title IX, the U.S. Supreme Court has recognized the significant differences between workplaces and schools. It has held that courts “must bear in mind that schools are unlike the adult workplace.” *Davis v. Monroe*, 526 U.S. 629, 651 (1999). In *Bostock* itself, the Court firmly rejected the idea that its holding would sweep across all statutory or regulatory provisions that prohibit sex discrimination. *Bostock*, 140 S. Ct. at 1753 (“[N]one of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms, and we do not prejudge any such question today.”). Thus, *Bostock* does not control the Department’s interpretation of Title IX.

However, with respect to complaints that a school’s action or policy excludes a person from participation in, denies a person the benefits of, or subjects a person to discrimination under an education program or activity, on the basis of sex, the *Bostock* opinion guides OCR’s understanding that discriminating against a person based on their homosexuality or identification as transgender generally involves discrimination on the basis of their biological sex.<sup>1</sup>

The Department has determined that it possesses jurisdiction over your complaint that the Student was discriminated against on the basis of her biological sex, by reason of her sexual orientation.<sup>2</sup> Because OCR has determined that it has jurisdiction and that the complaint was timely filed, OCR is opening the complaint for investigation of the issue set forth below. Please note that opening the complaint for investigation in no way implies that OCR has made a determination on the merits of the complaint. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from you, the District, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and fully responds to the allegations in accordance with the provisions of the *Case Processing Manual*, available at <http://www.ed.gov/ocr/docs/ocrcpm.html>.

Accordingly, OCR will investigate whether the District discriminated against the Student on the basis of sex in violation of Title IX and its implementing regulation at 34 C.F.R. Part 106.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

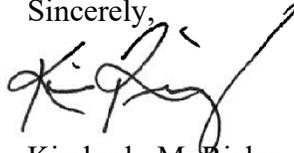
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<sup>1</sup> By contrast, *Bostock* does not impact OCR’s regulations or enforcement of Title IX regarding schools that separate students by biological sex in the context of intimate facilities—such as locker rooms and bathrooms—or sports teams, athletic opportunities, or other substantive areas for which Title IX includes specific statutory and regulatory exemptions outlining when consideration of biological sex is permitted. Additionally, educational institutions controlled by a religious organization are exempt from Title IX to the extent that the organization’s religious tenets conflict with applications of Title IX. Of course, recipients need not locate a specific exception in Title IX or its implementing regulations in order to establish that their conduct which considers sex does not constitute discrimination under Title IX.

<sup>2</sup> We note that *Bostock* is based on the express assumption that sex is defined by reference to biological sex. See *Bostock*, 141 S. Ct. at 1739.

If you have any questions, please contact the assigned investigator, [REDACTED], at [REDACTED], or [REDACTED], or me at [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly M. Richey". The signature is fluid and cursive, with a long, sweeping flourish extending upwards and to the right.

Kimberly M. Richey  
Acting Assistant Secretary for Civil Rights



September 4, 2020

## Questions and Answers Regarding the Department's Final Title IX Rule

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The Department of Education's Office for Civil Rights, through its new Outreach, Prevention, Education and Non-discrimination (OPEN) Center, issues the following technical assistance document to support institutions with meeting their obligations under the Title IX Rule, which was announced on May 6, 2020, and which became effective on August 14, 2020. Many of the questions were derived from questions posed to the OPEN center through e-mail.

OCR may periodically release additional Question and Answer documents addressing the Title IX Rule.

All references and citations are to the unofficial version of the Title IX Rule, which is available [here](#). A link to the official version of the Rule published in the Federal Register is [here](#).

Disclaimer: Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

### Effective Date of the Final Rule

**Question 1:** Can you please clarify whether the new Title IX rules that went into effect on August 14, 2020, will be applied retroactively?

**Answer 1:** The Title IX Rule will not be enforced retroactively. In the Preamble to the Rule at page 127, the Department states unambiguously that the Department will not enforce these final regulations retroactively. The Department also notes, in footnote 290 of the Rule, the general principle that:

Federal agencies authorized by statute to promulgate rules may only create rules with retroactive effect where the authorizing statute has expressly granted such authority. *See* 5 U.S.C. 551 (referring to a "rule" as agency action with "future effects" in the Administrative Procedure Act); *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) ("Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.").

Consistent with the Department’s statements in the preamble to the Title IX Rule regarding non-retroactivity, the Rule does not apply to schools’ responses to sexual harassment that allegedly occurred prior to August 14, 2020. The Department will only enforce the Rule as to sexual harassment that allegedly occurred on or after August 14, 2020. With respect to sexual harassment that allegedly occurred prior to August 14, 2020, OCR will judge the school’s Title IX compliance against the Title IX statute and the Title IX regulations in place at the time that the alleged sexual harassment occurred. In other words, the Rule governs how schools must respond to sexual harassment that allegedly occurs on or after August 14, 2020.

### **Title IX Coordinator and Other Personnel Issues**

**Question 2:** Does the Title IX Rule specify whether each recipient must have a Title IX Coordinator, or is each school required to have a separate Title IX Coordinator, or both?

**Answer 2:** The Title IX Rule states in § 106.8(a): “Each *recipient* must designate and authorize *at least one employee* to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the “Title IX Coordinator.” (emphasis added).

**Question 3:** The Title IX Rule allows schools to continue to address misconduct that does not meet the definition of sexual harassment. Can Title IX personnel still review these complaints, and follow procedures similar to those allegations that do meet the definition of sexual harassment?

**Answer 3:** Yes. The Title IX Rule does not preclude a recipient from using the same Title IX personnel (including the Title IX Coordinator, who must be an employee of the recipient, and Title IX investigators and decision-makers, who may be a recipient’s employees or the employees of a third-party, such as a consortium of schools) to review and investigate allegations of misconduct that fall outside the scope of Title IX. Similarly, the Rule does not preclude a recipient from using a grievance process that complies with § 106.45 with respect to allegations that fall outside the scope of Title IX. In the Preamble to the Rule at pages 481-82, for example, the Department states:

In response to commenters’ concerns, the final regulations revise § 106.45(b)(3)(i) to clearly state that dismissal for Title IX purposes does not preclude action under another provision of the recipient’s code of conduct. Thus, if a recipient is required under State law or the recipient’s own policies to investigate sexual or other misconduct that does not meet the § 106.30 definition, the final regulations clarify that a recipient may do so. Similarly, if a recipient wishes to use a grievance process that complies with § 106.45 to resolve allegations of misconduct that do not constitute sexual harassment under § 106.30, nothing in the final regulations precludes a recipient from doing so. Alternatively, a recipient may respond to non-Title IX misconduct under disciplinary procedures that do not comply with § 106.45. The final regulations leave recipients flexibility in this regard, and prescribe a particular grievance process only where allegations concern sexual harassment covered by Title IX.

## The Definition of Sexual Harassment

**Question 4:** One form of sexual harassment is conduct on the basis of sex that constitutes “[u]nwelcome 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.” In this sentence, does “reasonable person” modify only “severe, pervasive, and objectively offensive” only, or the effective denial clause as well? To clarify, can an “effective denial” be something that a reasonable person would experience, even if there is not evidence to show that the Complainant was in fact effectively denied?

**Answer 4:** The “reasonable person” standard in the second prong of the definition of sexual harassment under § 106.30(a) applies to each of the elements drawn from the U.S. Supreme Court’s decision in *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629 (1999). These elements include: severity, pervasiveness, objective offensiveness, and the effective denial of equal educational access. In the Preamble to the Rule, at page 515, the Department states: “The *Davis* standard ensures that all students, employees, and recipients understand that unwelcome conduct on the basis of sex is actionable under Title IX when a reasonable person in the complainant’s position would find the conduct severe, pervasive, and objectively offensive such that it effectively denies equal access to the recipient’s education program or activity.”

With respect to the denial of the equal access element in particular, in the Preamble to the Title IX Rule, at page 525, states:

Neither the Supreme Court, nor the final regulations in § 106.30, requires showing that a complainant dropped out of school, failed a class, had a panic attack, or otherwise reached a “breaking point” in order to report and receive a recipient’s supportive response to sexual harassment. The Department acknowledges that individuals react to sexual harassment in a wide variety of ways, and does not interpret the *Davis* standard to require certain manifestations of trauma or a “constructive expulsion.” Evaluating whether a reasonable person in the complainant’s position would deem the alleged harassment to deny a person “equal access” to education protects complainants against school officials inappropriately judging how a complainant has reacted to the sexual harassment. The § 106.30 definition neither requires nor permits school officials to impose notions of what a “perfect victim” does or says, nor may a recipient refuse to respond to sexual harassment because a complainant is “high-functioning” or not showing particular symptoms following a sexual harassment incident.

Similarly, the Preamble to the Title IX Rule, at pages 526-27, states:

With respect to the denial of equal access element, neither the *Davis* Court nor the Department’s final regulations require complete exclusion from an education, but rather denial of “equal” access. Signs of enduring *unequal* educational access due to severe, pervasive, and objectively offensive sexual harassment may include, as commenters suggest, skipping class to avoid a harasser, a decline in a student’s

grade point average, or having difficulty concentrating in class; however, *no concrete injury is required to conclude that serious harassment would deprive a reasonable person* in the complainant's position of the ability to access the recipient's education program or activity on an equal basis with persons who are not suffering such harassment.

(emphasis added).

### **Filing of a Formal Complaint**

**Question 5:** The Title IX Rule states: "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 school with which the formal complaint is filed." If a complainant either withdraws from school because of sexual harassment and then files a complaint, or files a complaint but then withdraws as a result of the sexual harassment or stress of the grievance process, how would the regulations affect the complainant's ability to pursue a formal complaint?

**Answer 5:** Under the Title IX Rule, recipients must promptly respond to a report that an individual has been allegedly victimized by sexual harassment, whether the alleged victim is presently a student or not, in a manner that is not "deliberately indifferent," or clearly unreasonable in light of known circumstances. Students and others who are participating or attempting to participate in the school's program or activity also have the right to file a formal complaint.

In the Preamble to the Title IX Rule, at pages 411-12, the Department further explains:

A complainant who has graduated may still be 'attempting to participate' in the recipient's education program or activity; for example, where the complainant has graduated from one program but intends to apply to a different program, or where the graduated complainant intends to remain involved with a recipient's alumni programs and activities. Similarly, a complainant who is on a leave of absence may be 'participating or attempting to participate' in the recipient's education program or activity; for example, such a complainant may still be enrolled as a student even while on leave of absence, or may intend to re-apply after a leave of absence and thus is still 'attempting to participate' even while on a leave of absence. *By way of further example, a complainant who has left school because of sexual harassment, but expresses a desire to re-enroll if the recipient appropriately responds to the sexual harassment, is 'attempting to participate' in the recipient's education program or activity.*

(emphasis added). Additionally, the Rule permits Title IX Coordinators to sign a formal complaint, regardless of whether a complainant is "participating or attempting to participate" in the school's education program or activity. A Title IX Coordinator's decision to sign a formal complaint (or not) is evaluated under the deliberate indifference standard: whether the decision was clearly unreasonable in light of the known circumstances.

## Conducting an Investigation Hearing

**Question 6:** May a recipient delegate many of the functions required by the Title IX Rule to an outside entity, such as a Regional Center or consortium of schools?

**Answer 6:** Yes. In particular, many of the elements of the investigation and hearing processes lend themselves to delegation. The recipient itself remains ultimately responsible for ensuring compliance with the legal obligations under the Title IX Rule.

At page 273 of the Preamble to the Title IX Rule, the Department expressly contemplates and encourages recipients to consider innovative approaches such as consortiums and regional centers:

The Department appreciates commenters' recommendations for using regional center models and similar models involving voluntary, cooperative efforts among recipients to outsource the investigation and adjudication functions required under the final regulations. The Department believes these models represent the potential for innovation with respect to how recipients might best fulfill the obligation to impartially reach accurate factual determinations while treating both parties fairly. The Department encourages recipients to consider innovative solutions to the challenges presented by the legal obligation for recipients to fairly and impartially investigate and adjudicate these difficult cases, and the Department will provide technical assistance for recipients with questions about pursuing regional center models.

To be sure, there are limitations on the extent to which a recipient may delegate certain responsibilities to other entities. For instance, each recipient must itself employ a Title IX Coordinator. *See* § 106.8 (“Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the “Title IX Coordinator.”). Similarly, each recipient is responsible for ensuring that its grievance procedures satisfy the Title IX Rule. *See* § 106.8(c) (“A recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30”). Still, despite these limitations, the Title IX Rule offers ample opportunity for recipients to find efficiencies in cooperation with other recipients, particularly with respect to investigation and adjudication.

**Question 7:** What are the rules of evidence at a hearing? Do courtroom rules like the Federal Rules of Evidence apply to a hearing under Title IX?

**Answer 7:** The Title IX Rule does not adopt the Federal Rules of Evidence for hearings conducted under Title IX. For instance, with respect to which evidence may be introduced, the Rule uses “relevance” as the sole admissibility criterion. *See* § 106.45(b)(1)(ii) (the recipient’s grievance process must provide for objective evaluation of all relevant evidence, including evidence that is inculpatory and exculpatory).

The Title IX Rule also deems certain evidence and information to be not relevant or otherwise precludes the recipient from using it: (i) a party’s treatment records, without the party’s prior

written consent [§ 106.45(b)(5)(i)]; (ii) information protected by a legally recognized privilege [§ 106.45(b)(1)(x)]; (iii) questions or evidence about a complainant’s sexual predisposition, and questions or evidence about a complainant’s prior sexual behavior unless it meets one of two limited exceptions [§ 106.45(b)(6)(i)-(ii)]; and, for postsecondary institutions, the decision-maker cannot rely on the statements of a party or witness who does not submit to cross-examination [§ 106.45(b)(6)(i)].

In the Preamble to the Title IX Rule, at pages 980-82, the Department explains:

These final regulations require objective evaluation of relevant evidence, and contain several provisions specifying types of evidence deemed irrelevant or excluded from consideration in a grievance process; a recipient may not adopt evidentiary rules of admissibility that contravene those evidentiary requirements prescribed under § 106.45. For example, a recipient may not adopt a rule excluding relevant evidence whose probative value is substantially outweighed by the danger of unfair prejudice; although such a rule is part of the Federal Rules of Evidence, the Federal Rules of Evidence constitute a complex, comprehensive set of evidentiary rules and exceptions designed to be applied by judges and lawyers, while *Title IX grievance processes are not court trials and are expected to be overseen by layperson officials of a school, college, or university rather than by a judge or lawyer*. Similarly, a recipient may not adopt rules excluding certain types of relevant evidence (e.g., lie detector test results, or rape kits) where the type of evidence is not either deemed “not relevant” (as is, for instance, evidence concerning a complainant’s prior sexual history ) or otherwise barred from use under § 106.45 (as is, for instance, information protected by a legally recognized privilege). However, the § 106.45 grievance process does not prescribe rules governing how admissible, relevant evidence must be evaluated for weight or credibility by a recipient’s decision-maker, and recipients thus have discretion to adopt and apply rules in that regard, so long as such rules do not conflict with § 106.45 and apply equally to both parties.

**Question 8:** Do recipients have latitude to define relevance on their own?

**Answer 8:** In the Preamble to the Title IX Rule, at page 811, footnote 1018, the Department states: “The final regulations do not define relevance, and the ordinary meaning of the word should be understood and applied.” At page 812 of the Preamble, the Department states:

Relevance is the standard that these final regulations require, and any evidentiary rules that a recipient chooses must respect this standard of relevance. For example, a recipient may not adopt a rule excluding relevant evidence because such relevant evidence may be unduly prejudicial, concern prior bad acts, or constitute character evidence. A recipient may adopt rules of order or decorum to forbid badgering a witness, and may fairly deem repetition of the same question to be irrelevant.

However, there is a difference between the admission of relevant evidence, and the weight, credibility, or persuasiveness of particular evidence. At pages 981-82 of the Preamble, the Department further explains:

However, the § 106.45 grievance process does not prescribe rules governing how admissible, relevant evidence must be evaluated for weight or credibility by a recipient's decision-maker, and recipients thus have discretion to adopt and apply rules in that regard, so long as such rules do not conflict with § 106.45 and apply equally to both parties. In response to commenters' concerns that the final regulations do not specify rules about evaluation of evidence, and recognizing that recipients therefore have discretion to adopt rules not otherwise prohibited under § 106.45, the final regulations acknowledge this reality by adding language to the introductory sentence of § 106.45(b): "Any provisions, rules, or practices other than those required by § 106.45 that a recipient adopts as part of its grievance process for handling formal complaints of sexual harassment, as defined in § 106.30, must apply equally to both parties." A recipient may, for example, adopt a rule regarding the weight or credibility (but not the admissibility) that a decision-maker should assign to evidence of a party's prior bad acts, so long as such a rule applied equally to the prior bad acts of complainants and the prior bad acts of respondents. Because a recipient's investigators and decision-makers must be trained specifically with respect to "issues of relevance," any rules adopted by a recipient in this regard should be reflected in the recipient's training materials, which must be publicly available.

(emphasis added) (internal footnotes omitted).

**Question 9:** The Title IX Rule states that at the postsecondary level, if a party does not appear at a live hearing, or chooses to not answer cross examination questions, that party's statement must not be relied upon "in reaching a determination regarding responsibility." If a complainant opts not to answer cross-examination questions, how does that impact that complainant's statements in an investigative report? Does it mean all statements provided by that party before the hearing—including statements made to an investigator and summarized in the investigation report—are excluded?

**Answer 9:** The Title IX Rule, at § 106.45(b)(6)(i), requires postsecondary institutions to hold a live hearing with the opportunity for each party's advisor to conduct cross-examination of parties and witnesses.

At page 1179 of the Preamble to the Rule, the Department explains:

Because party and witness statements so often raise credibility questions in the context of sexual harassment allegations, *the decision-maker must consider only those statements that have benefited from the truth-seeking function of cross-examination.* The recipient, and the parties, have equal opportunity (and, for the recipient, the obligation) to gather and present relevant evidence including fact and expert witnesses, and face the same limitations inherent in a lack of subpoena power

to compel witness testimony. The Department believes that the final regulations, including § 106.45(b)(6)(i), strike the appropriate balance for a postsecondary institution context between ensuring that only relevant and reliable evidence is considered while not over-legalizing the grievance process.

(emphasis added). And at page 1181 of the Preamble to the Title IX Rule, the Department states:

The prohibition on reliance on “statements” applies not only to statements made during the hearing, *but also to any statement of the party or witness who does not submit to cross-examination.* “Statements” has its ordinary meaning, but would not include evidence (such as videos) that do not constitute a person’s intent to make factual assertions, or to the extent that such evidence does not contain a person’s statements. Thus, *police reports, SANE reports, medical reports, and other documents and records may not be relied on to the extent that they contain the statements of a party or witness who has not submitted to cross-examination.* While documentary evidence such as police reports or hospital records may have been gathered during investigation and, if directly related to the allegations inspected and reviewed by the parties, and to the extent they are relevant, summarized in the investigative report, the hearing is the parties’ first opportunity to argue to the decision-maker about the credibility and implications of such evidence. Probing the credibility and reliability of *statements* asserted by witnesses contained in such evidence requires the parties to have the opportunity to cross-examine the witnesses making the statements.

(emphasis added) (footnotes omitted). For a further discussion of this topic and how it relates to unprotected speech that itself constitutes sexual harassment under the Title IX Rule, readers are invited to review OCR’s blog post on this topic [here](#).

**Question 10:** When a post-secondary institution holds a live hearing, is the questioning limited to certain subjects?

**Answer 10:** The Rule requires that schools provide the opportunity for cross-examination, and that party advisors must be permitted to ask *all* relevant questions (including follow-up questions), and *only* relevant questions.

**Question 11:** At the postsecondary level, are party advisors expected to cross-examine witnesses?

**Answer 11:** The Title IX Rule, at § 106.45(b)(6)(i), states that a postsecondary institution must hold a live hearing. At the hearing, each party’s advisor of choice must be “permitted” to cross-examine witnesses. (Note that the same provision requires the recipient to provide a party with an advisor of the recipient’s choice, if the party appears at the hearing without an advisor of the party’s choice.)

**Question 12:** If a party’s advisor fails to cross-examine another party on a key statement related to credibility, what is the effect of this on the statement made by the complainant? May the decision-maker consider the key statement?

**Answer 12:** The Title IX Rule, in § 106.45(b)(6)(i), states: “At the live hearing, the decision-maker(s) must permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.”

In the Preamble to the Rule at page 1181, the Department states (emphasis added):

Probing the credibility and reliability of statements asserted by witnesses contained in such evidence requires the parties to have *the opportunity* to cross-examine the witnesses making the statements.

The Department appreciates the opportunity to clarify here that to “submit to cross-examination” means answering those cross-examination questions that are relevant; the decision-maker is required to make relevance determinations regarding cross-examination in real time during the hearing in part to ensure that parties and witnesses do not feel compelled to answer irrelevant questions for fear of their statements being excluded.

(emphasis added).

Thus, the decision-maker is obligated to “permit” each party’s advisor to ask all relevant questions. However, this provision provides only an “opportunity” for each party (through an advisor) to conduct cross-examination; this provision does not purport to require that each party conduct cross-examination or will conduct cross-examination to the fullest extent possible. If a party chooses not to conduct cross-examination of another party or witness, that other party or witness cannot “submit” or “not submit” to cross-examination. Accordingly, the decision-maker is not precluded from relying on any statement of the party or witness who was not given the opportunity to submit to cross-examination. The same is true if a party’s advisor asks some cross-examination questions but not every possible cross-examination question; as to cross-examination questions *not asked* of a party or witness, that party or witness cannot be said to have submitted or not submitted to cross-examination, so the decision-maker is not precluded from relying on that party’s or witness’s statements.

Conversely, if a party or witness answers one, or some, but not all, relevant cross-examination questions asked by a party’s advisor at the live hearing, then that party or witness has not submitted to cross-examination and that party’s or witness’s statements cannot be relied on by the decision-maker. *See* Preamble at page 1183 (“the Department declines to allow a party or witness to “waive” a question because such a rule would circumvent the benefits and purposes of cross-examination as a truth-seeking tool for postsecondary institutions’ Title IX adjudications”).

**Question 13:** Does an advisor or party have an opportunity to provide input about how evidence should be weighted by the decision-maker?

**Answer 13:** Yes. The parties must have an equal opportunity to inspect, review, and respond to evidence directly related to the allegations (see § 106.45(b)(5)(vi)), and an equal opportunity to review and respond to the recipient’s investigative report (see § 106.45(b)(5)(vii)), allows each party the opportunity to provide input and make arguments about the relevance of evidence and

how a decision-maker should weigh the evidence. In the Preamble to the Rule at p. 1015, the Department states that the Rule:

... balances the recipient's obligation to impartially gather and objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence, with the parties' equal right to participate in furthering each party's own interests by identifying evidence overlooked by the investigator and evidence the investigator erroneously deemed relevant or irrelevant and making arguments to the decision-maker regarding the relevance of evidence and the weight or credibility of relevant evidence.

Note that Sections 106.45(b)(5)(vi) and (vii) require the recipient to "send to each party and the party's advisor, if any" the evidence and the investigative report, so that a party's advisor can advise the party in exercising the party's right to review and respond to the evidence and to the investigative report.

**Question 14:** Are all witnesses expected to appear at a hearing, or do decision-makers have the flexibility to request witnesses as they deem necessary?

**Answer 14:** The Title IX Rule does not require that all witnesses appear at a hearing, although it does provide the parties an equal right to present witnesses. At page 1176 of the Preamble of the Title IX Rule, the Department acknowledges that recipients do not have subpoena powers to compel attendance of parties or witnesses at a hearing:

The Department understands that complainants (and respondents) often will not have control over whether witnesses appear and are cross-examined, because neither the recipient nor the parties have subpoena power to compel appearance of witnesses. Some absences of witnesses can be avoided by a recipient thoughtfully working with witnesses regarding scheduling of a hearing, and taking advantage of the discretion to permit witnesses to testify remotely.

Furthermore, § 106.71(a) protects parties and witnesses against retaliation for deciding to participate or not to participate in a Title IX grievance process. Thus, a witness cannot be compelled to appear at a hearing, and cannot be intimidated, threatened, coerced, or discriminated against if the witness chooses not to appear. However, the parties must have an equal opportunity to "present" witnesses, so the decision-maker cannot request the presence only of witnesses the decision-maker has deemed necessary. The decision-maker has discretion to permit witnesses to testify at the hearing remotely, using technology. *See* § 106.45(b)(6)(i).

**Question 15:** Some recipients divide hearings between a "responsibility" phase and a "sanctions" phase. Is that bifurcation possible under Title IX?

**Answer 15:** Yes. The Rule does not preclude a recipient from using one decision-maker to reach the determination regarding responsibility, and having another decision-maker determine appropriate remedies or a complainant or appropriate disciplinary sanctions for the respondent. However, the end result must be that the written determination regarding responsibility includes

the remedies and disciplinary sanctions decided upon in the written determination issued under § 106.45(b)(7).

That provision, at § 106.45(b)(7), requires a recipient's decision-maker(s) to issue a written determination that must include, among other items, the result as to each allegation and rationale for the result, any disciplinary sanctions imposed by the recipient against the respondent, and whether remedies will be provided by the recipient to the complainant. The issuance of a written determination cannot be a piecemeal process that is broken down into chronologically occurring sub-parts.

Recipients should also remain aware of their obligation to conclude the grievance process within the reasonably prompt time frames designated in the recipient's grievance process, under § 106.45(b)(1)(v). Additionally, each decision-maker—whether an employee of the recipient or an employee of a third party such as a consortium of schools—owes an individual and ongoing duty not have a conflict of interest or bias for or against complainants or respondents generally, or with respect to an individual complainant or respondent, pursuant to § 106.45(b)(1)(iii).

If you have questions for the Office for Civil Rights (OCR), want additional information or technical assistance, or believe that a school is violating federal civil rights law, visit OCR's website at [www.ed.gov/ocr](http://www.ed.gov/ocr), or the Department's Title IX page at [www.ed.gov/titleix](http://www.ed.gov/titleix). You may contact OCR at (800) 421-3481 (TDD: 800-877-8339), [ocr@ed.gov](mailto:ocr@ed.gov), or contact OCR's Outreach, Prevention, Education and Non-discrimination (OPEN) Center at [OPEN@ed.gov](mailto:OPEN@ed.gov), or e-mail the OPEN Center with additional questions about the Title IX Final Rule at [T9questions@ed.gov](mailto:T9questions@ed.gov). Additional information regarding the Title IX Final Rule is available [here](#). You may also fill out a complaint form online at <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.



U.S. Department of Justice  
Civil Rights Division



U.S. Department of Education  
Office for Civil Rights

**Dear Colleague Letter**  
**Notice of Language Assistance**

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**U.S. Department of Justice**  
*Civil Rights Division*



**U.S. Department of Education**  
*Office for Civil Rights*

February 22, 2017

Dear Colleague:

The purpose of this guidance is to inform you that the Department of Justice and the Department of Education are withdrawing the statements of policy and guidance reflected in:

- Letter to Emily Prince from James A. Ferg-Cadima, Acting Deputy Assistant Secretary for Policy, Office for Civil Rights at the Department of Education dated January 7, 2015; and
- Dear Colleague Letter on Transgender Students jointly issued by the Civil Rights Division of the Department of Justice and the Department of Education dated May 13, 2016.

These guidance documents take the position that the prohibitions on discrimination “on the basis of sex” in Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and its implementing regulations, see, e.g., 34 C.F.R. § 106.33, require access to sex-segregated facilities based on gender identity. These guidance documents do not, however, contain extensive legal analysis or explain how the position is consistent with the express language of Title IX, nor did they undergo any formal public process.

This interpretation has given rise to significant litigation regarding school restrooms and locker rooms. The U.S. Court of Appeals for the Fourth Circuit concluded that the term “sex” in the regulations is ambiguous and deferred to what the court characterized as the “novel” interpretation advanced in the guidance. By contrast, a federal district court in Texas held that the term “sex” unambiguously refers to biological sex and that, in any event, the guidance was “legislative and substantive” and thus formal rulemaking should have occurred prior to the adoption of any such policy. In August of 2016, the Texas court preliminarily enjoined enforcement of the interpretation, and that nationwide injunction has not been overturned.

In addition, the Departments believe that, in this context, there must be due regard for the primary role of the States and local school districts in establishing educational policy.

In these circumstances, the Department of Education and the Department of Justice have decided to withdraw and rescind the above-referenced guidance documents in order to further and more completely consider the legal issues involved. The Departments thus will not rely on the views expressed within them.

**[OCR-000108]**

Please note that this withdrawal of these guidance documents does not leave students without protections from discrimination, bullying, or harassment. All schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment. The Department of Education Office for Civil Rights will continue its duty under law to hear all claims of discrimination and will explore every appropriate opportunity to protect all students and to encourage civility in our classrooms. The Department of Education and the Department of Justice are committed to the application of Title IX and other federal laws to ensure such protection.

This guidance does not add requirements to applicable law. If you have questions or are interested in commenting on this letter, please contact the Department of Education at [ocr@ed.gov](mailto:ocr@ed.gov) or 800-421-3481 (TDD: 800-877-8339); or the Department of Justice at [education@usdoj.gov](mailto:education@usdoj.gov) or 877-292-3804 (TTY: 800-514-0383).

Sincerely,

/s/

Sandra Battle  
Acting Assistant Secretary for Civil Rights  
U.S. Department of Education

/s/

T.E. Wheeler, II  
Acting Assistant Attorney General for Civil Rights  
U.S. Department of Justice