



Great Valley Academy Title IX Coordinators

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Uniform Complaint Procedure Discrimination/Harassment Complaint Reporting Form



In accordance with the Great Valley Academy's Uniform Complaint Procedures (5 CCR 4620) each school shall follow uniform complaint procedures when addressing complaints alleging unlawful discrimination, harassment, intimidation and bullying against any protected group. Protected groups are enumerated by Education Code §§ 200 and 220, It is the policy of the State of California, pursuant to Section 200, that all individuals shall enjoy freedom from discrimination and/or harassment of any kind in the educational institutions of the state. This also includes sexual harassment, which is a form of sexual discrimination (EC § 231.5).

I. Contact Information:

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Home Phone: _____ Work or Cell Phone: _____

II. Complainant

You are filing this complaint on behalf of: yourself your child or a (student) another student a group
If filing for someone other than yourself, please provide name, grade and date of birth: _____

III. School Information

School Name: _____
Principal's Name: _____
Address: _____
City: _____ State: _____ Zip: _____

IV. Basis of Complaint:

Please check the following box(es), based on the type(s) of discrimination, harassment, intimidation and bullying you experienced,

For allegation(s) of noncompliance, please check the program or activity referred to in your complaint, if applicable:

- | | |
|---|--|
| <input type="checkbox"/> Education Opportunities to Foster/Homeless Youth | <input type="checkbox"/> Special Education |
| <input type="checkbox"/> Child Care & Development | <input type="checkbox"/> Migrant Education |
| <input type="checkbox"/> Child Nutrition | <input type="checkbox"/> Physical Education Minutes |
| <input type="checkbox"/> Consolidated Categorical Aid | <input type="checkbox"/> Pupil Fees for Educational Activities |
| <input type="checkbox"/> Local Control Accountability Plan | |

For allegation(s) of unlawful discrimination, harassment, intimidation or bullying, please check the basis or the unlawful discrimination, harassment, intimidation or bullying described in your complaint, if applicable:

- | | | | | |
|---|--|--|--|--|
| <input type="checkbox"/> Age | <input type="checkbox"/> Ancestry | <input type="checkbox"/> Color | <input type="checkbox"/> Disability (Mental or Physical) | <input type="checkbox"/> Ethnic Group Identification |
| <input type="checkbox"/> Medical Condition | <input type="checkbox"/> Gender/Gender Expression/Gender Identity | <input type="checkbox"/> Genetic Information | | |
| <input type="checkbox"/> National Origin | <input type="checkbox"/> Race or Ethnicity | <input type="checkbox"/> Religion | <input type="checkbox"/> SEX (Actual or Perceived) | <input type="checkbox"/> Marital Status |
| <input type="checkbox"/> Sexual Orientation (Actual or Perceived) | <input type="checkbox"/> Based on association with a person or group with one or more of these actual or perceived characteristics | | | |

V. Details of Complaint

Please answer the following questions to the best of your ability. Attach additional sheets of paper if you need more space.

Please **describe** the type of incident(s) you experienced that led to this complaint, including the events or actions, in as much detail as possible:

List the **individuals** involved in the incident(s) complaint of:

List any **witnesses** to the incident(s):

Describe the **location where** the incident(s) occurred:

Please list **all the date(s) and times** when the incident(s) occurred or when the alleged acts first came to your attention:

What steps, if any, have you taken to resolve this issue before filing a complaint? Have you spoken with GVA personnel, if so, who and when?

Please provide copies of any written documents that may be relevant and supportive of your complaint. I have attached supporting documents. Yes No

Signature of Person Filing Complaint

Date

Print Name

To be completed by Great Valley Academy:

Received by: _____

Date Filed: _____

Title: _____

Please provide a duplicate copy to the complainant.



TITLE IX TRAINING

January 25, 2023

12:00 PM - 1:30 PM



Greta Proctor
Partner



Merrick Wadsworth
Senior Counsel

Agenda

- FAQs and Title IX resources
- Scope of Title IX, how it applies to charter schools, and recent changes
- Definitions
- Personnel on the School's Title IX Team
- How to serve impartially: avoiding prejudgment of the facts, conflicts of interest, and bias
- Handling reports of sexual harassment and initial response
- Grievance procedures for formal complaints
 - How to conduct an investigation, relevant evidence, investigative report, appeals, informal resolution process, etc.

FAQs and Title IX Resources



FAQs

- Is today's training being recorded?
- Will attendees get a copy of the training materials to post on their website?
- How can schools develop a compliant Title IX Policy and Grievance Procedures
- What about a compliant Title IX website statement?
- Can I ask questions during the training?

Title IX Resources

- The Title IX regulations are found in the Code of Federal Regulations at 34 CFR Part 106
 - 34 CFR section 106.45 sets forth the requirements for a school's grievance procedures
- Department of Education's Questions and Answers on the Title IX Regulations (last updated June 28, 2022)
 - <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>
 - Includes sample language, but be careful about differences between elementary/secondary and post-secondary
- Lots of other websites, e.g. www.titleix.info

Scope of Title IX, how it applies to charter schools, and recent changes



What is Title IX?

- Title IX is a federal civil rights law dating back to 1972 that prohibits discrimination on the basis of sex, including sexual harassment, in all schools that receive federal funding:
 - *“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”*
- Examples of the types of discrimination that are covered under Title IX include sexual harassment, failure to provide equal athletic opportunity, sex-based discrimination in a school’s courses and programs, and discrimination based on pregnancy

Does Title IX Apply to Charter Schools?

- All public and private elementary and secondary schools, school districts, colleges, and universities receiving any Federal funds must comply with Title IX
 - **note the requirements are different for colleges/universities than TK-12*
- The application of Title IX to charter schools receiving federal funds has not changed in recent years. However, since 2020, the process and requirements for *all* schools have changed significantly
 - Many charter schools previously used their UCP process to address Title IX complaints, which was recommended by CDE
- Schools follow the Title IX requirements that were in place at the time of the alleged incident (notwithstanding the date of school's response)

Recent Changes

- In mid-2020, the Secretary of Education under the former federal administration amended the Title IX regulations, in particular the process for how schools must handle sexual harassment complaints
 - Many thought that the new federal administration would quickly change the 2020 amendments (see next slide)
- In mid-2021, the USDOE issued guidance for K-12 schools to implement the 2020 regulations
 - Updated Title IX grievance procedures are now part of CDE's review for schools selected for Federal Program Monitoring (FPM) and many authorizers' oversight requirements.

More Changes Coming

- On June 23, 2022—the 50th anniversary of Title IX—the USDOE released proposed changes to the Title IX regulations
 - USDOE received 235,000 comments during 60-day public comment period!
- Today’s training is on the current requirements that apply to charter schools
- USDOE is currently targeting May 2023 to publish new Title IX regulations
 - What does this mean for charter schools?

What Does Title IX Now Require (among other things)?

- Schools must adopt grievance procedures for addressing formal complaints of sexual harassment
- Any time a school has actual knowledge of sexual harassment in the school's education programs or activities (whether employees and/or students), the school has an obligation to respond promptly
 - “Actual knowledge” means notice to any school employee
- The school's Title IX Team must receive training on the grievance procedures and other topics
- Schools must post training materials and Title IX statement to website

Definitions



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Definition of Sexual Harassment under Title IX

- **Sexual harassment** under Title IX includes any of the following, per 34 C.F.R. 106.30:
 - Quid Pro Quo Harassment: school employee conditions provision of aid, benefit, or service on an individual's participation in unwelcome sexual conduct
 - Denial of equal access to education program: 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 education program or activity
 - How is this standard determined?
 - Other sexual acts: sexual assault, dating violence, domestic violence, or stalking as defined per federal statutes (see next slides)

Sexual Harassment under Title IX (cont.)

- **Sexual Assault** can be forcible and nonforcible:
 - Forcible: any sexual act directed against complainant forcibly, against their will or without consent
 - Nonforcible: offenses that do not involve force where complainant is incapable of giving consent

Sexual Harassment under Title IX (cont.)

- **Dating Violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
 - Whether a relationship exists is determined based on a consideration of the following factors:
 - Length of relationship
 - Type of relationship
 - Frequency of interaction between the persons in the relationship

Sexual Harassment under Title IX (cont.)

- **Domestic Violence** is violence committed by:
 - Current or former spouse or intimate partner of the victim
 - Person with whom the victim shares a child in common
 - Person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
 - Person similarly situated to a spouse of the victim under the domestic or family violence laws of the state
 - Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state

Sexual Harassment under Title IX (cont.)

- **Stalking** is engaging in a course of conduct directed at the complainant that would cause a reasonable person to:
 - Fear for their safety or safety of others; or
 - Suffer substantial emotional distress

Education Program or Activity

- Includes locations, events, or circumstances over which the educational institution exercised substantial control over both the respondent and the context in which the sexual harassment occurs
 - E.g., at a school site or resource center, on remote learning platforms, at school-sponsored activities, etc.
 - Off-campus and online settings may require fact-specific determination

Complainant vs. Respondent

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

Note on California Law

- Definitions of sexual harassment and required responses under California law and under Title IX overlap but are not the same
 - Today’s training is limited to Title IX requirements
- However, any complaints alleging unlawful discrimination or harassment on the basis of sex may also be eligible to be investigated under school’s Uniform Complaint Procedures (“UCP”) or other process, but UCP does not supplant Title IX
- Only formal complaints alleging sexual harassment as defined under Title IX may be investigated under school’s Title IX grievance procedures

The Title IX Team



Roles

- **Title IX Coordinator** receives reports and formal complaints of sexual harassment, and coordinates the investigation and resolution process
 - Your school’s policy will name the Title IX Coordinator
- **Investigator** gathers all evidence related to a formal complaint and creates an “Investigative Report” summarizing the relevant evidence
 - Investigator does not need to be named in policy but does need to be trained. Investigator can also be the Title IX Coordinator

Roles

- **Decision-Maker** evaluates evidence in order to make a written determination of findings regarding a formal complaint
 - Decision-Maker cannot be the Title IX Coordinator, the Investigator, or any individual involved in the investigation of the formal complaint
- **Title IX Appeals Officer** evaluates an appeal of the Decision-Maker's final determination (if an appeal is filed)
 - Title IX Appeals Officer cannot be the Title IX Coordinator, Investigator, or any individual involved in the investigation of the formal complaint

Training Requirements

- Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process must receive training on the definition of sexual harassment, the scope of Title IX, 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

Training Content

- Decision-makers must receive training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant
- Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence
- Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment

Serving Impartially



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Requirement to be Neutral

- All members of the Title IX Team must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent
 - Must serve impartially and avoid prejudgment of the facts
- How does this work in small school environments?

Avoid Conflicts of Interest

- There is no definition of a conflict under Title IX
- A conflict of interest generally occurs when an individual has a personal interest in the matter that affects their decision-making
 - Could be a familial interest, financial interest, etc.
- *Example:* the Investigator is related by marriage to the respondent
- *Example:* the Decision-Maker's spouse works at a business owned by the complainant

Avoid Bias

- Bias is an unfair preference for or dislike of something
 - It's usually a function of experiences we have had or beliefs we have developed over time
- Bias inhibits impartial judgment
 - Our own experiences and perceptions are not universal
 - Perceptions can be as powerful as reality

Avoid Bias

- Bias is oftentimes implicit, meaning the individual is unaware that their behavior is “discriminatory”
 - It’s often associated with a person’s gender, age, race, etc.
- *Example:* male Decision-Maker who quickly believed witness “Tom” but is skeptical of witness “Chloe”
- You can prevent bias by learning to recognize it, being aware of it, and actively focusing on remaining impartial

Handling reports of sexual harassment and initial response



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Overview

- Who can make a report of sexual harassment and how? (next slide)
- What are the initial response steps? (next slides)
 - Contact complainant
 - Determine need for supportive measures
 - Explain Title IX grievance process (i.e., reports vs. formal complaints)
 - Determine need for emergency removal
- Overarching standard: school must “respond promptly in a manner that is not deliberately indifferent,” i.e. not clearly unreasonable in light of the known circumstances

Reports of Sexual Harassment

- Any individual (e.g., the alleged victim, a student, an employee, a parent/guardian, etc.) may report sexual harassment directly to the Title IX Coordinator, or to any other available school employee who shall immediately inform the Title IX Coordinator
 - Reports can be made by any means (e.g., in-person, by phone, by mail, by email, etc.)
- Timing of report

Initial Response: Contact Complainant

- Title IX Coordinator must:
 - Promptly contact the complainant, listen to allegations, and discuss the availability of supportive measures regardless of whether a formal complaint is filed (see next slides)
 - Consider the complainant's wishes with regard to supportive measures
 - Explain the Title IX grievance process for filing formal complaint
 - Definition of formal complaint

Initial Response: Supportive Measures

- Non-disciplinary, non-punitive individualized services available free of charge at any point during the Title IX investigation
- Designed to restore or preserve equal access to school's education program or activity without unreasonably burdening the other party
 - Examples include wellness check-ins, counseling services, extension of deadlines or course-related adjustments, modifications of work or class schedules, changes in work locations, leaves of absence, etc.

Initial Response: Determine Need for Emergency Removal

- Title IX Coordinator will review the facts to determine whether respondent may need to be removed from the school setting to prevent further sexual harassment and/or maintain safety of students and staff
 - If respondent is a **student**, respondent may be removed from educational program based on individualized safety and risk analysis. Respondent shall be provided with notice and opportunity to challenge the decision immediately following the removal
 - Applicable laws concerning student discipline and expulsion apply
 - If respondent is an **employee**, respondent may be placed on administrative leave during formal complaint investigation

Grievance Procedures for Formal Complaints of Sexual Harassment



Step-by-Step Overview

- Step 0. Report and initial response, including consideration of supportive measures and potential temporary removal (see previous slides)
- Step 1. Initial review of formal complaint
- Step 2. Send written notice of formal complaint
- Step 3. Conduct investigation
- Step 4. Prepare and share investigative report
- Step 5. Issue written decision
- Step 6. Provide remedies
- Step 7. Appeals
- Step 8. Recordkeeping

Step 1: Initial Review

- School reviews complaint
 - Your policy will provide a process and timeline for this
- Mandatory and discretionary dismissals of a formal complaint
 - **Must** dismiss complaint if the alleged conduct:
 - Does not constitute sexual harassment under Title IX; or
 - Did not occur in school's educational program/activity or against individual in U.S.
 - **May** dismiss complaint if:
 - Complainant has notified school in writing of desire to withdraw complaint/allegations;
 - Respondent is no longer enrolled in or employed by school; or
 - Specific circumstances prevent school from gathering evidence to reach a determination

Step 1: Initial Review (cont.)

- If Title IX Coordinator dismisses complaint:
 - Must send written notice simultaneously to both parties
 - State reason for dismissal and inform parties of their right to appeal
 - If Title IX Coordinator determines another school grievance procedure (e.g., UCP) is appropriate, inform parties of school's intent to investigate the complaint through that procedure

Step 2: Send Written Notice

- School must provide parties with notice of formal complaint
 - Your policy will provide a process and timeline for this
- Notice shall include:
 - Copy of school's Policy on Title IX
 - Description of allegations with sufficient detail (e.g., parties involved, specific conduct, date and location of alleged incident, etc.)
 - Statement that respondent is presumed not responsible and determination of responsibility will be made at end of process
 - Statement informing parties of opportunity to have advisor of their choice throughout grievance process and ability to inspect and review evidence
 - Statement informing parties that they must not knowingly make false statements or submit false information

Step 3: Conduct Investigation

- Timelines and extensions
- Presumption of innocence
 - School must presume respondent is **not** responsible for alleged conduct
- Evidence gathering
 - Investigator has burden to gather sufficient evidence
 - Cannot gather privileged information without voluntary, written consent (e.g., medical records)
 - Must provide written notice for all interviews with sufficient time for the individual to prepare to participate
 - School has discretion to permit parties to appear virtually
 - No live hearing requirement for TK-12
 - Q&A process

Step 3: Conduct Investigation (cont.)

- Equal opportunities
 - Both parties must have equal opportunity to present witnesses and evidence
 - Both parties may have an advisor of their choice present for any meeting, hearing, interview
 - School can restrict advisors' participation in the proceedings if equal
 - Both parties must be provided with all evidence that is directly related to the allegations in the complaint and at least 10 days to submit a written response, which must be considered by the Investigator
 - Your policy should confirm whether calendar days or school days

Step 4: Prepare and Share Investigative Report

- Investigator must prepare an investigative report that fairly summarizes **all** relevant evidence, including both inculpatory and exculpatory evidence
 - “Relevant evidence” is not defined under Title IX
- With limited exceptions, evidence of complainants prior sexual behavior is not relevant
- Evidence is generally considered relevant when it has any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action

Step 4: Prepare and Share Investigative Report (cont.)

- Investigator must share the investigative report with both parties and their advisors at least 10 days before school issues a written decision
 - Your policy should confirm whether calendar days or school days
- Both parties may submit a written response

Step 5: Issue Written Decision

- **Before** making decision, the Decision-Maker must:
 - Inform each party of the right to submit written, relevant questions that a party wants asked of any party or witness, and allow for additional limited follow-up questions from each party (Q&A process)
 - Provide responses to the questions or explain any decision to the party to exclude questions as irrelevant

Step 5: Issue Written Decision (cont.)

- Decision-Maker must use either “preponderance of evidence” standard or “clear and convincing evidence” standard
 - Check your policy
- Written decision should be issued to both parties simultaneously
 - Your policy should provide a reasonable timeline for this
- Written decision must include the specific allegations, description of the investigation process, findings of fact, conclusions, rationale, any disciplinary sanctions for respondent, whether remedies will be provided to the complainant, and procedures/bases for either party to appeal

Step 6: Provide Remedies

- If school determines that respondent engaged in sexual harassment, the Title IX Coordinator will provide appropriate remedies to complainant
- Remedies may be disciplinary and/or punitive and may burden respondent
- School is free to make disciplinary and remedial decisions, but remedies must be designed to restore or preserve equal access to educational program
- Examples include supportive measures, change of class schedule, parent/student conference(s), positive behavior support, warnings, and/or formal discipline (e.g., suspension, expulsion, etc.)
 - Remedies may be the same individualized services the school provided to the complainant as supportive measures
- If employee is found to have engaged in sexual harassment, school will take appropriate disciplinary action (e.g., termination)

Step 7: Appeals

- Either party may appeal the written decision, or dismissal of a formal complaint or allegation in a complaint
 - Your policy will provide a process and timeline for this
- Bases for appeal:
 - Procedural irregularity that affected the outcome
 - New evidence that was not reasonably available and could have affected outcome
 - Conflict of interest or bias by Title IX Coordinator, Investigator, or Decision-Maker
- School must provide written notice to the other party and give both parties a reasonable, equal opportunity to submit a written statement
- Title IX Appeals Officer must issue a written decision simultaneously to both parties
 - Your policy will provide a timeline for this

Step 8: Recordkeeping

- School must maintain records for seven years, including records of:
 - Each sexual harassment investigation
 - Any appeal and result of the appeal
 - Any informal resolution and result of the resolution
 - All materials used to train the Title IX Team (materials must be publicly available on website)
 - Any actions taken in response to a report or formal complaint of sexual harassment

Consider Informal Resolution Processes

- Any time after a formal complaint has been filed, but before reaching a determination, the school may offer an informal resolution process (e.g., mediation, restorative justice, etc.) to complainant and respondent
 - Both parties must voluntarily consent
 - Exception: Informal resolution process is not available where complainant alleges that an employee harassed a student

Questions? Please don't hesitate to contact us!



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YOUNG, MINNEY & CORR, LLP
EXPERT CHARTER SCHOOL
LEGAL SERVICES

Legally Required Title IX Training

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FIRM OVERVIEW

Young, Minney & Corr, LLP (YM&C) has been the leader in charter school law for over two decades, representing well over half of California's charter schools with offices in Sacramento, Los Angeles, San Diego, and Walnut Creek. The firm principals have been working with charter schools since the inception of California's Charter Schools Act in 1992.

We offer superior legal expertise, as well as the technical know-how, to allow you to effectively resolve your problems and meet all of your charter school needs.

The YM&C team of experts can assist charter schools in every aspect of charter school creation, expansion, and operation including:

- **Labor & Employment**
- **Student Rights & Discipline**
- **Special Education**
- **Board Governance**
- **Facilities**
- **Granting Agency Relations**
- **Charter Development & Renewal**
- **Charter Defense**
- **Insurance Defense**
- **Charter Litigation**
- **Independent Study**
- **Corporate Law**
- **Public Law**

We emphasize a preventative approach to the law, helping our clients anticipate legal difficulties, minimize exposure to legal claims and fees, and prevent operational challenges.

With our main office located in Sacramento, YM&C is also uniquely positioned to influence the public policy debate in California – helping shape the future of charter schools.

For more information on our team of expert attorneys and services, please visit www.mycharterlaw.com or call us at **916-646-1400**.

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Jerry Simmons has represented charter schools in every aspect of their operations for more than fifteen years. Between his work at the firm and at the Charter Schools Development Center, Jerry has personally assisted in the development of hundreds of California's charter schools through drafting charter petitions, memorandums of understanding for business and special education services, facilities use agreements, private leases, property purchases, and development of school policies covering every facet of charter school operations. Jerry has also assisted charter schools with employment and labor law matters, board governance and training, zoning and building code compliance, defense of audit findings in both annual and extraordinary audits, compliance with the Brown Act, Political Reform Act, Public Records Act, and Family Educational Records Protection Act.

Jerry has presented workshops for the Charter Schools Development Center and frequently presents at California Charter Schools Association conferences. He also presents at Governance Academies jointly sponsored by the firm and the California Charter Schools Association.

His understanding of governance and public agency laws has been enriched by his own prior service as both a member and President of the Sierra Community College District Board of Trustees. He also previously served as a member of the City of San Jose Parks and Recreation Commission, Chair of the City of San Jose's Youth Commission, Chair of the Santa Clara County Youth Commission and Student Body President at San Jose State University.

PRACTICE AREAS

Board Governance
Facilities
Charter Development
Charter Defense
Independent Study
Public Law

EDUCATION

- Pepperdine School of Law (J.D.)
- Harvard University (M.A.)
- San Jose State University (B.A.)

Casey L. Fee

Senior Counsel

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Casey Hazelhofer's primary practice areas include litigation, facilities, corporate compliance, and student matters. Prior to joining Young, Minney & Corr, LLP, she practiced employment law and litigation for over three years, which involved defense of employment claims including discrimination, harassment and retaliation. She has also defended public schools in prosecuting employee discipline and discharge matters, workers compensation claims, and requests for reasonable accommodation.

Casey is a California native and was raised in a family of educators and administrators. Her mother was an adaptive physical education teacher for over 30 years, her step-father was a Program Specialist for 17 years, and her father was the Principal of the first ever charter school in her hometown of Livermore.

PRACTICE AREAS

Student Rights & Discipline

Facilities

Charter Litigation

EDUCATION

- University of the Pacific, McGeorge School of Law (J.D.)
- Arizona State University (B.A.)

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**Legally Required Training for
Title IX Coordinators,
Investigators, and Decision-
Makers**

Presented by:

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THE CHARTER LAW FIRM

Disclaimer



- This webinar cannot substitute for personalized legal advice.
- Our advice is based upon the latest available guidance which is subject to change in this ever-evolving landscape.
- During the webinar and after we are happy to answer questions as time permits. Please use the chat box.
- Sign up for our YMC Legal Alerts on our website to receive updated information on the topics discussed today: www.mycharterlaw.com.

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YM&C Firm Overview



- Partners have over 125 years of collective experience working with charter schools
- 34 attorneys working with charter schools throughout the state in all areas of charter school law (e.g., employment/labor, special education, nonprofits, litigation, audits, facilities, etc.)
- Represent more than half of California's charter schools
- Conduct workshops for charter schools in all areas of legal compliance

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Overview of Training



- Title IX
 - Scope of Title IX
 - Responsibilities of the Title IX Coordinator
 - Responses and Grievance Procedures
 - Policy and Notice Requirements
 - Training and Recordkeeping
 - Most Common Pitfalls for Title IX Coordinators

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Scope of Title IX



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Scope of Title IX



- What is Title IX?
 - “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.” (20 USC § 1681; 34 CFR Part 106)
- Sex-based discrimination includes sexual harassment and sexual assault.



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Scope of Title IX



- Applies only to sex-based discrimination occurring in the U.S.
- Applies to recipients of Federal financial assistance operating education programs or activities
- Applies to students and employees and may also apply to third-party complaints

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Scope of Title IX



- “Education program or activity”
 - Includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution (34 CFR Part 106.44(a))
 - Includes all the academic, educational, extra-curricular, athletic, and other programs of the school, whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere (2001 DOE Guidance cited by Title IX Final Rule)
 - Not necessarily dictated by the geographic location of the incident; requires a fact-specific inquiry (Title IX Final Rule)

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Scope of Title IX



- “Education program or activity” (cont.)
 - May be affected by whether sexual harassment was perpetrated by a teacher against a student
 - May include school networks, platforms, and computer hardware or software owned or operated by the school, or used in school operations
 - Student’s use of a personal device to sexually harass another student online during class time may constitute a circumstance over which the school exercises substantial control (Title IX Final Rule)

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Scope of Title IX

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integrity
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- “Sexual Harassment” - Conduct on the basis of sex that satisfies one or more of the following:
 - An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
 - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
 - “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

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Title IX Coordinator

CTIONS ANSWERS
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Title IX Coordinator

CTIONS ANSWERS
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- The School must designate and authorize at least one employee to serve as the “Title IX Coordinator.” The Title IX Coordinator:
 - Coordinates the School's efforts to comply with the requirements of Title IX and the regulations
 - Receives reports of sex discrimination, including sexual harassment and formal sexual harassment complaints, and inquiries about the application of Title IX

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Title IX Coordinator



- May investigate complaints or reports but cannot serve as a decision-maker for formal complaints of sexual harassment
- Must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent
- Must serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias



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Title IX Coordinator



- The Title IX Coordinator also coordinates the effective implementation of remedies and supportive measures
 - Promptly contact the complainant to discuss the availability of supportive measures
 - Consider the complainant's wishes regarding supportive measures
 - Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint
 - Explain to the complainant the process for filing a formal complaint



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General Response to Sexual Harassment



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General Response to Sexual Harassment



- If the School has actual knowledge of sexual harassment in an education program or activity of the School against a person in the U.S., the School must respond promptly in a manner that is not deliberately indifferent.
 - Any person may report sex discrimination, including sexual harassment.
 - Reports may be made at any time by 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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General Response to Sexual Harassment



- A School is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.
- Must treat complainants and respondents equitably by offering supportive measures to a complainant, and by following the grievance process for "formal complaints of sexual harassment" before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.



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General Response to Sexual Harassment



- "Actual knowledge"
 - Means notice of sexual harassment or allegations of sexual harassment to the School's Title IX Coordinator or any School official who has authority to institute corrective measures on behalf of the School, or to any employee of an elementary and secondary school (other than the respondent).
- "Complainant"
 - Means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- "Respondent"
 - Means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.



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Supportive Measures



- “Supportive Measures”
 - Non-disciplinary, non-punitive, free individualized services offered to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint is filed.
 - Designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party.



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Supportive Measures



- May include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- Must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the School's ability to provide the supportive measures.



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Grievance Procedures



- The School 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 Title IX and the regulations; and
 - A grievance process for formal complaints of sexual harassment that complies with 34 CFR § 106.45.



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Formal Sexual Harassment Complaints

QUESTIONS ANSWERS

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Formal Sexual Harassment Complaints

- "Formal complaint"
 - Means 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.
 - At the time of filing, the complainant must be participating in or attempting to participate in the education program or activity.
 - Must contain the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint and may be submitted electronically.

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Formal Sexual Harassment Complaints

- Basic requirements for grievance process for formal complaints of sexual harassment:
 - Treat complainants and respondents equitably by providing remedies to a complainant where sexual harassment found, and by following the formal complaint grievance process before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent.
 - Respondent is presumed not responsible for the alleged conduct until a determination of responsibility is made at the conclusion of the process.
 - Remedies must be designed to restore or preserve equal access to the School's education program or activity. Remedies may include "supportive measures" and discipline.

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Formal Sexual Harassment Complaints



- Basic requirements for grievance process for formal complaints of sexual harassment (cont.):
 - Require an objective evaluation of all relevant evidence - including both inculpatory and exculpatory evidence - and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
 - Title IX Coordinator, investigator, decision-maker, and any person designated to facilitate an informal resolution process must receive required training and not have a conflict of interest or bias for or against complainants or respondents. Must serve impartially, including by avoiding prejudice of the facts at issue.

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Formal Sexual Harassment Complaints



- Basic requirements for grievance process for formal complaints of sexual harassment (cont.):
 - Include reasonably prompt time frames for conclusion of the grievance process, appeal process and any informal resolution processes.
 - Allow for temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the parties. Good cause may be based on the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation.

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Formal Sexual Harassment Complaints



- Basic requirements for grievance process for formal complaints of sexual harassment (cont.)
 - Include a list or describe the range of possible disciplinary sanctions, remedies, and supportive measures.
 - State whether the standard of evidence will be the preponderance of the evidence standard or the clear and convincing evidence standard and apply the same standard to all formal complaints of sexual harassment.

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Formal Sexual Harassment Complaints



- Basic requirements for grievance process for formal complaints of sexual harassment (cont.)
 - Include the procedures and permissible bases for appeal.
 - Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

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Formal Sexual Harassment Complaints



- Notice of allegations sent to known parties upon receipt of a formal complaint including notice of:
 - The School's grievance process, including any informal resolution process.
 - The allegations potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.
 - Presumption that the respondent is not responsible for the alleged conduct until the conclusion of the grievance process.

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Formal Sexual Harassment Complaints



- Notice of Allegations (cont.)
 - Their right to have an advisor of their choice and inspect and review evidence.
 - Any provision in the School's code of conduct that prohibits knowingly making false statements or submitting false information during the grievance process.
 - If additional allegations will be investigated, the School must provide notice of the additional allegations to the parties whose identities are known.

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Formal Sexual Harassment Complaints



- Informal resolution
 - Voluntary and may not be offered unless a formal complaint is filed.
 - Must obtain the parties' voluntary, written consent to the informal resolution process.
 - Must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

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Formal Sexual Harassment Complaints



- Informal resolution (cont.)
 - Must provide written notice to the parties of:
 - The allegations
 - The requirements of the informal resolution process and when it may preclude the parties from resuming a formal complaint on the same allegations
 - That 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
 - Consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared

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Formal Sexual Harassment Complaints



- Investigation of a formal complaint
 - Burden of proof and of gathering evidence sufficient to reach a determination on responsibility rests on the School.
 - School must have valid written, voluntary consent to access, consider, disclose, or otherwise use records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in their capacity, or assisting in that capacity, and which are made and maintained for the provision of treatment to the party.

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Formal Sexual Harassment Complaints



- Investigation of a formal complaint (cont.)
 - Do not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
 - Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
 - Provide the parties with equal opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied by the advisor of their choice, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding. The School may establish restrictions that apply to both parties equally, regarding the extent to which the advisor may participate in the proceedings.



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Formal Sexual Harassment Complaints



- Investigation of a formal complaint (cont.)
 - Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
 - Provide both parties an equal opportunity to inspect and review any evidence obtained in the investigation that is directly related to the allegations raised in the formal complaint, including evidence upon which the School does not intend to rely and inculpatory or exculpatory evidence, so that each party can meaningfully respond prior to conclusion of the investigation.



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Formal Sexual Harassment Complaints



- Investigation of a formal complaint (cont.)
 - Must serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias.
 - Avoid sex-based biases and stereotypes.
 - E.g., "Boys will be boys"
 - Whether bias exists is fact-specific, and schools should use a common sense approach.
 - Do not make credibility determinations based on a person's sex or status as a complainant, respondent or witness.
 - Treat complainants and respondents equitably.
 - Respondent is presumed not responsible until a determination is made at the conclusion of the grievance process.



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Formal Sexual Harassment Complaints



- Investigation of a formal complaint (cont.)
 - Prior to completion of the investigative report, the School must 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, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.
 - Investigative report must fairly summarize relevant evidence and be provided in electronic or hard copy at least 10 days prior to any hearing or date of determination on responsibility to each party and the party's advisor, for review and response.



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Formal Sexual Harassment Complaints



- Questions from the parties
 - 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.
 - The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.



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Formal Sexual Harassment Complaints



- Mandatory dismissal of a formal complaint
 - The School must investigate the allegations in a formal complaint and dismiss a formal complaint if the conduct alleged:
 - Would not constitute sexual harassment even if proved
 - Did not occur in the School's education program or activity
 - Did not occur against a person in the U.S.



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Formal Sexual Harassment Complaints



- Discretionary dismissal of a formal complaint
 - Complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein.
 - Respondent is no longer enrolled or employed by the School.
 - Specific circumstances prevent the School from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.


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Formal Sexual Harassment Complaints



- Dismissals
 - Upon a dismissal, the School must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
 - Dismissal does not preclude action under another provision of the School's code of conduct.


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Formal Sexual Harassment Complaints



- Determination regarding responsibility
 - Decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination and apply the standard of evidence specified.
 - The written determination must:
 1. Identify the allegations potentially constituting sexual harassment
 2. Describe the procedural steps taken, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
 3. Findings of fact supporting the determination


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Formal Sexual Harassment Complaints



4. Conclusions on the application of the School's code of conduct to the facts
5. State the result, rationale and determination of responsibility as to each allegation and any disciplinary sanctions imposed on the respondent
6. State whether remedies will be provided to the complainant
7. The School's procedures and permissible bases for appeal
8. Be provided to the parties simultaneously
9. Become final on the date that the School provides the parties with written result of any appeal, or the deadline for appeal.


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Formal Sexual Harassment Complaints



- Appeals
 - Must offer both parties an appeal from a determination regarding responsibility, and from a 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 was made, that could affect the outcome of the matter
 - The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents that affected the outcome of the matter


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Formal Sexual Harassment Complaints



- Appeals (cont.)
 - May offer an appeal equally to both parties on additional bases.
 - Notify the other party in writing and implement appeal procedures equally for both parties.
 - Decision-maker(s) cannot be the same as the initial decision-maker(s), the investigator(s), or the Title IX Coordinator and must comply with the required standards.
 - Give both parties a reasonable, equal opportunity to submit a written statement.
 - Written decision describing the result and the rationale provided simultaneously to both parties.


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Relevance of Evidence

QUESTIONS, ANSWERS, AND PROBLEMS

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Relevance of Evidence

- Investigations and determinations of responsibility must include an objective evaluation of all relevant evidence - inculpatory and exculpatory. Investigative report must fairly summarize relevant evidence.
- Evidence is relevant if it has any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.
- Investigator and decision-maker may give different weight to evidence or evaluate evidence differently.

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Relevance of Evidence

- Factors that may affect weight given to relevant evidence:
 - First-hand v. hearsay
 - Direct evidence v. circumstantial evidence
 - Physical or documentary evidence
- Credibility factors:
 - 1) corroboration;
 - 2) consistency;
 - 3) motivation/interest;
 - 4) plausibility;
 - 5) bias/hostility

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Relevance of Evidence



- Irrelevant evidence under Title IX includes:
 - Information protected under a legally recognized privilege
 - Evidence about the complainant's sexual predisposition
 - Evidence about the complainant's prior sexual behavior except when:
 - Used to prove that someone other than the respondent committed the conduct alleged; or
 - Relating to specific incidents of the complainant's prior sexual behavior with respect to the respondent and used to prove consent.



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Relevance of Evidence



- A party's treatment records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional/paraprofessional acting or assisting in the professional's/paraprofessional's capacity, unless the school obtains voluntary, written consent to use such records for the grievance process from the party (if the party is an "eligible student") or the party's parent/guardian (if the party is a minor)



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Policy, Notice and Training Requirements



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Policy and Notice Requirements



- The School must provide applicants for admission and employment, students, parents/guardians, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the School notice of the School's Title IX policy and grievance procedures and process.
- Must prominently display the below contact information for the Title IX Coordinator(s) and the School's Title IX policy on its website, if any, and in each handbook that it makes available to the stakeholders listed above.



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Policy and Notice Requirements



- The notice must state:
 - The name or title, office address, electronic mail address, and telephone number of the employee(s) designated as the Title IX Coordinator(s).
 - That the School does not discriminate on the basis of sex in its education program or activity and is required by Title IX and Part 106 not to discriminate in such a manner.
 - For certain institutions, that the requirement not to discriminate in the education program or activity extends to admission and employment.
 - That inquiries about the application of Title IX and Part 106 to the School may be referred to the Title IX Coordinator(s), to the Assistant Secretary, or both.



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Training Requirements



- Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must receive training on all the following:
 - The definition of sexual harassment in 34 CFR § 106.30
 - 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
 - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias



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Training Requirements



- Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.



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Recordkeeping



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Recordkeeping



The School must maintain the following records for a period of seven years—

- Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the education program or activity;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom; and



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Recordkeeping

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- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The training materials must be publicly available on the School's website.
- For general responses to sexual harassment, the School must create and maintain the following for a period of seven years--
 - Records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.
 - Documentation of the basis for concluding that the School's response was not deliberately indifferent.

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Recordkeeping

CTIONS ANSWERS
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- Documentation that the School has taken measures designed to restore or preserve equal access to its education program or activity.
- If the School does not provide a complainant with supportive measures, then the School must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.
- Documentation of certain bases or measures does not limit the School in the future from providing additional explanations or detailing additional measures taken.

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Most Common Pitfalls

CTIONS ANSWERS
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Most Common Pitfalls



1. Not *promptly* contacting the complainant to discuss the availability of supportive measures, informing the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explaining to the complainant the process for filing a formal complaint.



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Most Common Pitfalls



2. Not treating an email as a formal complaint because it is not on the School's "Title IX Complaint Form."
3. Jumping to investigate a formal sexual harassment complaint before ensuring both parties receive a Notice of Allegations.



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Most Common Pitfalls



4. Failing to ensure the School creates and maintains all the required records under Title IX.
5. Failing to ensure all required notices and postings are provided.



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