



# A Training Manual for California K-12 Local Educational Agencies

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# Welcome

# ALIGN WITH TITLE IX



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A vertical photograph on the left side of the page shows a stack of books with various colored spines (black, blue, yellow, red) and a yellow pencil lying horizontally across the bottom of the stack.

# How to Use This Training Manual

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This training manual is designed to provide an overview and assist local educational agencies (“LEAs”) in compliance and best practice with respect to responding to complaints of sex discrimination and harassment. The content of this manual focuses on the legal mandates of federal Title IX regulations, which were updated—and in many ways significantly changed—in 2024. In light of this major regulatory overhaul, this training manual serves to train and guide Title IX Coordinators and their teams through the process of Title IX compliance, including the complete grievance process.

We recommend this training manual to be used in consultation with the LEA’s legal counsel and hope it provides clarity and assists LEAs in responding to complaints in compliance with both the letter and the spirit of the law.

## What is Title IX?

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

(United States Congress, June 23, 1972.)

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Title IX of the Education Amendments of 1972 is a federal law that serves as a powerful tool for combating sex-based violence in public education institutions. The law requires LEAs receiving federal funding to respond to sex-based violence and harassment in order to ensure that all students have equal access to education.<sup>1</sup>

In principle, the law is straightforward. In implementation, it is more complicated. An LEA’s failure to comply with the requirements of the Title IX regulations can result in costly litigation and/or withdrawal of federal funds.





## 2024 Title IX Update

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In 2020, the regulations which instructed LEAs of their obligations under Title IX drastically changed. The 2020 regulations moved away from a single investigator model, expanded the required roles on Title IX teams, and implemented new procedural due process steps such as evidence review and mandatory question and answer phases into our grievance procedures. In California, LEAs struggled to triage what complaints should be processed under Title IX and what should be processed in accordance with other, similar California-specific policies and procedures.

In April 2024, the regulations were overhauled again. The 2024 regulations are effective on **August 1, 2024**.

Any complaints that allege conduct that occurred before August 1, 2024 must still be processed under the policies in compliance with the 2020 regulations. Thus, LEAs should keep the old policies on hand for at least the 2024-2025 school year (potentially longer, as there is no statute of limitations for filing a Title IX complaint) and process grievances in accordance with the applicable policy depending on when the alleged conduct occurred.

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<sup>1</sup>Title IX broadly encompasses sex discrimination in educational institutions, including access to programs and activities, such as athletics. This manual, however, focuses solely on LEAs response to reports or complaints of sex discrimination, including sex-based harassment.

# Title IX Training Requirements

All employees must be trained upon their hiring or change of position that alters their duties under Title IX, and annually thereafter, on the LEA's obligation to address sex discrimination in its education program or activity, the scope of conduct that constitutes sex discrimination under Title IX, including the definition of "sex-based harassment," and all applicable notification and information requirements under §§ 106.40(b)(2) and 106.44.

All investigators, decisionmakers, and other persons responsible for implementing the LEA's grievance procedures or who have the authority to modify or terminate supportive measures must also be trained on the LEA's obligations under § 106.44 [obligation to respond promptly and effectively, monitor barriers to reporting, notification requirements, Title IX Coordinator requirements, etc.]; the LEA's grievance procedures under § 106.45; how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and the meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under § 106.45.

Facilitators of the informal resolution process must also be trained on the rules and practices associated with the LEA's informal resolution process and how to serve impartially, including by avoiding conflicts of interest and bias.

Finally, Title IX Coordinators and their designees must also be trained on their specific responsibilities under §§ 106.8(a)[designation of a Title IX Coordinator to coordinate efforts to comply with Title IX and delegation to designees], 106.40(b)(3) [specific actions to prevent discrimination and ensure equal access], 106.44(f) [coordinating the recipient's compliance with its obligations under Title IX], 106.44(g)[supportive measures], the LEA's recordkeeping system and the requirements of paragraph (f) of this section, and any other training



necessary to coordinate the LEA's compliance with Title IX.

(34 C.F.R. § 106.8.)

## LEA's Obligation to Respond

An LEA's obligation to respond promptly and effectively is triggered when it has knowledge of conduct that reasonably may constitute sex discrimination.

(34 C.F.R. § 106.44(a)(1).)

An LEA is deemed to have knowledge of sex-based discrimination in its education program or activity and an obligation to respond consistent with the requirements in § 106.44 when any non-confidential employee has information about conduct that reasonably may constitute sex discrimination.

The nature of the response required by § 106.44 depends on the person's role, but an LEA must ensure that all of its employees fulfill the duty to respond.

## Scope

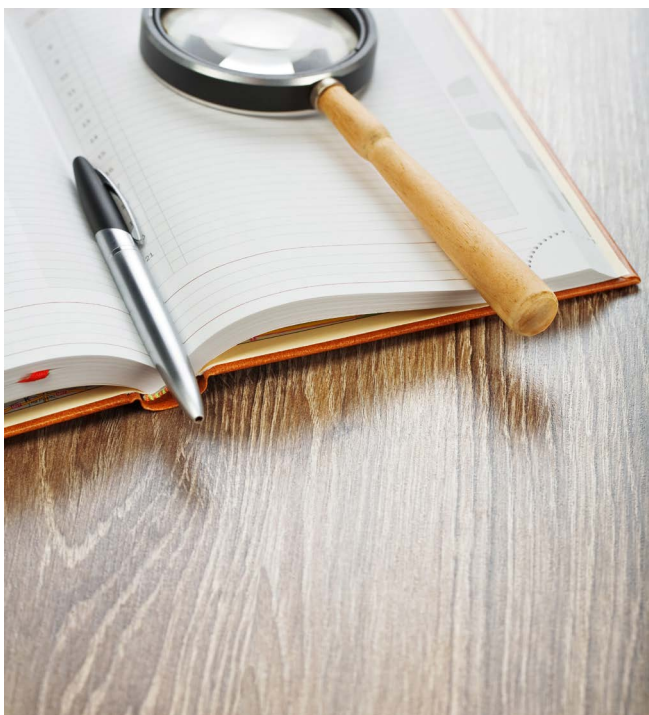
Title IX covers discrimination on the basis of sex, which includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

(34 C.F.R. § 106.10.)

## Jurisdiction

The LEA has an obligation to respond to conduct that occurs under the LEA's education program or activity, including conduct that is subject to the LEA's disciplinary authority. An LEA has an obligation to address a sex-based hostile environment under its education program or activity, even when the conduct alleged to be contributing to the hostile environment occurred outside the LEA's education program or activity or outside the United States.

(34 CFR § 106.11.)



## Definition of Sex-Based Harassment

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including:

- (1) Quid pro quo harassment;
- (2) Hostile environment harassment;
- (3) Specific offenses:
  - a. Sexual assault,
  - b. Dating violence,
  - c. Domestic violence,

(34 CFR § 106.2.)





## Definition of Hostile Environment Harassment

The 2024 updates included a shift from using the term “sexual harassment” to “hostile environment harassment,” a form of sex-based harassment. Hostile environment harassment is defined as unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the LEA’s education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is

a fact-specific inquiry that includes consideration of the following:

- (1) The degree to which the conduct affected the complainant’s ability to access the LEA’s education program or activity;
- (2) The type, frequency, and duration of the conduct; or
- (3) The parties’ ages, roles within the LEA’s education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- (4) The location of the conduct and the context in which the conduct occurred; and
- (5) Other sex-based harassment in the LEA’s education program or activity.

(34 CFR § 106.2.)

## Complaint Intake and Triage

A complaint is an oral or written request to the LEA that objectively can be understood as a request for the LEA to investigate and make a determination about alleged discrimination under Title IX. (34 C.F.R. § 106.2)

### WHO CAN MAKE A COMPLAINT

The following persons have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that the LEA investigate and make a determination about alleged discrimination under Title IX:

- (1) A complainant (see definition below);
- (2) A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant;
- (3) The Title IX Coordinator, after making the determination specified in § 106.44(f)(1)(v);
- (4) With respect to complaints of sex discrimination



other than sex-based harassment, in addition to the persons listed in paragraphs (a)(2)(i) through (iii) of this section,

- (A) Any student or employee; or
- (B) Any person other than a student or employee who was participating or attempting to participate in the LEA's education program or activity at the time of the alleged sex discrimination.

(34 C.F.R. § 106.45.)

A "complainant" is defined as a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX and a person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX and who was participating or attempting to participate in the LEA's program or activity at the time of the alleged harassment.

(34 C.F.R. § 106.2.)

### WHEN CAN A COMPLAINT BE DISMISSED

Unlike the 2020 regulations, there are no longer any circumstances in which the LEA must dismiss the complaint.

An LEA may dismiss a complaint of sex discrimination made through its grievance procedures under this section, for any of the following reasons:

- (1) The LEA is unable to identify the respondent after taking reasonable steps to do so;
- (2) The respondent is not participating in the LEA's education program or activity and is not employed by the LEA;
- (3) The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint under § 106.44(f)(1)(v), and the LEA determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX or even if proven; or

- (4) The LEA determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Prior to dismissing the complaint under this paragraph, the LEA must make reasonable efforts to clarify the allegations with the complainant.

If a complaint is dismissed, the LEA must notify the complainant of basis for dismissal. Notice is not required to be in writing; however, we recommend it as best practice. If the LEA has already given notice of the allegations to the respondent, it must also notify the respondent of the dismissal and the basis for dismissal. Notice must be given simultaneously to the complainant and respondent if notice is given in writing.

Additionally, LEAs must notify complainant that the dismissal may be appealed and provide an opportunity to appeal.

(34 C.F.R. § 106.45(d).)



### WHEN SHOULD A TITLE IX COORDINATOR FILE A COMPLAINT

In the absence of a complaint or when a complaint is withdrawn, the Title IX Coordinator must consider the following specific factors to determine whether they should initiate a complaint:

- (1) Complainant's request not to proceed;
- (2) Complainant's reasonable safety concerns regarding the initiation of the complaint;

- (3) The risk that additional acts of sex discrimination would occur if no complaint is initiated;
- (4) Severity of the alleged discrimination, including possible disciplinary sanctions that could occur if substantiated;
- (5) Age and relationship of the parties;
- (6) Scope of the alleged discrimination, including information regarding patterns or ongoing discrimination;
- (7) Availability of evidence;
- (8) Whether the LEA could end the discrimination without initiating the grievance procedures.

If, after considering the factors, the Title IX Coordinator determines the alleged conduct presents an imminent and serious threat to the health and safety or that the alleged conduct prevents the LEA from ensuring equal access on the basis of sex to education, then the Title IX Coordinator may initiate a complaint.

(34 C.F.R. § 106.44(f).)

## Supportive Measures

“Supportive measures,” must be promptly offered to complainants when the District is on notice of a potential Title IX complaint, regardless of whether a complaint is made.

Supportive measures are individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to: (1) Restore or preserve that party’s access to the LEA’s education program or activity, including measures that are designed to protect the safety of the parties or the LEA’s educational environment; or (2) Provide support during the LEA’s grievance procedures or during the informal resolution process.

(34 C.F.R. § 106.2.)

### Examples of supportive measures:

- Counseling;
- Extensions of deadlines or other course-related adjustments;
- Campus escort services;
- Increased security and monitoring of certain areas of the campus;
- Restriction on contact applied to one or more parties;
- Leaves of absence;
- Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and/or,
- Training and education programs related to sex-based harassment.



An LEA must not disclose information about any supportive measures to persons other than the persons to whom they apply, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity.

If the complainant or respondent is a student with a disability, the Title IX Coordinator or designee is required to consult with one or more members, as appropriate, of the student's IEP team, or any group of persons responsible for student's placement decision, to determine how to comply with the requirements of the IDEA and Section 504, in the implementation of supportive measures.

(34 C.F.R. § 106.44(g).)

#### APPEALS OF SUPPORTIVE MEASURES

An LEA must provide a complainant or respondent with a timely opportunity to seek, from an appropriate and impartial employee, modification or reversal of the LEA's decision to provide, deny, modify, or terminate supportive measures applicable to them. The impartial employee must be someone other than the employee who made the challenged decision and must have authority to modify or reverse the decision.

(34 C.F.R. § 106.44(g).)

## Emergency Removal

An LEA may remove a respondent from the LEA's education program or activity on an emergency basis, provided that the LEA undertakes an individualized safety and risk analysis, determines that an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and provides the respondent with notice and an opportunity to challenge

the decision immediately following the removal. (34 C.F.R. § 106.44(h).) The standard for emergency removals in the 2024 regulations is slightly different than the 2020 regulations which required that the threat be an "immediate threat to the *physical* health or safety of any student or individual."



## Grievance Procedure

#### TITLE IX POLICY

An LEA's grievance procedure must be in writing and must:

- (1) Treat complainant and respondent equitably.
- (2) Require that any person designated as a Title IX Coordinator, investigator, or decisionmaker to not have a conflict of interest or bias for or against the parties.
- (3) Include a presumption that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of the LEA's grievance procedures.
- (4) Establish reasonably prompt timeframes for the major stages of the grievance procedures.
- (5) Require the LEA take reasonable steps to protect the privacy of the parties and witnesses.
- (6) Require an objective evaluation of all relevant evidence.
- (7) Require the exclusion of impermissible evidence.

(34 C.F.R. § 106.45(b).)



## NOTICE OF ALLEGATIONS

Upon initiation of the grievance procedures, the LEA must provide notice of the allegations to the parties whose identities are known.

The notice must include:

- (1) A copy of the LEA's written grievance procedure (BP/AR).
- (2) Sufficient information to allow the parties to respond to the allegations. This includes the identities of the parties involved in the incident, the conduct alleged to constitute sex discrimination under Title IX, and the date and location of the alleged incident, if available.
- (3) A statement that retaliation is prohibited.
- (4) A statement that parties are entitled to an equal opportunity to access the relevant, and not otherwise impermissible evidence.

(34 C.F.R. § 106.45(c).)

Under the 2024 regulations, the notice is no longer required to be in writing, however, we recommend written notice as best practice to confirm compliance with this requirement. Parties must be treated equitably and each party should receive the same form of notice.

## INVESTIGATION

LEAs must provide adequate, reliable and impartial investigation of complaints. (34 C.F.R. § 106.45(f).) A Title IX investigation can be conducted by the LEA's Title IX Coordinator, another administrator within the LEA, or an outside investigator, as long as the person assigned to conduct the investigation has been trained in Title IX (see above "Title IX Training Requirements").

The Title IX Investigator must:

- (1) Gather sufficient evidence to determine whether the alleged conduct occurred.
- (2) Provide equal opportunity to both parties to present fact witnesses and evidence.

- (3) Review all evidence gathered and determine what is relevant and impermissible.
- (4) Provide parties equal opportunity to access evidence and respond to the evidence.

The LEA must provide an equal opportunity to both parties to present fact witnesses and both inculpatory and exculpatory evidence.

(34 C.F.R. § 106.45(f).)

## PARTIES' ACCESS TO RELEVANT AND PERMISSIBLE EVIDENCE AND RESPONSE

### *Provide Parties Access to Evidence*

LEA must provide parties equal opportunity to access evidence and respond to the relevant and not otherwise impermissible evidence. (34 C.F.R. § 106.45(f).) This is a similar concept as the first evidence review phase required by the 2020 regulations.

LEAs should decide who is going to facilitate this process. As a practical matter, we recommend the Title IX Coordinator or the Investigator (if different from the Title IX Coordinator) facilitate this process.





Evidence can be presented to the parties in one of two ways. Specifically:

- (1) **Provide the Evidence:** LEAs can prepare and provide the actual evidence (e.g., in a packet, with video links, exhibits, etc.).
- (2) **Provide a Description:** Alternatively, LEAs can prepare an accurate description of the evidence (e.g., in an investigation report or executive summary).

If an LEA opts to use the description option, it must provide access to the evidence itself, upon request of either party.

For K-12 institutions, there is no requirement this access to evidence be provided in writing. LEAs now have the option to provide access verbally or in an investigation report. In the Preamble to the 2024 regulations, the Department of Education contemplates that the first evidence option might be more appropriate for complaints involving high school students or students facing expulsion. Whereas the second, more streamlined description option may be more appropriate for less complicated complaints or younger students and individuals facing less severe consequences.

### ***Review for Relevancy and Exclusion of Impermissible Evidence***

After the evidence has been collected, and before parties are given access to the evidence, the new regulations require that LEAs review all evidence

gathered and determine what is relevant and what is impermissible.

(34 C.F.R. § 106.45(f).)

Practically, this step will take place when the Investigator is done collecting evidence. LEAs may determine who makes this determination based on their unique circumstances. The two most logical options for who will conduct this analysis are the Title IX Coordinator or Investigator (if different from the Title IX Coordinator).

**Relevant** - Relevant means related to the allegations of sex discrimination under investigation. Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

**Impermissible** - The following types of evidence (and questions seeking this kind of evidence) are not allowed, regardless of whether it is relevant:

- (1) Evidence protected under a privilege.
- (2) Party or witness records that are made or maintained by a physician, psychologist or other recognized professional or paraprofessional in connection with the provision of treatment (unless LEA obtains voluntary, written consent).
- (3) Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless:
  - offered to prove consent; or
  - that someone other than the respondent committed the alleged conduct.

(34 C.F.R. § 106.45(f).)

Only evidence that is relevant and permissible should be presented to the parties for review.

### ***Confidentiality***

LEAs must not disclose personally identifiable information obtained in the course of complying with Title IX unless an exception applies.

(34 C.F.R. § 106.44(j).)



An LEA may disclose personally identifiable information obtained in the course of complying with Title IX when:

- (1) There is prior written consent;
- (2) To a parent, guardian or authorized legal representative;
- (3) To carry out obligations under Title IX (such as to carry out the obligation to allow access to all relevant and permissible evidence); or,
- (4) When required by state or federal law.

LEAs should not redact relevant and permissible evidence, even in an effort to preserve confidentiality. In the Preamble to the 2024 regulations, the Department of Education outlines that the principles of due process and fundamental fairness require the disclosure of unredacted information to the parties that is relevant to the allegations and not otherwise impermissible.

When there is an intersection between an LEA's obligations to comply with Title IX and to protect student privacy under the Family Educational Rights and Privacy Act (FERPA), Title IX supersedes FERPA obligations.

### **PARTIES' OPPORTUNITY TO RESPOND TO EVIDENCE**

Once parties have been given equal opportunity to access the relevant and not otherwise impermissible evidence, they then must be provided with an opportunity to respond.

(34 C.F.R. § 106.45(f).)

LEAs have a lot of leeway in terms of how to structure this process. However it is designed, the specific process and timelines for this step in the grievance procedure should be clearly outlined in the LEA's written Title IX policy.

### **NOTICE OF DETERMINATION**

After the investigation and evaluation of evidence, LEAs must make a determination whether sex discrimination occurred.

LEAs must use the preponderance of the evidence standard of proof, unless another standard is used in all other comparable proceedings.

(34 C.F.R. § 106.45(h).)

The preponderance of the evidence means "more likely than not."

Parties must be notified of the determination in writing. The notice must include:

- (1) Rationale for the determination.
- (2) Procedures and permissible bases for the complainant and respondent to appeal.

(34 C.F.R. § 106.45(h).)

### ***Decisionmaker's Credibility Assessment***

Before issuing a determination, the decisionmaker must have the opportunity to question parties and witnesses to assess credibility. This does not mean the decisionmaker must do so if there are no credibility assessments to make. However, written



Title IX policies should ensure that the decisionmaker has the opportunity to question parties and witnesses to assess credibility, if needed.

### ***Who Should Make the Determination?***

Under the 2020 regulations, the decisionmaker had to be someone other than the Title IX Coordinator and/or the Investigator. Under the 2024 regulations, the decisionmaker may be the Title IX Coordinator and/or Investigator.

### **REMEDIES FOLLOWING A SUBSTANTIATED DETERMINATION**

If the determination is that sex discrimination occurred, the Title IX Coordinator must:

- (1) coordinate the provision and implementation of remedies to the complainant and anyone else identified as having been denied equal access to the education program or activity;
- (2) coordinate the imposition of any disciplinary sanctions;
- (3) notify the complainant of any disciplinary sanctions; and
- (4) take appropriate, prompt and effective steps to ensure sex discrimination does not continue.



### **DETERMINATION APPEAL**

LEAs must offer the parties an appeal process that, at minimum, is the same as it offers in all other comparable proceedings. LEAs should take a close look at the other comparable policies (i.e., Uniform Complaint Procedures, Complaints Against Employees, Disciplinary Hearings, Nondiscrimination in Employment, etc.) to determine what appeal rights are granted in other comparable policies and model the Title IX Policy accordingly.

(34 C.F.R. § 106.45(i).)

## **Informal Resolution**

As part of the LEA's response to sex discrimination, the LEA has discretion to offer informal resolution in some circumstances.

An LEA may offer to a complainant and respondent an informal resolution process prior to determining whether sex discrimination occurred, unless (1) the complaint includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student; or (2) such a process would conflict with federal, state, or local law. An LEA that provides the parties an informal resolution process must, to the extent necessary, also require its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the LEA's education program or activity.

(34 C.F.R. § 106.44(k).)

### **DECLINING INFORMAL RESOLUTION**

The LEA has discretion to determine whether it is appropriate to offer an informal resolution process. The LEA may decline to offer informal resolution

despite one or more of the parties' interest in participating. An LEA may also decline to allow informal resolution when the LEA determines that the alleged conduct would present a future risk of harm to others.

### OFFERING INFORMAL RESOLUTION

An LEA cannot require or pressure the parties to participate in an informal resolution process. The LEA must obtain the parties' voluntary consent to the informal resolution process and must not require waiver of the right to an investigation and determination of a complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right.

### PRIOR NOTICE

Before initiation of an informal resolution process, the LEA must provide notice to the parties that explains:

- The allegations;
- The requirements of the informal resolution process;
- The right of the Parties to withdraw from the informal resolution process prior to reaching resolution and to initiate or resume the LEA's grievance procedures;
- That the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming grievance procedures arising from the same allegations;
- Potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- Information the LEA will maintain and whether and how the LEA could disclose such information for use in grievance procedures if grievance procedures are initiated or resumed.

(34 C.F.R. § 106.44(k).)

### WHO SHOULD CONDUCT INFORMAL RESOLUTION?

The facilitator for the informal resolution process must not be the same person as the investigator or the decisionmaker in the LEA's grievance procedures. Any person designated by an LEA to facilitate an informal resolution process must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Any person facilitating informal resolution must receive training pursuant to the above-mentioned training requirements.

(34 C.F.R. § 106.44(k).)

### AGREEMENT THROUGH INFORMAL RESOLUTION

Potential terms that may be included in an informal resolution agreement include (but are not limited to):

- Restrictions on contact; or
- Restrictions on the respondent's participation in one or more of the LEA's programs or activities or attendance at specific events, including restrictions the LEA could have imposed as remedies or disciplinary sanctions had the LEA determined at the conclusion of the LEA's grievance procedures that sex discrimination occurred.

(34 C.F.R. § 106.44(k))



# Other Forms of Sex Discrimination

## RETALIATION

Retaliation includes intimidation, threats, coercion, or discrimination against any person by the LEA, a student, or an employee or other person authorized by the LEA to provide aid, benefit, or service under the LEA's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, including in an informal resolution process, in grievance procedures, and in any other actions taken by an LEA in compliance with Title IX.

(34 C.F.R. § 106.2.)

An LEA must prohibit retaliation, including peer retaliation, in its education program or activity. When an LEA has information about conduct that reasonably may constitute retaliation under Title IX, the LEA is obligated to comply with § 106.44. Upon receiving a complaint alleging retaliation, an LEA must initiate its grievance procedures or, as appropriate, an informal resolution process.

(34 C.F.R. § 106.71.)

## PREGNANCY AND RELATED CONDITIONS STUDENTS

### Students

An LEA must not discriminate in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions.

The LEA also has a responsibility to provide Title IX Coordinator's contact and other information to students.

The LEA must ensure that when a student, or a person who has a legal right to act on behalf of the student, informs any employee of the student's pregnancy or related conditions, the employee promptly provides that person with the Title IX Coordinator's contact information and informs that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the LEA's education program or activity.

The LEA must make reasonable modifications to the LEA's policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to the LEA's education program or activity. Reasonable modifications the LEA offers may include:

- Breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom;
- Intermittent absences to attend medical appointments;
- Access to online or homebound education;
- Changes in schedule or course sequence;
- Extensions of time for coursework and rescheduling of tests and examinations;
- Allowing a student to sit or stand, or carry or keep water nearby;
- Counseling;
- Changes in physical space or supplies (for example, access to a larger desk or a footrest);
- Elevator access; and/or
- Other changes to policies, practices, or procedures.

The LEA must also allow a student to voluntarily take a leave of absence from their education program for, at minimum, the period of time deemed medically necessary by the student's licensed healthcare provider. The LEA must also ensure students have access to a lactation space that is clean, free from others, shielded from view, and is not a bathroom.

(34 C.F.R. § 106.4(b).)



## Employees

An LEA must not discriminate against any employee or applicant for employment on the basis of current, potential, or past pregnancy or related conditions.

An LEA must treat pregnancy or related conditions as any other temporary medical conditions for all job-related purposes, including commencement, duration and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; and reinstatement; and under any fringe benefit offered to employees by virtue of employment.

An LEA must also provide employees with lactation time and space.

(34 C.F.R. § 106.57.)

## PRE-EMPLOYMENT INQUIRIES

An LEA must not make a pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is “Miss or Mrs.” An LEA may ask an applicant for employment to self-identify their sex, but only if this question is asked of all applicants and if the response is not used as a basis for discrimination prohibited by Title IX.

(34 C.F.R. § 106.60.)



## Record Keeping

LEAs must maintain the following records for seven (7) years:

- (1) Each sexual harassment investigation including any determination of responsibility, any

- disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the LEA's education program or activity;
- (2) Any appeal and the result therefrom; and

- (3) Any informal resolution and the result therefrom;
- (4) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

All LEAs must make the training materials publicly available on their website (or, if the LEA does not maintain a website, the training materials must be available upon request for inspection by members of the public).

(34 C.F.R. § 106.45(b)(10).)

LEAs should consider these record keeping requirements when deciding whether to put notices, reports, and other Title IX grievance procedure communications in writing. Maintaining a robust, written record of actions taken and communications sent during a Title IX grievance process may assist LEAs in proving compliance.

## Monitoring Barriers to Reporting

A Title IX Coordinator must monitor the LEA's education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX and take steps reasonably calculated to address such barriers.

(34 CFR 106.41(b).)

## Notice of Nondiscrimination

Each LEA must adopt, publish, and implement a policy stating that the LEA does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX.

Each LEA must provide a notice of nondiscrimination to students; parents; guardians; or other authorized

legal representatives of elementary school and secondary school students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the LEA.

### CONTENT OF NONDISCRIMINATION STATEMENT

The notice of nondiscrimination must include the following elements:

- (1) A statement that the LEA does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX, including in admission (unless subpart C of Title IX does not apply) and employment;
- (2) A statement that inquiries about the application of Title IX to the LEA may be referred to the LEA's Title IX Coordinator, the Office for Civil Rights, or both;
- (3) The name or title, office address, email address, and telephone number of the LEA's Title IX Coordinator;
- (4) How to locate the LEA's nondiscrimination policy under paragraph (b)(1) of this section; and the LEA's grievance procedures under paragraph (b)(2) of this section; and
- (5) How to report information about conduct that may constitute sex discrimination under Title IX; and how to make a complaint of sex discrimination under Title IX.

Each LEA must prominently include all elements of its notice of nondiscrimination on its website and in each handbook, catalog, announcement, bulletin, and application form. If necessary, due to the format or size of any publication, the LEA may instead include in those publications a statement that the LEA prohibits sex discrimination in any education program or activity that it operates and that individuals may report concerns or questions to the Title IX Coordinator, and provide the location of the notice on the LEA's website.

(34 CFR 106.8(c).)







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