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Title IX Essentials: Compliance Training for Key Personnel

PRESENTED BY:

Haley Dumas, Esq.
Senior Counsel
hdumas@ymclegal.com

Sarah Kalas Bancroft, Esq.
Senior Counsel
sbancroft@ymclegal.com

Unparalled School Legal Services

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Firm Overview

Young, Minney & Corr, LLP (YM&C) stands at the forefront of charter school advocacy since the enactment of California's Charter Schools Act of 1992. Our firm offers unparalleled legal proficiency encompassing all aspects of charter school establishment, growth, and operation.

At YM&C, we place great emphasis on a proactive legal approach. We assist our clients in foreseeing potential legal challenges, minimizing exposure to legal liabilities and associated costs, and preempting operational hurdles. In liability instances, YM&C vigorously champions your cause, leveraging an extensive reservoir of experience, expertise, practical insight, and adeptness in advocating steadfastly on your behalf.

With a team of 35+ attorneys situated across various offices in California, YM&C takes pride in being a genuinely cooperative collective marked by diverse backgrounds and personas. We are dedicated to meeting all your charter school requisites.

YM&C offers a full breadth of legal services in every aspect of charter school law:

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

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 attorneys and services, please visit www.ymclegal.com or call us at **916-646-1400**.

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Haley Dumas

Senior Counsel
San Diego Office
916.646.1400 ex. 289
hdumas@ymclegal.com

Haley Dumas's practice advises employers on various labor and employment issues, including leaves of absence, disability accommodations, wage and hour compliance, discipline and dismissal, workplace complaints and investigations, employment agreements, executive compensation, and policy development. She also represents employers before the Division of Labor Standards Enforcement, the Civil Rights Department, the Equal Opportunity Commission, the Unemployment Insurance Appeals Board, and other employment-related agencies.

Before joining Young, Minney & Corr, Haley represented clients in employment and business litigation disputes. She earned her law degree from the University of San Diego School of Law, where she served as an executive editor for the San Diego International Law Journal and spent a semester studying international law at King's College London.

PRACTICE AREAS

Labor & Employment

EDUCATION

University of San Diego School of Law (J.D.)

California State University San Marcos (B.A.)

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Sarah Kalas Bancroft

Senior Counsel
Sacramento Office
916.646.1400
sbancroft@ymclegal.com

Sarah Kalas Bancroft brings to YM&C an extraordinary wealth of legal knowledge. Her primary areas of practice include labor & employment law, litigation in federal, state, and administrative venues, charter governance, student rights & discipline, and special education.

Sarah worked in civil litigation for two years before transitioning to education law, where she spent the majority of her legal career. Sarah came to YM&C from another education law firm in 2011 and stayed for 8 years, specializing in labor and employment, special education, and litigation/insurance defense. Sarah went on to become Deputy General Counsel at the California Department of Education (CDE), where she remained for the next five years.

At the CDE, Sarah practiced predominantly in General and Special Education litigation at the federal and administrative levels, handling highly sensitive, complex matters with broad statewide impact. Sarah provided legal support and representation for the State Special Schools, Diagnostic Centers, Special Education Division, and Nonpublic School Unit, CDE (the entity), the State Superintendent of Public Instruction, and the State Board of Education in a variety of areas. Sarah developed and provided Board Governance and Accountability training along with many other education-focused training, program guidance for publication, and legislative analysis.

Sarah next became an Administrative Law Judge, hearing general-jurisdiction cases for the California Department of Social Services, and gained valuable insight into the benchside of the administrative court process. While she enjoyed her years on the bench, Sarah was drawn back to her passion for educational advocacy and legal representation.

YM&C is pleased that Sarah has returned to the firm bringing with her an accomplished and illustrious legal career, broad-ranging and highly skilled legal expertise, and life-long dedication to service for the public good.

PRACTICE AREAS

Litigation

Insurance Defense

Labor & Employment

Board Governance

Special Education

Student Policies & Discipline

EDUCATION

University of Hawaii, Manoa, William S. Richardson School of Law (J.D.)

University of California, Berkeley (B.A.)

TITLE IX ESSENTIALS: COMPLIANCE TRAINING FOR KEY PERSONNEL

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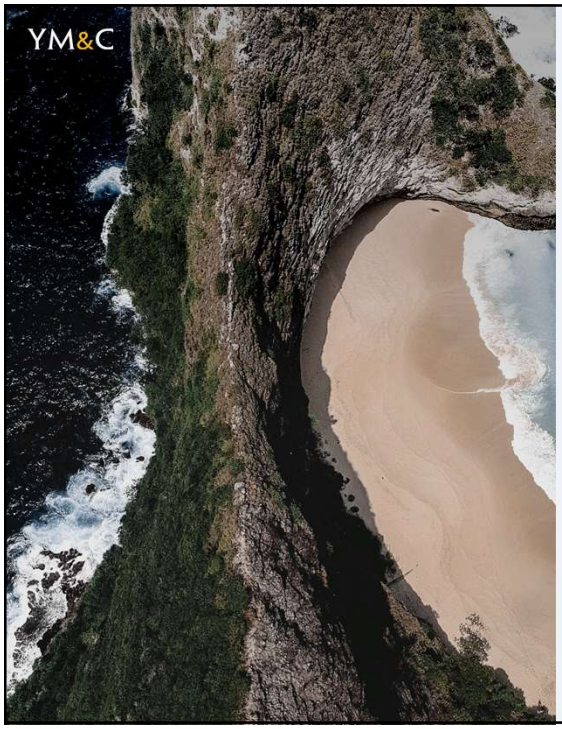

DISCLAIMER

This training 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.

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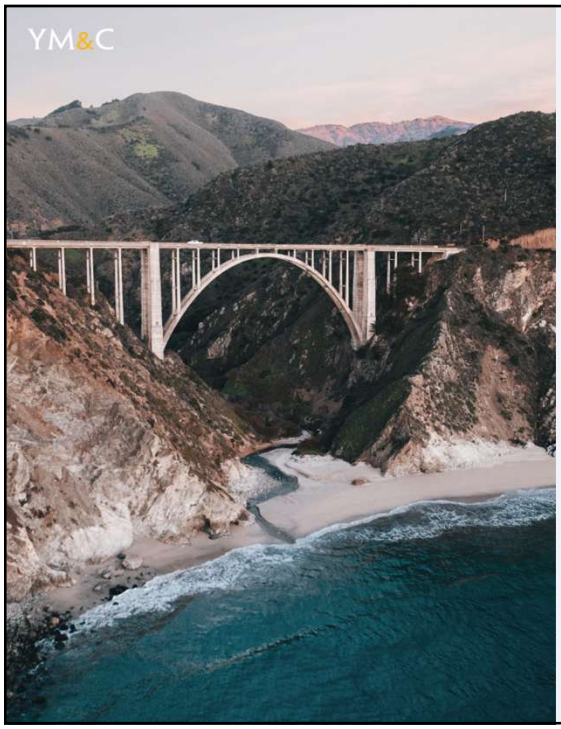

YM&C FIRM MISSION

We champion outstanding choices in education for all students.

We believe a quality public education is a civil right.

We work and fight alongside you to ensure student needs are always put first.

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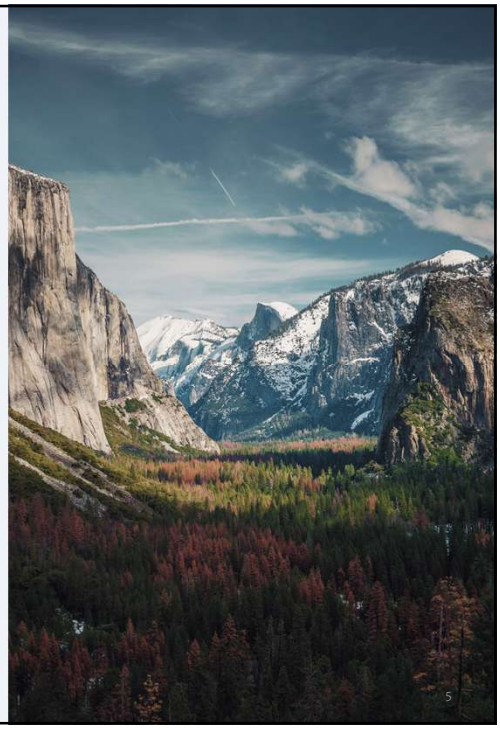
OVERVIEW

- ✓ Scope of Title IX
- ✓ What Happened to the 2024 Title IX Regulations?
- ✓ Important Definitions
- ✓ Responsibilities of the Title IX Coordinator
- ✓ Responses and Grievance Procedures
- ✓ Policy and Notice Requirements
- ✓ Training and Recordkeeping



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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 education program or activity receiving Federal financial assistance." (20 USC § 1681; 34 CFR Part 106)
- How does Title IX define "sex"? (Hint: it doesn't!)

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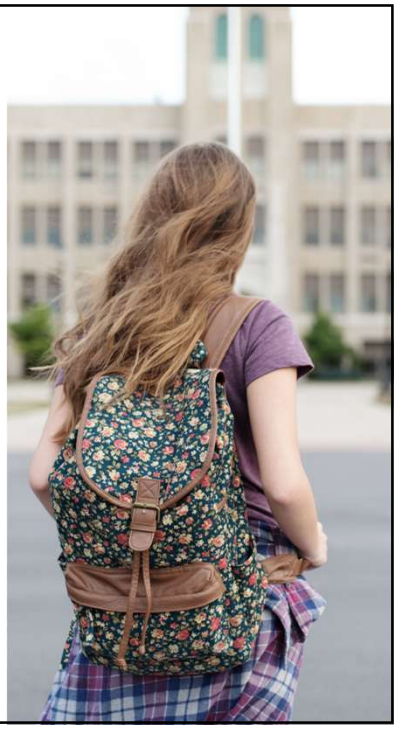
SCOPE OF TITLE IX

What does this apply to?

- 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
- 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
- Not necessarily dictated by the geographic location of the incident; requires a fact-specific inquiry

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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
  - ✓ The Supreme Court emphasized that a teacher's sexual abuse of a student "undermines the basic purposes of the educational system" thereby implicitly recognizing that a teacher's sexual harassment of a student likely constitutes sexual harassment "in the program" of the school even if the harassment occurs off campus.
- 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

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SCOPE OF TITLE IX

Title IX Sexual Harassment Complaints Fall Under One of Three Categories:

- **Quid Pro Quo:** 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;
- **Hostile Environment:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- **Sexual assault**, dating violence, domestic violence, or stalking.

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HOSTILE ENVIRONMENT SEXUAL HARASSMENT

Unwelcome conduct that is:

- Severe;
- Pervasive;
- Objectively offensive; and
- Effectively denies a person equal access to a school program or activity.

What is a "reasonable person" standard?

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12

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SCOPE OF TITLE IX

What if Conduct is Not "Sexual Harassment" Under Title IX?

- Harassment Prevention Policies
- Uniform Complaint Procedures
- General/Internal Complaint Policies

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2024 Title IX Regs: What Happened?

- Initially effective August 1, 2024
- **Vacated** on January 9, 2025, by federal court in Kentucky (*Tennessee v. Cardona*)
- Court ruled that the 2024 Title IX Final Rule and Regulations were unconstitutional and exceeded the U.S. Department of Education's authority under Title IX.
  - ✓ Does not change the underlaying law – Title IX itself still exists.

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2024 Title IX Regs: What Does This Mean?

- 2024 Title IX Regulations are no longer effective in any U.S. jurisdiction
- The 2024 Title IX Regulations are now "off the books" – as if it never happened. U.S. Department of Education is precluded from enforcing them at any educational institution in the nation
- Schools should revert to the 2020 Title IX Regulations moving forward
- Does not change the underlying statute – Title IX itself still exists

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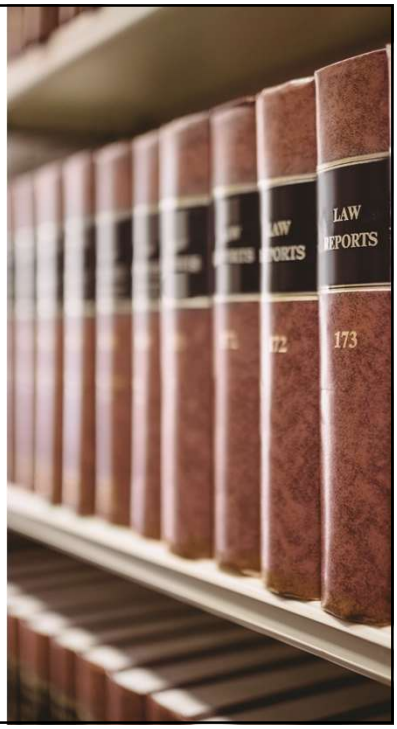

Major Differences Between the 2020 and 2024 Title IX Regulations

2020 Title IX Regulations (in effect now)

- *Narrower*- Specific grievance procedures for sexual harassment complaints
  - ✓ *More steps* - Must include two required 10-day response timeframes, a report of evidence and an investigation report, etc.; Title IX Coordinator cannot serve as the decisionmaker
- *Narrower* definition of hostile environment sexual harassment (severe *and* pervasive)

2024 Title IX Regulations

- *Broader*- Specific grievance procedures for sex-based harassment complaints *and* sex discrimination complaints
  - ✓ *Streamlined*- No investigation report required; Title IX Coordinator can serve as the investigator and decisionmaker
- *Broader* definition of hostile environment sex-based harassment (severe *or* pervasive)

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Major Differences Between the 2020 and 2024 Title IX Regulations

2020 Title IX Regulations (in effect now)

- *Narrower* – Complainants must be participating or attempting to participate in the school's education program or activity at the time the complaint is filed

2024 Title IX Regulations

- *Broader* – Complainants must be participating or attempting to participate in the school's education program or activity at the time the incident occurred
- *Broader* –includes protections against discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity
- *Broader* protections for students who are pregnant or have related conditions

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Major Differences Between the 2020 and 2024 Title IX Regulations

2020 Title IX Regulations (in effect now)

- *Narrower* - No "all employee" or annual training requirement
- *Narrower* – mandatory dismissals on certain grounds
- *Broader* – School must send the parties the evidence that is directly related to the allegations
- *Narrower* - Formal sexual harassment complaints must be in writing

2024 Title IX Regulations

- *Broader* training requirements
- *Broader* – no mandatory dismissals
- *Narrower* - Parties have access to the relevant and not otherwise impermissible evidence
- *Broader* – Complaint may be verbal or in writing

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19

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WHAT IS A FORMAL SEXUAL HARASSMENT COMPLAINT?

A Formal Sexual Harassment Complaint:

- Is 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.
- 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.
- At the time of filing, the complainant must be participating in or attempting to participate in the education program or activity.

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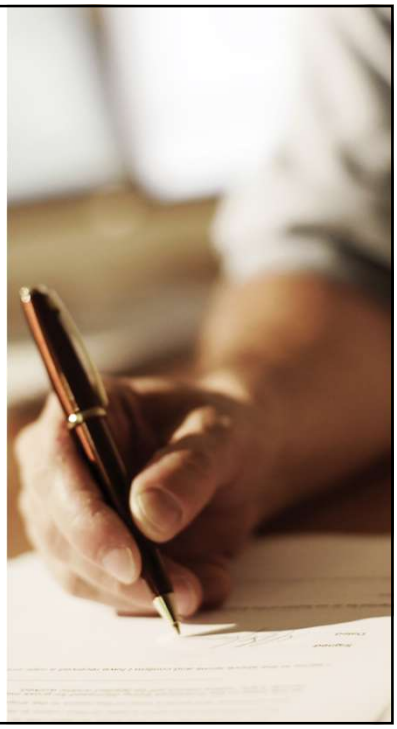

WHO IS THE COMPLAINANT?

The Complainant is:

- An individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- Not necessarily the person who reports the conduct.

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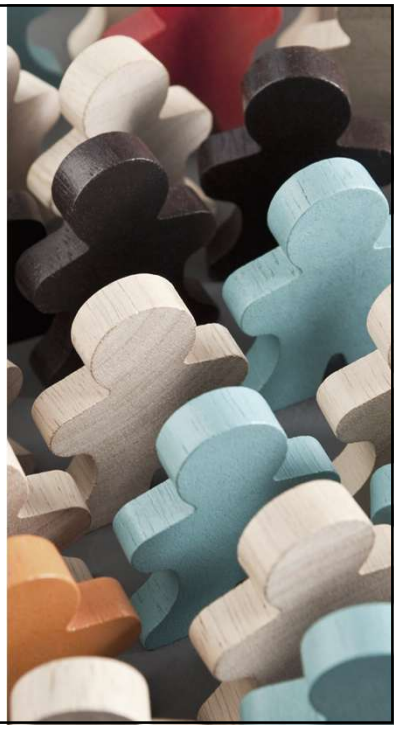

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WHO IS THE RESPONDENT?

The Respondent is:

- 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" are:

- 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 chaperone 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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TITLE IX COORDINATOR

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 and sexual harassment, 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
- Coordinates the effective implementation of remedies and supportive measures

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TITLE IX COORDINATOR

- Promptly contacts the complainant to discuss the availability of supportive measures
- Considers the complainant's wishes regarding supportive measures
- Informs the complainant of the availability of supportive measures with or without the filing of a formal complaint
- Explains to the complainant the process for filing a formal complaint

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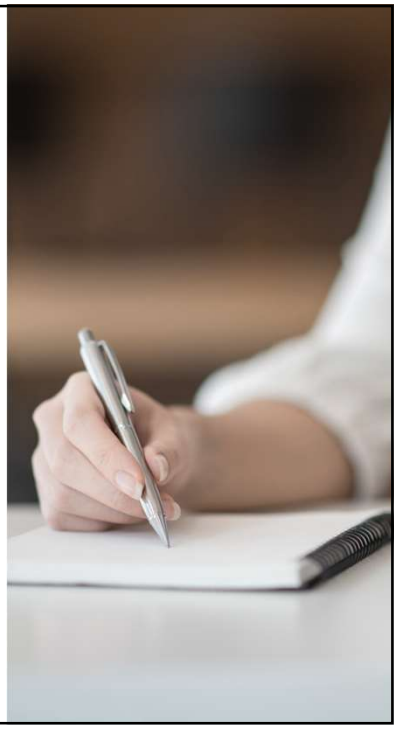

GENERAL RESPONSE TO SEXUAL HARASSMENT

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GENERAL RESPONSE TO SEXUAL HARASSMENT

If the School has actual knowledge of sexual harassment in the School's education program or activity against a person in the U.S., the School must respond promptly in a manner that is not deliberately indifferent.

- "Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to the 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).
- 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 imposing any discipline or other actions that are not supportive measures on a respondent.

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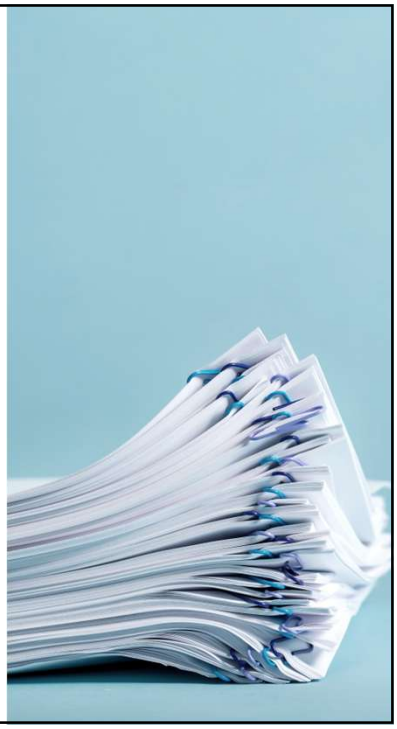
GENERAL RESPONSE TO SEXUAL HARASSMENT

- 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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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

Basic requirements for the 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 the 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 prejudgment of the facts at issue.

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FORMAL SEXUAL HARASSMENT COMPLAINTS

Basic requirements for the grievance process for formal complaints of sexual harassment (cont.):

- Include reasonably prompt time frames for the 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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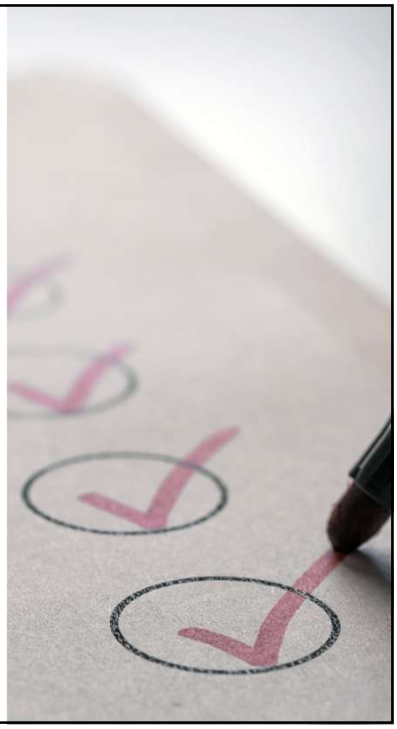
FORMAL SEXUAL HARASSMENT COMPLAINTS

Basic requirements for the 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 the 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

Summary of Steps in the Title IX Formal Sexual Harassment Complaint Process

- Review Complaint
- Supportive Measures
- Notice of Allegations
- Informal Resolution (voluntary and not for allegations that an employee sexually harassed a student)
- Dismissal of Complaint, if applicable
- Investigation
- Report of Evidence to Parties
- Written Response(s) from Parties
- Investigation Report
- Written Response(s) from Parties
- Hearing, if applicable
- Written Determination of Responsibility to Parties
- Appeal, if any

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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.
- The 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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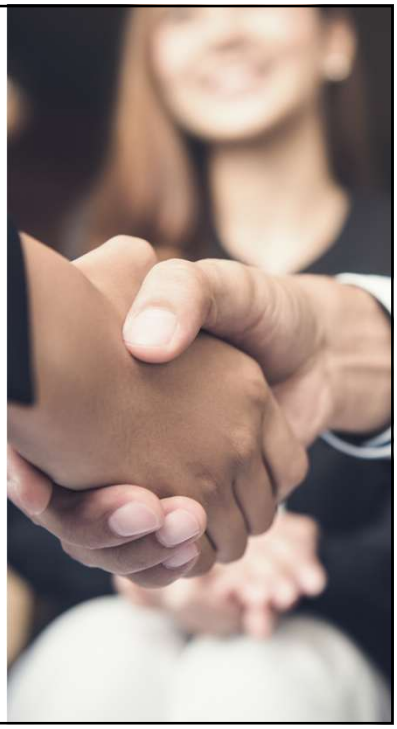
FORMAL SEXUAL HARASSMENT COMPLAINTS

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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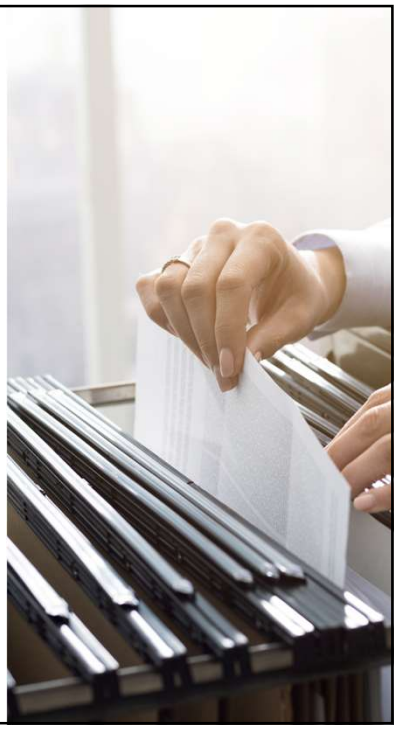
FORMAL SEXUAL HARASSMENT COMPLAINTS

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

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 an advisor for either the complainant or respondent in any meeting or grievance proceeding. The School may establish restrictions regarding the extent to which the advisor may participate in the proceedings, but such restrictions must apply to both parties equally.

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FORMAL SEXUAL HARASSMENT COMPLAINTS

Investigation of a formal complaint (cont.): Additional participants in the investigation

- Attorneys for parties
- Support people for parties (both non-employees and employees)
- Witnesses are not entitled to an advisor of their choice to be present for their interview (i.e. support persons, co-witness interviews, attorneys, etc.)

Practical considerations

- Code of Conduct
- Confidentiality
- Refusal to participate/Insubordination
- Lybarger Warning

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50

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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 the conclusion of the investigation. → **Practical Tip**: It may not be necessary to provide this pre-interview, depending on the circumstances. Ask YM&C!

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FORMAL SEXUAL HARASSMENT COMPLAINTS

Investigation of a formal complaint (cont.)

- Must serve impartially, including by avoiding prejudgment 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 commonsense 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

Hearings

- Required of Colleges and Universities but not K-12 Schools
- Overview of Hearing Process
  - ✓ Identify Hearing Participants
  - ✓ Provide Parties Written Notice of Hearing
  - ✓ Protect Interests and Rights of Parties and Witnesses
  - ✓ Set Procedural Norms
  - ✓ Conduct Hearing
  - ✓ Post-Hearing

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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. Include findings of fact supporting the determination

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FORMAL SEXUAL HARASSMENT COMPLAINTS

The written determination must (cont.):

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. Include 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 the 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 determination of responsibility 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 generally or the individual complainant or respondent 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.
- Must notify the other party in writing and implement appeal procedures equally for both parties.
- Decision-maker(s) for an appeal 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.
- A written decision describing the result and the rationale must be provided simultaneously to both parties.

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RELEVANCE OF EVIDENCE

- Investigations and determinations of responsibility must include an objective evaluation of all relevant evidence - inculpatory and exculpatory. The 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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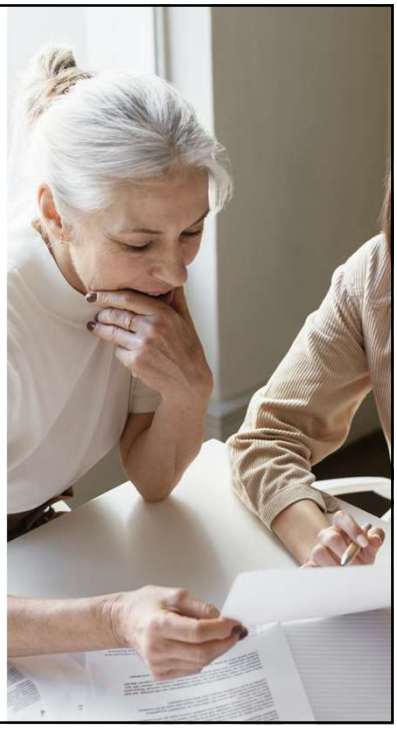
RELEVANCE OF EVIDENCE

Factors that may affect weight given to relevant evidence:

- First-hand v. hearsay
- Direct evidence v. circumstantial evidence
- Physical or documentary evidence v. testimonial



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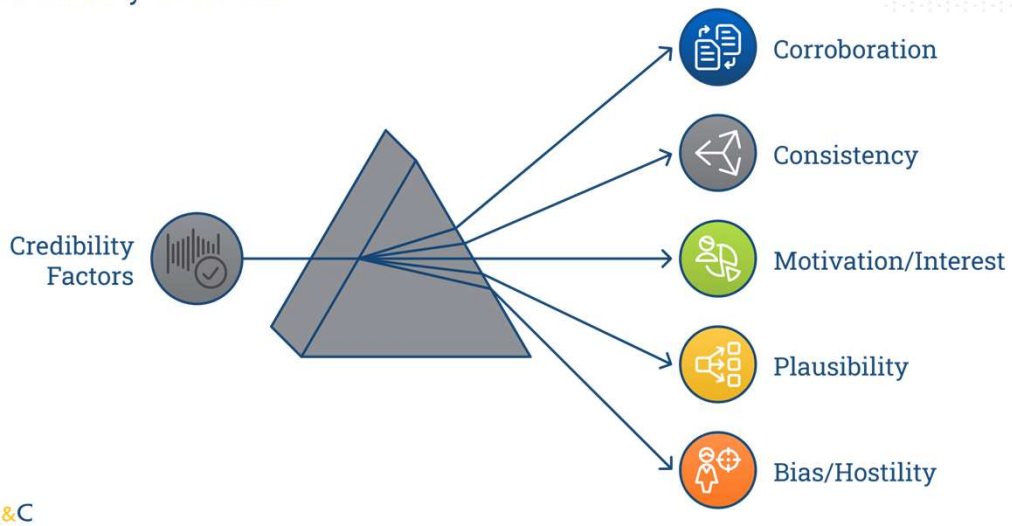
RELEVANCE OF EVIDENCE

Credibility Factors:



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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 AND NOTICE REQUIREMENTS

- The School must provide notice of the School's Title IX policy and grievance procedures and process to (1) applicants for admission and employment, (2) students, parents/guardians, employees, and (3) all unions or professional organizations holding collective bargaining or professional agreements with the School.
- Must prominently display the 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 for Civil Rights of the Department of Education, 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 under Title IX
- 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

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
- 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.

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RECORDKEEPING

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.
- 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.

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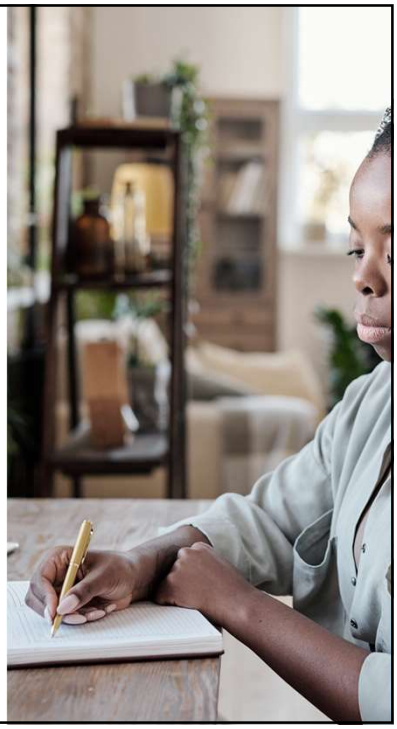
RECORDKEEPING

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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QUESTIONS?
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THANK YOU
Sarah Kalas Bancroft, Esq.
sbancroft@ymclegal.com
916.646.1400 Ext. 266
Haley Dumas, Esq.
hdumas@ymclegal.com
916.646.1400 Ext.
ymclegal.com | 916.646.1400