

# Department of Education Office for Civil Rights



## Title IX: An Introduction to the New Regulations

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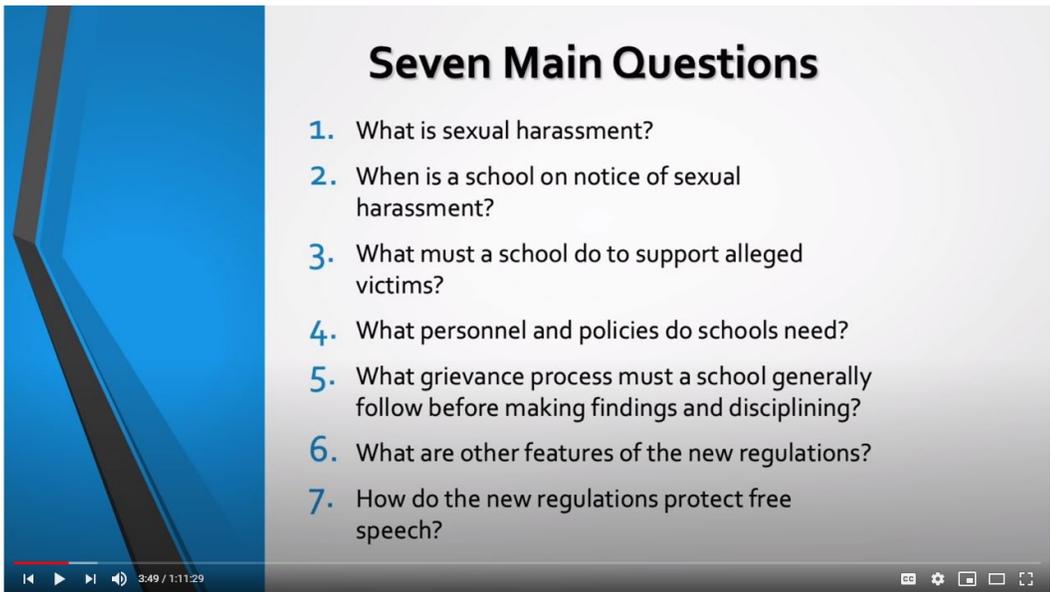


### Overview

- The Office for Civil Rights
- Title IX of the Education Amendments Act of 1972
- Sexual harassment and sex discrimination
- New Departmental regulations have been announced and will be effective on August 14, 2020.

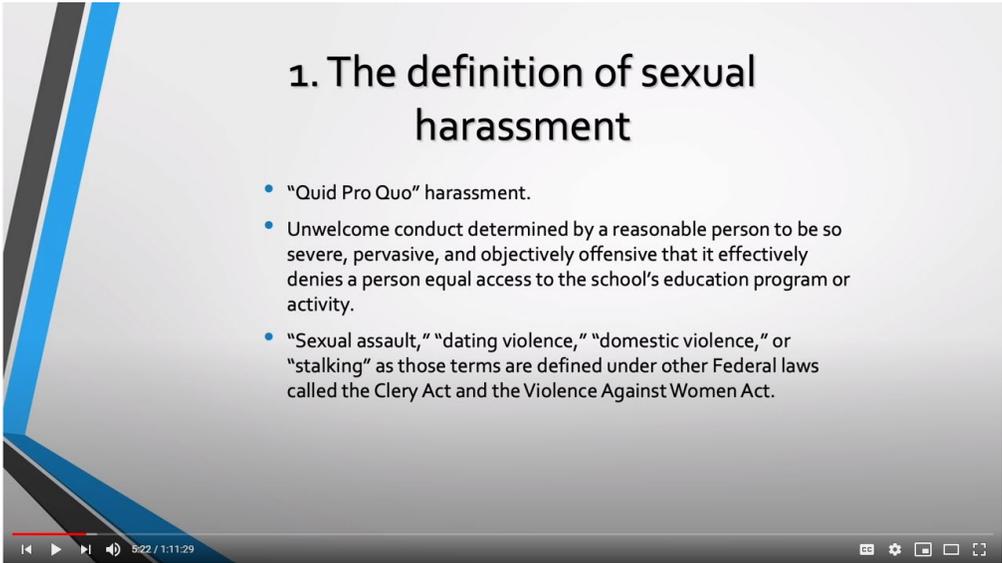
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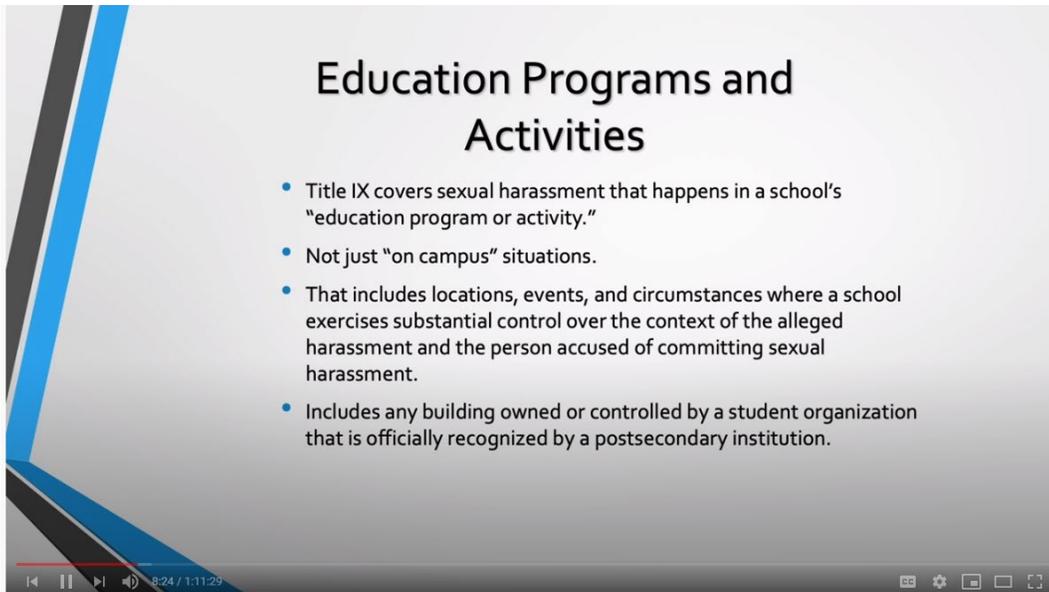
What is sexual harassment?

When is a school on notice of sexual harassment? What must a school do to support alleged victims when it has notice of sexual harassment? What personnel and policies must a school have in place to address sexual harassment? What grievance process must just school generally follow before making a determination as to whether sexual harassment occurred? And before disciplining a student for engaging in sexual harassment? What are some other prominent features of the new regulations addressing other topics? For instance, retaliation, and record keeping? And finally, how do the final regulations protect free speech when a school responds to sexual harassment?



Hi, I'm William trackman. Senior Counsel in the US Department of Education Office for Civil Rights. The first topic that we're discussing today is the definition of sexual harassment. The final regulations provide a definition of sexual harassment that schools must use for Title Nine purposes to protect students from sex discrimination. Sexual harassment is conduct on the basis of sex that meets one or more of the following descriptions. The first category is a school employee conditioning an educational benefit or service on an individual's participation in unwelcome sexual conduct. People often refer to this as a quid pro quo harassment, offering a benefit in exchange for unwelcome sexual conduct. This is an abuse of a school employees position of authority and trust. The second category is any type of unwelcome conduct determined by a reasonable person to be so severe, pervasive and Objectively offensive that effectively denies a person equal access to the school's education program or activity. The third category is sexual assault, dating violence, domestic violence, or stalking, as those terms are defined under other federal laws, called the Clery Act and the Violence

Against Women Act, because we're talking about Title Nine, which prohibits discrimination on the basis of sex. It's also the case that misconduct that is not based on sex is not sexual harassment, under Title Nine. Some conduct that means that federal criminal definition of stalking, for instance, may not be based on sex. At the same time, misconduct that is based on sex does not need to be sexual in nature, in order to constitute sexual harassment. Well, only a school employee can connect quid pro quo sexual harassment any person And might perpetrate the other two categories of misconduct that constitute sexual harassment, whether it's a school employee, a student, or anyone else. We also want to emphasize that anyone, regardless of a person's race, sexual orientation, disability status, or gender identity might be a victim or perpetrator of sexual harassment. The final regulations protects everyone from sexual harassment under Title Nine. Sexual harassment might consist of verbal, physical, or other types of conduct that target a person based on their sex. And if the person finds on welcome of schools, enforcement of Title Nine must always be consistent with everyone's free speech rights.



## Education Programs and Activities

- Title IX covers sexual harassment that happens in a school's "education program or activity."
- Not just "on campus" situations.
- That includes locations, events, and circumstances where a school exercises substantial control over the context of the alleged harassment and the person accused of committing sexual harassment.
- Includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

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Hi, I'm Samantha Christianson counsels the assistant secretary for civil rights at the US Department of Education Office for Civil Rights One question that you may be asking is whether the location of sexual harassment matters for the purpose of when a school has to respond under Title Nine. The answer is that it can matter. Although it's a little more complicated than that. When it passed Title Nine, Congress covered only sex discrimination against a person in the United States. The final regulations don't change that one way or another. So most important consideration for whether a school must respond to sexual harassment is whether the harassment occurs in a school's education, program or activity. The final regulations state that a school's education program or activity includes any locations, events And circumstances, whether or not these items are on a school's campus or not, where school exercises substantial control over the context of the alleged harassment, and the person accused of committing sexual harassment, schools must always respond to sexual harassment. That happens in school related circumstances, such as on field trips, academic conferences, were on a school bus at the post secondary level. The final regulations also specify that a school's education program or activity extends to any building that is owned or controlled by a student organization. If that organization is officially recognized by the post secondary institution. This applies For instance, to fraternity or sorority houses, whether on campus or off campus if the fraternity or sorority is officially recognized by the school, and that fraternity or sorority owns or controls their own building. Putting these provisions together, a school's duty to respond is not simply a matter of whether sexual harassment occurred on campus or off campus.

## 2. When does a school have notice?

- Once a school has actual knowledge of sexual harassment or allegations of sexual harassment, the school has to respond and take action.
- A school has actual knowledge when the school has notice that a person may have been victimized by sexual harassment.
- Any person, whether the alleged victim or a parent, friend, or bystander, has the right to report sexual harassment to put the school on notice.
- And sometimes school personnel will personally witness sexual harassment.

The final regulations state that once a school has actual knowledge of sexual harassment, or allegations of sexual harassment, the school has to respond and take action. Our second topic is about what constitutes actual knowledge under the new title nine final rule. actual knowledge is notice to the school of an allegation of sexual harasser A school has actual knowledge when the school has noticed that a person may have been victimized by sexual harassment. How is the school put on notice of sexual harassment. Any person whether the alleged victim or a parent, friend or bystander has the right to report sexual harassment to put the school on notice. And sometimes school personnel will personally witness sexual harassment themselves. But who within a school needs to have notice for the school to be considered to have actual knowledge

## Actual Knowledge and School Personnel

- The Title IX Coordinator for the school district or school.
- Schools have to provide the contact information for the Title IX Coordinator.
- Other people within the school who have authority to institute corrective measures. This could vary from school to school, but always includes the Title IX Coordinator.
- In elementary and secondary schools, telling any school employee always puts the school on notice.

In all schools, colleges and universities and elementary and secondary schools, the school must respond whenever the school's cutter nine coordinator has noticed. Reports can be made to a school's Title Nine coordinator by mail, phone or email at anytime, day or night and also in person Courts can be verbal or written. Also in all schools, the school must also respond whenever any school official with authority to institute corrective measures has notice of sexual harassment. For all schools, telling the title nine coordinator always puts the school on notice for post secondary institutions for school officials and this category may vary from school to school, but again, they will always include the title nine coordinator in elementary and secondary schools telling any school employee always puts the school on notice. schools must post the title nine coordinators contact information on their websites and send notice with that contact information to every student

employee, parents and legal guardian of an elementary or secondary school students and school union. So the entire school community is aware of how to report sexual harassment to the title nine coordinator.

### 3. What kind of response must the school provide?

- The school can't be "deliberately indifferent." That also means that it can't be "clearly unreasonable" in light of the known circumstances.
- The Title IX Coordinator must provide information to the individual:
  - the availability of supportive measures;
  - the right to file a complaint; and
  - how to file a complaint.

Our third topic is what schools have to do once they have actual knowledge of sexual harassment. Once the school has actual knowledge of sexual harassment, and it's education, program or activity, the school has to respond promptly. And the response cannot be deliberately indifferent to the knowledge of sexual harassment. Another way of thinking about whether a response is deliberately indifferent, is asking whether it's clearly unreasonable in light of the known circumstances as part of a required response, and in order not to be deliberately indifferent the title nine coordinator has to respond promptly when there's actual knowledge of an hour. of sexual harassment. At a very minimum, the title nine coordinator must promptly reach out to the student alleging sexual harassment and confidentially discuss the available options. those options include receiving supportive measures from the school and choosing whether to also file a formal complaint that initiate an investigation into the alleged victims sexual harassment allegations. The title nine coordinator must also inform the alleged victim. One test supportive measures are available to them to restore access to the school's education program or activity, with or without filing a formal complaint and to how the process to file a formal complaint works.

## What are supportive measures?

- Supportive measures are free, individualized services designed to restore or preserve equal access to education, protect safety, or deter sexual harassment.
- There doesn't need to be a formal complaint for an alleged victim to receive supportive measures.
- Supportive measures support a student, and they aren't punitive or disciplinary with respect to another student.
- Supportive measures don't unreasonably burden any other person.

As Samantha noted, a required part of the school's response is to offer supportive measures to the alleged victim of sexual harassment, regardless of whether a formal complaint is also filed. Supportive measures may also be offered to the person accused of sexual harassment. What are supportive measures? Supportive measures are free individualized services designed to restore or preserve equal access to education, protect safety, or deter sexual harassment. They are offered without a fee to either an alleged victim or the accused person. There doesn't need to be a formal complaint for either person to receive supportive measures. The key to supportive measures is that they support a student and that they aren't punitive or disciplinary with respect to another student. Supportive measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening any other person.

### Examples of supportive measures

Examples of supportive measures could include:

- Counseling;
- Extensions of deadlines;
- Modifications of work or class schedules;
- Campus escort services;
- Changes in housing location;
- Increased security or monitoring of parts of campus;
- Mutual restrictions on contact between individuals.

Supportive measures might 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, leave of absence, increase security and monitoring of certain areas of the campus and other similar measures.

## Implementing Supportive Measures

- The school always has to consider the alleged victim's wishes when it comes to requests for supportive measures.
- The school generally has to keep supportive measures confidential.
- The Title IX Coordinator is responsible to implementing supportive measures.

When alleged sexual harassment occurs in a school's education program or activity, the title nine coordinator has to inform the victim of the right to support measures, even if no formal complaint is filed, and the school must consider the alleged victims wishes when it comes to their request for supportive measures.

The school must keep confidential any supportive measures provided to the alleged victim. Or the accused person. To the extent that confidentiality does not impair the school's ability to provide the supportive measure, and the title nine coordinator is responsible for coordinating the effective implementation of supportive measures

## Formal Complaints

- A formal complaint is an official document alleging sexual harassment.
- It's filed by the student (or their parent or legal guardian in some cases), or in some cases the Title IX Coordinator.
- In cases where an alleged victim doesn't file a formal complaint, a Title IX Coordinator might initiate grievance procedures where discipline is appropriate.

Sometimes a student will choose to file a formal complaint. a formal complaint is an official document alleging sexual harassment and schools must investigate the allegations made in a formal complaint. a formal complaint has to be filed by the student or their parent or legal guardian as appropriate or signed by the title nine coordinator. Formal complaints can be filed with the title nine coordinator in person, by mail by email and any other method that the recipient also allows. Even if a student offs not to file a formal complaint. The school's Title Nine coordinator may In some cases decide to file a formal complaint on their own, which starts an investigation.

## 4. Personnel and Policies

### 4. What personnel and policies do schools need to have?

- Title IX Coordinator;
  - Specific information about how to contact the Title IX Coordinator must be provided by the school.
- Non-Discrimination policy;
- Written grievance procedures;
- Information about how to file a formal complaint regarding sexual harassment.

Now let's turn to our fourth topic, and talk about what schools must do in terms of their written policies for dealing with sexual harassment. Some policies will deal with the grievance process when a formal complaint is filed. So that will help guide us when we actually walk through those provisions. Right after discussing the written policies, every recipient must designate an authorized at least one employee to coordinate its title nine efforts. That person must be called a title nine coordinator, which we've alluded to already. The recipient has to give the name or title, office address, electronic mail address and telephone number of the employee or employees designated as the title nine coordinator to all of its students, applicants for admission or employment employees. Parents or legal guardians of elementary and secondary school students, and all unions or professional organizations that have collective bargaining agreements or other professional agreements with the recipient. Any person may contact the title nine coordinator in person, by mail, by telephone, or by electronic mail, or by any other means that results in the title nine coordinator receiving the person's verbal or written report. Such a report may be made at any time, including during non business hours by using the telephone number or electronic mail address or by mail to the office address listed for the title nine coordinator. A person needs to be able to make a report to the telephone number, electronic mail address or mail address at all times.

In addition to the notice of the title nine coordinator and their contact information, the recipient also has to disseminate to the Same groups and noticed that it has a policy against discrimination on the basis of sex, and that it is required by title nine not to discriminate on the basis of sex. The recipient also has to display and post the title mine coordinators contact information and the policy against discrimination on its website, and its handbooks and in its catalogs, in addition to the written policies surrounding non discrimination and the title nine coordinator, recipients also have to adopt and publish written grievance procedures that provide for a prompt and equitable resolution of student and employee complaints, along with a grievance process that complies with additional standards for sexual harassment allegations. The grievance procedures have to be provided to the same group as mentioned above in the context of the non discrimination and title nine coordinator obligations. The recipient has to provide information To the same groups about how to file a formal complaint of sexual harassment, and how the recipient will respond when a formal complaint is

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filed. It's important for a school's educational community to be aware of how to report sexual harassment, how to file a formal complaint of sexual harassment, and how the school will respond to reports and formal complaints. The final regulations require each school to notify all students and employees, parents and legal guardians of elementary and secondary students and school unions of the school sexual harassment grievance process.

## Written Grievance Procedures

- Schools' written grievance procedures for dealing with sexual harassment must abide by the new regulations.
- The grievance procedures themselves can't discriminate on the basis of sex, and any additional provisions that a school adds must apply equally to complainants and respondents.
- Note: The final regulations refer to alleged victims as complainants and alleged perpetrators as respondents, whether or not the grievance process has begun.
- Written grievance procedures need to include 10 other specific items.

The final regulations and nounce requirements that schools must have in their written grievance policies. Most broadly, school grievance procedures cannot treat people differently on the basis of sex when the school investigates or reaches determination. Regarding responsibility. Also, schools must adopt rules in accordance with these final regulations. And any additional rules that the school chooses to adopt. that do not conflict with these final regulations must apply equally to complainants and respondents. Note that whether or not a grievance process has begun, the final regulations refer to an alleged victim of sexual harassment as a complainant and to a person accused of sexual harassment as a respondent. The final regulations also require every school's grievance process to contain 10 other more specific items

## Requirement 1: Treat Parties Equitably

- The school's grievance process must treat complainants and respondents equitably by providing remedies to a complainant if a respondent is found responsible, and by following the prescribed grievance process imposing discipline on a respondent.
- The remedies for a complainant have to be designed to restore or preserve equal access to the school's education program or activity.
- Unlike supportive measures in place with or without a grievance process pending, a complainant's remedies CAN be punitive or disciplinary against the respondent.

First, the school's grievance process must treat complainants and respondents equitably by providing remedies to a complainant. If a respondent is found responsible, and by following the prescribed grievance process, imposing discipline on a respondent the remedies for a complainant have to be designed to restore or preserve equal access to the schools education program, or activity. Unlike supportive measures in place, with or without a grievance process pending, a complainants remedies can be punitive or disciplinary against the respondent

## Requirement 2: Objective Evaluation of Evidence

- The school's grievance process must ensure an objective evaluation of all relevant evidence—including inculpatory and exculpatory evidence.
- Credibility determinations can't be made on the basis of a person's status as a complainant, respondent, or witness.

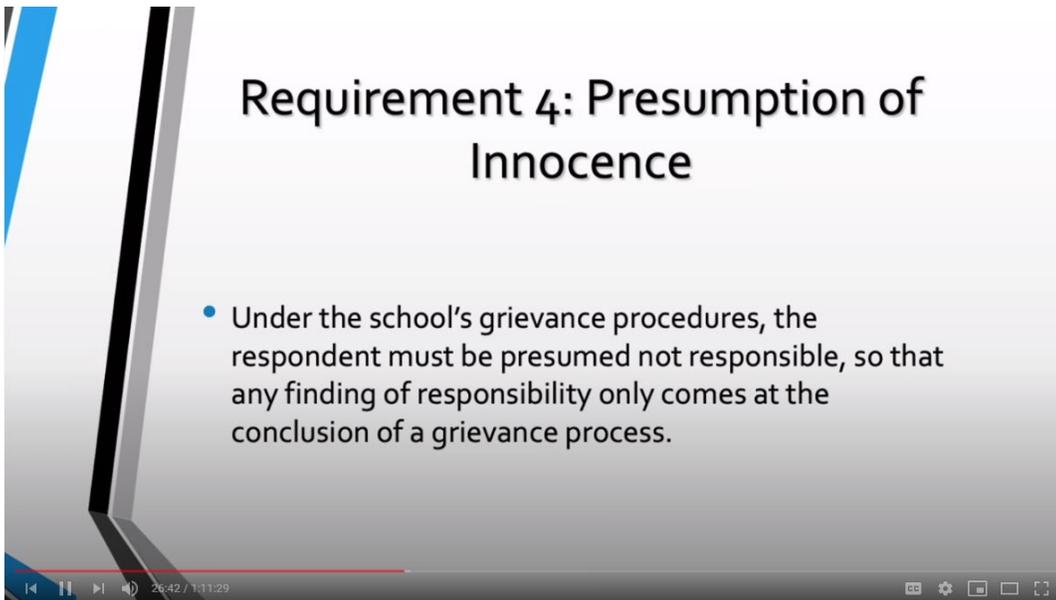
Second, the grievance process must ensure an objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence. And credibility determinations can't be made on the basis of a person status as a complaint it responded or witness.

## Requirement 3: Training; No Conflicts of Interest

- The individuals involved in the process—like the Title IX Coordinator, investigators, decision-makers, or facilitators of informal, voluntary resolution efforts—must not have any bias or conflict of interest.
- These individuals must also be trained. The materials used to train Title IX personnel can't rely on sex stereotypes, must promote impartial investigations and adjudications, and must be posted on each school's website (and if a school does not maintain a website, make them available for public inspection upon request).

Third, the individuals involved in the process like the title nine coordinator, investigators, decision makers, or facilitators of informal voluntary resolution efforts must not have any bias or conflict of interest. These individuals must also be trained. The training has to include, among other things, the definition of sexual harassment, the scope The recipients education program or activity, how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts that issue conflicts of interest and bias. It also has to include training on any technology to be used at a live hearing, and on issues of relevance of questions and evidence, including when questions and evidence about the complainants sexual predisposition, or prior sexual behavior are not relevant. A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence The materials used to train Title Nine personnel can't rely on sex stereotypes must promote impartial investigations and adjudications and must be

posted on each school's website. And if a school does not maintain a website, the school must make them available for public inspection upon request.

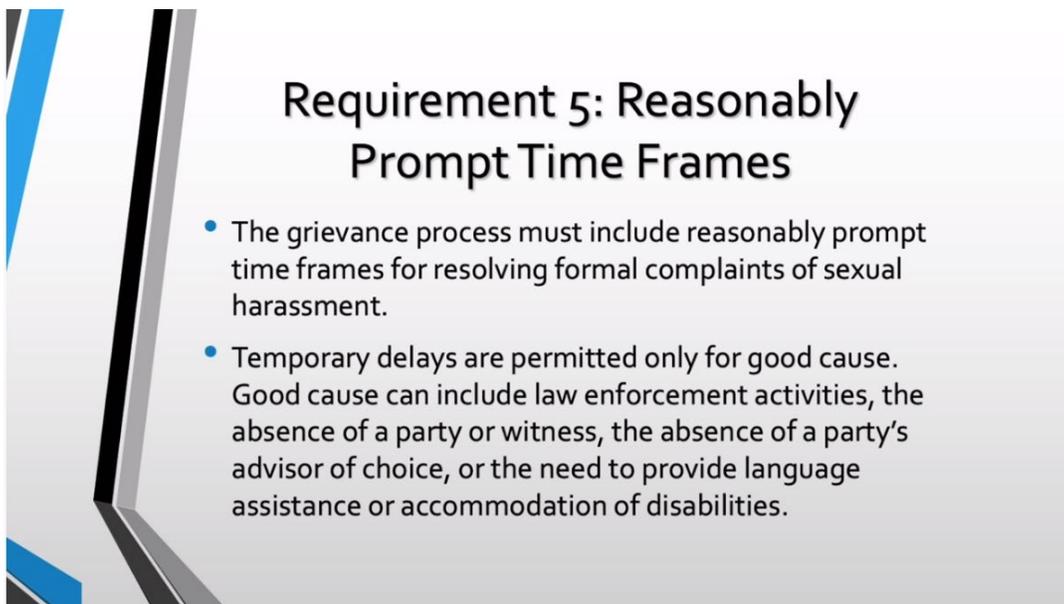


**Requirement 4: Presumption of Innocence**

- Under the school's grievance procedures, the respondent must be presumed not responsible, so that any finding of responsibility only comes at the conclusion of a grievance process.

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For the respondent must be presumed, not responsible, so that any finding of responsibility only comes at the conclusion of a grievance process.



**Requirement 5: Reasonably Prompt Time Frames**

- The grievance process must include reasonably prompt time frames for resolving formal complaints of sexual harassment.
- Temporary delays are permitted only for good cause. Good cause can include law enforcement activities, the absence of a party or witness, the absence of a party's advisor of choice, or the need to provide language assistance or accommodation of disabilities.

Fifth, the grievance process must include reasonably prompt timeframes for resolving formal complaints of sexual harassment. Note that the final regulations do permit Temporary delays of these timeframes, but only for a good cause. Good cause can include law enforcement activities, the absence of a party or witness, the absence of a party's advisor of choice or the need to provide language assistance or accommodation of disabilities.

## Requirement 6: Description of Range of Outcomes

- The grievance process must describe or list the range of possible remedies and disciplinary sanctions that could occur following a determination of responsibility.

Sixth. The grievance process must describe or list the range of possible remedies and disciplinary sanctions that could occur following a determination of responsibility.

## Requirement 7: Standard of Evidence

- The grievance process must state which standard of evidence the school will use to reach a determination regarding responsibility, to be used for all sexual harassment proceedings.
- Schools can choose between the preponderance of the evidence standard and the clear and convincing evidence standard.
- Whichever standard the school chooses, it has to use that standard for all formal complaints of sexual harassment, whether the respondent is a student, or employee, including a faculty member.
- All sexual harassment proceedings must have the same standard of evidence.

Seventh, the grievance process must state which standard of evidence the school will use to reach a determination regarding responsibility to be used for all sexual harassment. proceedings. For that standard. Schools can choose between the preponderance of the evidence standard and the clear and convincing evidence standard. But whichever standard the school chooses, it has to use that standard for all formal complaints of sexual harassment. Whether the respondent is a student or employee, including a faculty member. That also means that a recipient cannot choose preponderance of the evidence as a standard for some cases of sexual harassment, but clear and convincing as a standard for others. All sexual harassment proceedings must have the same standard of evidence.

## Requirement 8: Right to Appeal

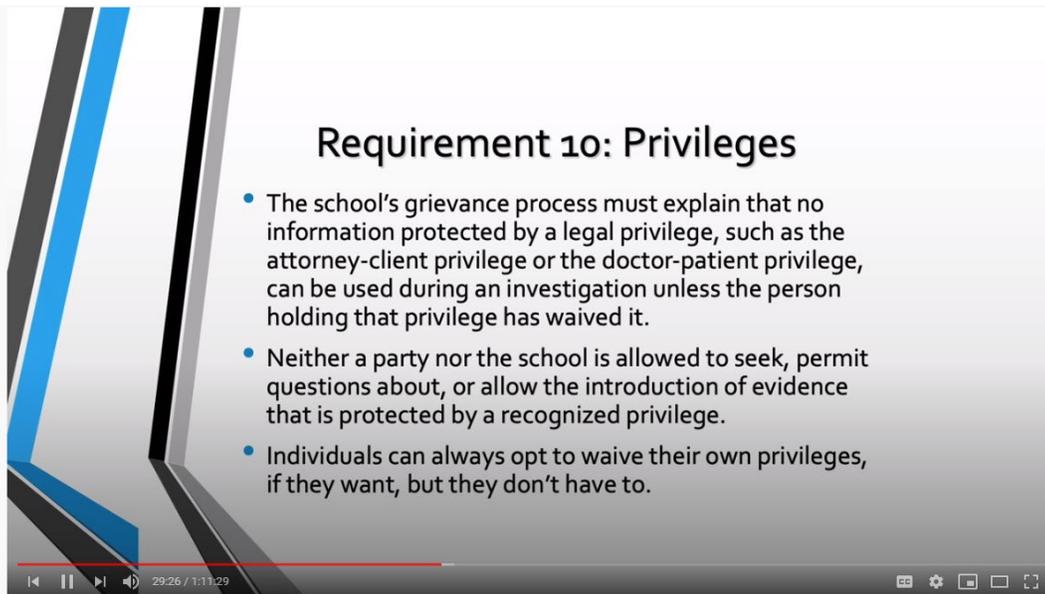
- The grievance procedures they have to contain the right to appeal the result of a grievance process, and information about how to invoke the right to appeal.
- Schools must offer an appeal to every party on certain bases, and schools also have the option to expand the bases on which an appeal may be taken, as long as they apply those bases equally to both parties.

As the written policies have to contain information about the right to appeal the result of a grievance process, schools must offer an appeal to every party on certain bases that will be described later on in this webinar, and schools also have the option to expand the bases on which an appeal may be taken as long as they apply those bases equally to both parties.

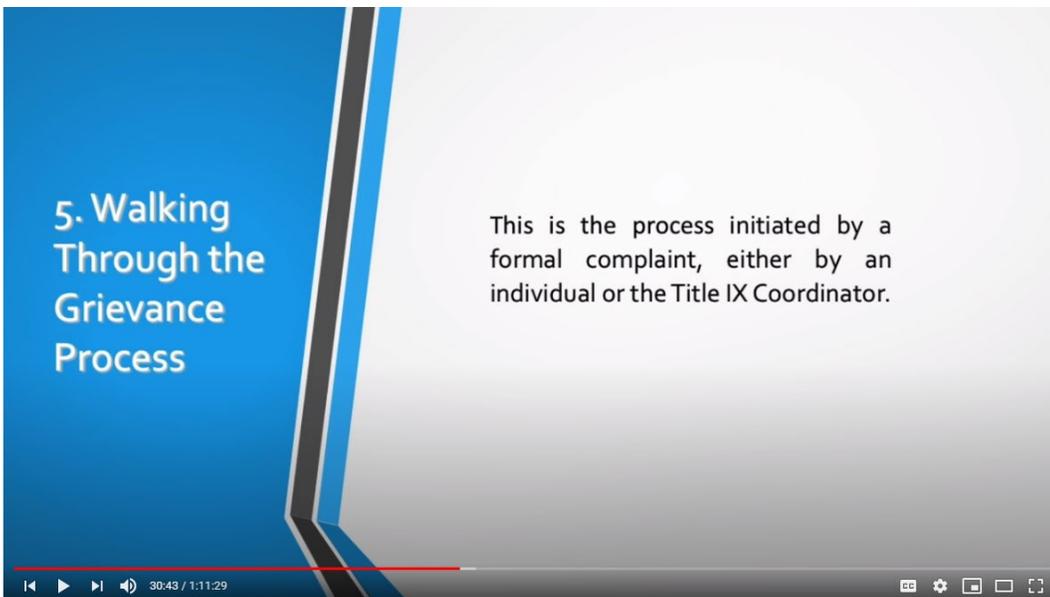
## Requirement 9: Description of Range of Supportive Measures

- The school's grievance process must describe the range of supportive measures available to complainants and respondents.

Ninth, the school's grievance process must describe the range of supportive measures, but those who have previously described available to complainants and respondents



10th the school's grievance process must explain that no information protected by a legal privilege, such as the attorney client privilege, or the doctor patient privilege can be used during an investigation unless the person holding that privilege has waited. In the same vein, during a grievance proceeding, neither a party nor the school is allowed to seek, permit questions about or allow the introduction of evidence that is protected by a recognized privilege. That includes the attorney client privilege, among other privileges. Of course, individuals can always opt to waive their own privileges if they want, but they don't have to.



Okay, our fifth big topic today is the grievance process once a formal complaint has been filed, when a school is investigating and reaching determinations about allegations in a formal complaint of sexual harassment, the school must comply with specific requirements. As a reminder, a formal complaint can be filed either by a complainant or their parent or guardian as appropriate or By the title nine coordinator.

## Emergency Removals

Two quick notes:

- A school can remove a respondent from the school's education programs or activities on an emergency basis if the respondent poses an immediate threat to anyone's physical health or safety. There are additional requirements for emergency removal proceedings that schools should consider if they institute this process.
- If the respondent is a school employee, the final regulations don't prevent a school from placing that employee on administrative leave during the investigation.

Two more notes before we describe what the school's investigation and decision making process must look like. First, whether or not a grievance process is underway, a school can remove a respondent from the school's education programs or activities on an emergency basis if the respondent poses an immediate threat to anyone's physical health or safety there are additional requirements for emergency removal proceedings that schools should consider if they Institute this process. Second, if the respondent is a school employee, the final regulations don't prevent a school from placing That employee on administrative leave during the investigation. Of course, the employee may have other rights under a collective bargaining agreement, or the Americans with Disabilities Act, or section 504 of the Rehabilitation Act of 1973.

## Overarching Principles

- The grievance process cannot itself discriminate against a complainant or a respondent on the basis of sex.
- Practices must apply equally to both complainants and respondents—either of which can be male or female—and can't discriminate as between men and women, notably with respect to credibility determinations.

As we start discussing the investigation and grievance process, remember that the final regulations state emphatically that the grievance process cannot itself discriminate against a complainant or a respondent on the basis of sex. That means, for instance, that practices must apply equally to both complainants and respondents, either of which can be male or female and can't discriminate, as between Men and women, notably with respect to credibility determinations.

## Written Notice to the Parties

- When the school begins an investigation, it has to provide the parties with written notice of certain information.
- It has to give notice to the parties of the school's grievance process, which must comply with the 10 items we listed before.
- It also has to include whether there is an opportunity to engage in informal resolution. Schools don't have to offer informal resolution processes, but if they choose to, it's important that they are mentioned in this initial notice.

When the school begins an investigation, it has to provide the parties that is the complainant and the respondent, written notice of searching information. For instance, it has to give notice to the parties of the school's grievance process, which complies with the 10 items we listed before. It also has to include whether there's an opportunity to engage in informal resolution. schools don't have to offer informal resolution processes. But if they choose to, it's important that they are mentioned in this initial notice

## Details of Written Notice

1. The actual allegations and facts that would constitute sexual harassment.
2. The presumption of innocence.
3. A statement that the parties are entitled to adviser of their choice.
4. A statement that the parties can request to inspect and review certain evidence.
5. Information regarding the code of conduct and false statements.

The written notice also needs to give the parties several pieces of additional information first, the written Notice must describe key details of the alleged sexual harassment incident, such as who was involved in the incident, the date and location of the incident if known, and the alleged misconduct that constitutes sexual harassment. Second, the notice also has to include a statement that the respondent is presumed not responsible at the outset of the process, and can only be found responsible after the grievance process concludes. Third, this notice also has to include a statement that the parties are entitled to an advisor of their choice. The advisor can be an attorney, but doesn't have to be. Fourth. The notice also has to include a statement that the parties can request to inspect And review certain evidence. It's a notice also has to include information regarding any provision in the recipients code of conduct, if it exists, that prohibits knowingly making false statements or submitting false information during the grievance process. No, that is satisfactory notice has to be provided to the parties before any initial interview with the respondent occurs and has to give the parties sufficient time for responding to prepare before an initial interview.

## Mandatory Dismissals

- A school must dismiss a complaint:
- that does not describe conduct that meets the definition of sexual harassment;
- that alleges sexual harassment that did not occur in the school's education program or activity;
- that alleges sexual harassment that did not occur in the United States at all.
- Schools can still address these complaints under their code of conduct, even if the misconduct is not sexual harassment under Title IX.

It's important to remember that a school must investigate every formal complaint and the school must send the initial written notice that we've described as soon as the school receives any formal complaint. But there are some instances where a formal complaint or some of the allegations in it must be dismissed outright by the school. And there are other situations where a complaint can be dismissed by a school within its discretion. The final regulation includes requirements for mandatory dismissals, and discretionary dismissals. First, let's discuss mandatory dismissals. A school must dismiss a complaint that does not describe conduct that meets the definition of sexual harassment that we discussed earlier. Or that alleges sexual harassment that did not occur in the school's education program or activity or that did not occur in the United States at all. The final regulations do not prevent a school from addressing misconduct that violates a state law or violates the school's own code of conduct, even if the misconduct is not sexual harassment under Title Nine

## Discretionary Dismissals

- A school may dismiss a complaint:
- if the complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or some of its allegations;
- if the respondent is no longer enrolled or employed by the school; or
- if specific circumstances prevent the school from gathering evidence sufficient to reach a determination about the allegations.

Now, let's turn to discretionary dismissals. There are circumstances when a school is allowed to use its discretion to dismiss a formal complaint or some of the allegations in it. A school can choose to dismiss if the complainant notifies the title nine coordinator in writing Meaning that the complainant wishes to withdraw the formal complaint or some of its allegations. A school can also choose to dismiss if the respondent is no longer enrolled or employed by the school or, if specific circumstances prevent the school from gathering evidence sufficient to reach a determination about the allegations. In each of these situations, the school can dismiss the formal complaint, but it also has the option to proceed. If it doesn't think dismissal is appropriate.

## Dismissal Procedures

- Whenever a school dismisses a formal complaint, or any allegations in it, the school has to promptly send written notice of the dismissal and the reasons to the parties.
- As we will mention later, both parties have the right to appeal a school's dismissal decisions.

Whenever a school dismisses a formal complaint, or any allegations in it, the school has to promptly send written notice of dismissal and the reasons to the parties. As we will mention later, both parties have the right to appeal a school's dismissal decision.

## Gathering Evidence: Schools and Parties

- The school must give both parties specific, equal rights and protections. These rights and protections apply whether the complainant filed the formal complaint, or whether the Title IX Coordinator began the investigation by signing the formal complaint.
- The school is not allowed to access a party's personal records if they are maintained by a physician, psychiatrist, psychologist, or other professional for the purpose of treatment to the party, without consent.

As a school's investigation proceeds, the school must give both parties specific equal rights and protections. These rights and protections apply whether the complainant filed a formal complaint, or whether the title nine coordinator began the investigation by signing the formal complaint. We should also mention that when the title nine coordinator signs the formal complaint, the school does not treat the title nine coordinator as the complainant or as a party to the grievance process. The title nine coordinator always remains impartial towards the complainant and the respondent. But despite being the one with a burden of proof in any given grievance process, The school is not allowed to access a party's personal records if they are maintained by a physician, psychiatrist, psychologist or other professional for the purpose of treatment to the party. Only if a party voluntarily consents in writing to the use of these materials, can the school access them.

## Gathering Evidence: Schools and Parties

- The school must provide an equal opportunity for the parties to have witnesses and evidence, including expert witnesses, as well as inculpatory or exculpatory evidence.
- The school can't restrict the ability of either party to discuss the allegations under investigation, or to gather and present relevant evidence.
- The school has to provide the same opportunities to the parties to have others present during the grievance proceedings, including access to an adviser of choice for any meetings or hearings.

The school has an ongoing duty to let the parties prepare for the time when a determination of responsibility will be made. The school must provide an equal opportunity for the parties to present witnesses and evidence, including expert witnesses, as well as inculpatory or exculpatory evidence. The school also can't restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. The school has to provide the same opportunities to the parties to have others present during the grievance proceedings, including access to an advisor of choice For any meetings or hearings,

## Gathering Evidence: Schools and Parties

- The school has to provide written notice of the date, time, location, participants, and purpose of all hearings, interviews, or other meetings, with sufficient time for the party to prepare.
- The school must also provide equal opportunities for the parties and their advisors to inspect and review the evidence obtained by the school as part of its investigation, if the information is directly related to the allegations raised the formal complaint.
- The school also has to give the parties a meaningful opportunity to respond to the evidence after the school has provided it.

there are other requirements as the school goes through the grievance process. The school has to provide written notice of the date, time, location, participants, and purpose of all hearings, interviews, or other meetings was sufficient time for the party to prepare. That goes for both complainants and respondents. The school must also provide equal opportunities for the parties and their advisors to inspect and review the evidence obtained by the school as part of its investigation. If the information is directly related to the allegations raised in the formal complaint, that could include documents, notes from interviews with students or employees or other types of evidence that the school gathers. And that even includes evidence that the school doesn't think it will use, or that it plans to use before reaching a determination as to whether sexual harassment occurred. The evidence can be sent in electronic format, or hardcopy that evidence must later be available at any hearing if a hearing occurs.



## Investigative Reports

- After gathering evidence, the school needs to prepare an investigative report on the allegations of the formal complaint.
- A school has to give the parties at least ten days to respond to the evidence in writing. If a response is submitted, the school must consider that response before finalizing the investigative report.
- The investigative report can then be finalized and provided to the parties.
- That report must be circulated to the parties at least another 10 days before any determination of responsibility, or 10 days before a hearing, if a hearing happens.

After gathering evidence, the school needs to prepare an investigative report on the allegations of the formal complaint. The regulations don't say how long the report has to be. But it does need to fairly summarize the evidence that the school has gathered about the alleged incident. But this report can't be finalized until the evidence sharing. We just don't mentioned happens. And even then, a school has to give the parties at least 10 days to respond to the evidence in writing. If a response is submitted, the school must consider that response before finalizing the investigative report. The investigative report can then be finalized and provided to the parties. That report must be circulated to the parties at least another 10 days before any determination of responsibility or 10 days before a hearing. If a hearing happens,



## Hearings (ESE)

- For elementary and secondary schools, the school has the option, but never the obligation, to hold a hearing.
- Even without a hearing, the elementary or secondary school must give still the parties equal opportunity to submit relevant, written questions to each other, before the decision-maker reaches a determination.
- Questions and evidence about a complainant's prior sexual history are not relevant, with two limited exceptions.

you might be wondering whether a hearing must take place where the parties get to ask questions in front present evidence to the person who will be reaching conclusions about the case? The answer depends on the type of school investigating the allegation of sexual harassment. For example, the elementary and secondary schools have the option but never the obligation to hold a hearing. But even without a hearing, the elementary or secondary school must give the parties equal opportunity to submit relevant written questions to each other before the decision maker reaches a determination. If a decision maker opts not to ask a question, it has to explain to the parties why the question isn't relevant to the issues in the hearing. It's important to note that the final regulations state that questions and evidence about a complainants purse textual history are not relevant, with too limited exceptions that we'll explain in a moment

## Hearings (PSE)

- At the postsecondary level, the school must hold a live hearing.
- The parties' advisors must be allowed to cross-examine other parties and witnesses.
- No party can ever be allowed to personally question or cross-examine anyone.
- If any party requests it, the entire hearing must be held with the parties located in separate rooms, with technology enabling everyone to see and hear each other.
- Cross-examination simply means that a party's advisor asks questions that might challenge the other party's denials, or allegations.
- Cross-examination questions must be relevant, and decision-makers must decide if a question is relevant BEFORE the party or witness has to answer it.
- A complainant's privacy must be protected by only allowing questions or evidence about prior sexual history in two narrow circumstances.

at the post secondary level School must hold a live hearing. And live hearing is an opportunity for both parties to tell their side of the story in front of the decision maker during a live hearing at a college or university, the party's advisors must be allowed to cross examine other parties and witnesses with real time back and forth questions and follow up questions, including questions that challenge credibility. But no party can ever be allowed to personally question or cross examine anyone. If any party requested, the entire live hearing must be held, with the parties located in separate rooms with technology enabling everyone to see and hear each other so that parties never need to face each other Person during a live hearing. cross examination simply means that a party's advisor asked questions that might challenge the other party's denials or allegations. The purpose is to help the decision maker arrive at a factually accurate decision about what happened. The final regulations specify that cross examination questions must be relevant, and that decision makers must decide if a question is relevant before the party or witness has to answer it. In addition, a complainants privacy must be protected by only allowing questions or evidence about prior sexual history into narrow circumstances where such information is offered to prove that someone other than that respondent committed The alleged sexual harassment or it relates to sexual behavior between the complainant and the respondent, and is offered to prove consent.

## Cross-Examination

- No party is EVER allowed to personally cross-examine anyone.
- The school must provide a party with an advisor, of the school's own choosing, free of charge, solely for the purpose of conducting cross-examination on that party's behalf.
- An advisor chosen by the school does NOT need to be a lawyer.
- By hearing each party's version of events, and hearing each party answer questions about their version of events, the neutral, unbiased decision-maker is more likely to reach an accurate determination regarding responsibility.

Again, no party is ever allowed to personally cross examine anyone. So what if a party shows up to hearing without an advisor? The final regulations require the school to provide that party with an advisor of the school's own choosing free of charge, solely for the purpose of conducting cross examination on that party's behalf. And advisor chosen by the school does not need to be a lawyer. In these situations, the advisors only job at the hearing is to relay a party's relevant cross examination questions to other parties and witnesses so that the parties themselves never personally confront anyone. By hearing each party's version of events, and hearing each party answer questions about their version of events. The neutral, unbiased decision maker is more likely to reach an accurate determination regarding responsibility.



## Participation and Cross-Examination

- The final regulations protect every person's right to choose to participate, or not participate, in any part of a grievance process.
- No one should be forced, threatened, coerced, or discriminated against for choosing not to be part of the school's grievance process.
- If a party or witness chooses not to appear at the live hearing, or not to answer cross-examination questions, the decision-maker excludes that party's or witness's statements and evaluates any evidence that doesn't involve those statements.
- The decision-maker must never make inferences about the determination regarding responsibility based on the fact that a party or witness didn't come to the hearing or submit to cross-examination.
- A school may hold the entire live hearing virtually, or a school may allow some participants to appear virtually, with technology that allows everyone to see and hear each other.

What if a party or witness chooses not to appear at the live hearing, or chooses not to answer cross examination questions? First and foremost, the final regulations protect every person's right to choose to participate or not to participate in any part of the grievance process. No one should be forced, threatened, coerced or discriminated against or choosing not to be part of the school's grievance process. If a party or witness chooses not to appear at the live hearing, or not to answer cross examination questions. The decision maker excludes that parties or witnesses statements and evaluates anything evidence that doesn't involve those statements. The decision maker must never make inferences about the determination regarding responsibility based on the fact that a party or witness didn't come to the hearing or submit your cross examination. To reiterate, a school cannot draw an inference about the refusal to testify, either positive or negative. To make it easier for schools to hold live hearings that accommodate the schedules of parties, advisors and witnesses. The final regulations allow a school to hold the entire life hearing virtually, or a school may allow some participants to appear virtually, with technology that allows everyone to see and hear each other.

## Recordings

- Schools also have to create an audio or audiovisual recording, or a transcript, of any live hearing, and make it available to the parties for inspection and review.
- It's important to remember that a school must ALWAYS comply with disability laws, so that individuals with disabilities who participate in a school's grievance process are appropriately accommodated, including with respect to the use of technology and the reliance on visual, auditory, or written modes of communication.

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Schools also have to create an audio or audio visual recording or transcript of any live hearing and make it available to the parties for inspection and review. It's important to remember that his school must Always comply with disability laws, so that individuals with disabilities who participate in a school's grievance process are appropriately accommodated, including with respect to the use of technology and the reliance on visual, auditory or written modes of communication.

## Decision-making: Objective and Unbiased

- The school's decision-maker needs to objectively evaluate the relevant evidence and reach conclusions about whether the respondent is responsible for the alleged sexual harassment.
- A school's decision-maker needs to use independent judgment, so the decision-maker cannot be the same person who conducted the investigation, and cannot be the school's Title IX Coordinator.
- Who are the decision-makers?
- Decision-makers must be free from conflicts of interest or bias for or against complainants or respondents, and must receive special training about how to be impartial and how to decide what evidence is relevant.
- The decision-maker will weigh the relevant evidence and decide whether it meets the school's standard of evidence for sexual harassment allegations.

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In an elementary or secondary school, whether or not a hearing was held, and in a post secondary institution, after a live hearing has been held, the school's decision maker needs to objectively evaluate the relevant evidence and reach conclusions about whether the respondent is responsible for the alleged sexual harassment. The school's decision maker needs to use independent judgment. So the decision maker cannot be the same person who conducted the investigation and cannot be the school's Title Nine coordinator We've used the word adjudicator or decision maker a few times in reference to the person or people who weigh the evidence, apply the standard of proof and make a decision. Who are these people? Well, the final regulations offer some requirements as to who these people cannot be. First, the person or people who make the decision about responsibility can't also be the ones who gathered the evidence in the first place. And they can't be the title nine coordinator. There has to be a separation between these roles under Title Nine in terms of who the adjudicators can be the adjudicators or decision makers must be free from conflicts of interest or bias for or against complainants or respondents and must receive special training about how to be impartial and how to decide what

evidence is relevant. The decision maker will weigh the relevant evidence and decide whether it meets the school's standard of evidence for sexual harassment allegations.

**Decision-making: Written Decisions**

After the evidence has been weighed, the determination has to be written. It must include:

- 1. the portion of the school's policies that was violated.
- 2. a description of the procedural steps that were taken by the school on the way to getting to that point.
- 3. a findings of fact section.
- 4. a section that draws conclusions after applying the facts to the portion of the school's policy that applies.
- 5. a statement and rationale for the ultimate determination of responsibility.
- 6. any disciplinary sanctions that the school will impose on the respondent, and state whether the school will provide remedies to the complainant.
- 7. a statement and rationale for any remedies for the complainant, addressing how those remedies will restore or preserve equal access.
- 8. a statement of the recipient's procedures, a statement that the parties have a right to appeal the initial determination regarding responsibility, and the permissible bases for appeal.

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Once the evidence has been heard, and the adjudicator or adjudicators proceed to make a finding, they have to comply with several requirements before issuing the determination. First, the determination has to be written and has to include a number of parts. One, it needs to include the portion of the school's policies that was violated. That can be a school's heterodyne policy, or its general policy against sexual harassment, if it adequately tracks the final regulations to the written determination has to describe all of the procedural steps that were taken by the school on the way to getting to that point, including describing all of the notices and interviews that took place and the site visits that occurred and the hearing itself. Third, the written determination needs to include a finding a fact section, where the adjudicator explains what facts were introduced at the hearing forth, it has to include a section that draws conclusions after applying the facts to the portion of the school's policy that applies. For each allegation that was made in the formal complaint. The written determination has to provide a statement and rationale for the conclusion as to each allegation in the formal complaint. Fifth, the written determination needs to include a statement and rationale for the ultimate determination of responsibility. Sixth, the written determination needs to describe any disciplinary sanctions that the school will impose on the respondent and say whether the school will provide remedies to the complainant, where the respondent is determined to be responsible for sexually harassing the complaint. The Department of Education will not second guess the school's decisions. About disciplinary action against the respondent. The final regulations require the school to give the complainant remedies designed to restore or preserve the complainants educational access. These remedies might be some of the same individualized services that schools must offer as supportive measures. But because the respondent has now been found responsible for sexual harassment, remedies may burden the respondent. For example, a complainants remedies might include a one way no contact order against the respondent that forbids the respondent from participating in the same extracurricular club or team that the complainant has joined. The school's Title Nine coordinator is responsible for effectively implementing remedies for the complainant. Seventh, the written determination must include a statement and rationale for any remedies for With the complainant, addressing how those remedies will restore or preserve equal access. Eighth, the written determination needs to include a statement of the recipients procedures, a statement that the parties have a right to appeal the initial determination regarding responsibility and the permissible bases for appeal.

Decision-making:  
After the  
Decision

- The school must send the written determination to the parties simultaneously, along with information about how to appeal the determination.
- A school has discretion to set deadlines for when an appeal must be filed, bearing in mind the obligation to conclude the entire grievance process and bring resolution to the situation for both parties, within a reasonably prompt time frame.
- The Title IX coordinator is responsible for carrying out the remedies contained in the written decision.

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The school must send a written determination to the party simultaneously, along with information about how to appeal the determination. The decision is final either one if the parties don't appeal or to at the conclusion of the appeal if either party files and appeal. School has discretion to set deadlines for when an appeal must be filed. Bearing in mind the obligation to conclude the entire grievance process and bring resolution to the situation for both parties within a reasonably prompt timeframe separately, the title nine coordinator is responsible for carrying out the remedies contained in the written decision.

Appeals

- A school has to offer both parties an opportunity to appeal.
- Appeals can be taken from two different steps in the process.
  - After a dismissal before the grievance process, whether mandatory or discretionary.
  - At the end of the grievance process.

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The new rule also addresses the rights of the parties to appeal a ruling. The school has to offer both parties an opportunity to appeal. appeals can be taken from two different steps in the process. One is the dismissal we discussed before, where a school must dismiss some complaints sometimes, and is allowed to dismiss other complaints and its discretion. At other times. either party can appeal those dismissals. The other chance to appeal is to appeal the ultimate finding of responsibility at the end of the grievance process.

## Grounds for Appeal

- 1. A procedural irregularity affected the outcome of the matter.
- 2. New evidence has been discovered that was not reasonably available at the time of the determination on responsibility or dismissal.
- 3. A conflict of interest on the part of a Title IX Coordinator, an investigator who compiled evidence, or a decision-maker, and the conflict of interest affected the outcome.
- 4. Schools can offer additional grounds for appeals, if they want to, so long as the grounds apply on an equal basis to the parties.

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The rule sets out that schools have to allow appeals on a handful of bases. But schools have the ability to expand those bases. If they want and if they do so, equally for complainants and respondents. First, either the complainant or the respondent can appeal on the grounds that a procedural irregularity affected the outcome of the matter. Second, either party can appeal on the grounds that new evidence has been discovered that was not reasonably available at the time of the determination on responsibility for dismissal. Third, either party can appeal on the grounds that there was a conflict of interest on the part of a title nine coordinator, an investigator who compiled evidence or a decision maker, and that the conflict of interest affected the outcome. Fourth, schools can offer additional grounds for appeals if they want to, so long as the grounds apply on an equal basis to the parties

## Appellate Processes

- The recipient has to notify the parties in writing and implement appeal procedures equally.
- Both parties must have equal opportunity to submit a written statement supporting or challenging the outcome.
- The person who decides the appeal cannot be the same person who reached the determination regarding responsibility, or the same person as the investigator or Title IX Coordinator.
- After considering the parties' written statements, the decision-maker on appeal has to issue a written decision and send it to the parties simultaneously.
- The school's determination about whether the respondent is responsible for the sexual harassment allegations becomes final after appeal.

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What if a party appeals?

if a party does file an appeal, the recipient has to notify the parties in writing and implement appeal procedures equally. Both parties must have equal opportunity to submit a written statement supporting or challenging the outcome. Importantly, the person who decides the appeal cannot be the same person who reached the determination regarding responsibility or the same person as the investigator or title nine coordinator. This requirement increases the chances that any error that led to the first outcome will be corrected by The school on appeal. After considering the party's written statements, the decision maker on appeal has to issue a written decision and send it to the parties simultaneously. At that point, the schools determination about whether the respondent is responsible for the sexual harassment allegations becomes final.

The image is a screenshot of a video player. On the left side, there is a blue vertical bar with the text "Informal Resolution" in white. The main area of the video is a light gray background with a bulleted list of points. At the bottom of the video player, there is a red progress bar and a control panel with icons for play, volume, and other settings. The time displayed is 59:38 / 1:11:29.

## Informal Resolution

- Schools can offer informal resolution in appropriate cases.
  - **Exception:** Where the respondent is an employee of the school.
- Informal resolution may only be attempted if each party enters the process completely voluntarily.
- A school can never force, threaten, or require any party, complainant or respondent, into going into informal resolution.
- If informal resolution proceeds, the school must provide a facilitator who is free from conflicts of interest or bias, and who has received special training.
- The school still needs to provide complainants and respondents with notice of the allegations, notice of their rights, information about whether an informal process is confidential, and about withdrawing from the process.

In appropriate cases, the school may facilitate a voluntary informal resolution of the formal complaint. There is an important exception. However, a school must never facilitate informal resolution of allegations that an employee sexually harassed a student. In other situations, the school has discretion to choose to offer and facilitate options such as mediation. As a way of resolving the allegations in a formal complaint, the final regulations place critical parameters around this option. However, the most important restriction on any informal resolution is that it must only be attempted if each party enters the process completely voluntarily. A school can never force, threaten, or require any party, complainant or respondent to go into informal resolution. Schools also can't force students to agree to informal resolution ahead of time as a condition for going to school or force employees to agree to informal resolution as a condition of employment. Further, if informal resolution proceeds, the school must provide a facilitator who is free from conflicts of interest or bias and who has received special training assuming there is mutual voluntary agreement to engage in informal resolution. The school still needs to provide complainants and respondents with notice of the allegations, notice of their rights, information about whether an informal process is confidential, and assurances that any party may withdraw from the informal process and resume the grievance process at any time before an agreement has been reached.

## 6. Other issues: Record-Keeping

- This duty extends for 7 years, and includes several categories of documents:
- 1. records of a school's investigation.
- 2. records of any appeal and the materials associated with an appeal .
- 3. records of any informal resolution process.
- 4. all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution. These materials also have to be posted on a recipient's website, or made available for public inspection if the recipient doesn't have a website.
- 5. records of the supportive measures that they took in response to a report or complaint of sexual harassment.

Our sixth topic is some of the other prominent features of the new regulations, such as retaliation and record keeping. Under the new regulations, schools also have specific record keeping duties to make sure that they retain relevant information. Duty extends for seven years, and includes several categories of documents. First, records of a school's investigation, including any determination regarding responsibility, and any appeal or informal resolution and the audio or audio visual recording or transcript of any hearing, and a record of any discipline against the respondent or remedies provided to a complainant. Second, schools need to keep records of any appeal and the materials associated with an appeal, such as the written statements submitted by the parties. Third, schools need to keep records of any informal resolution process, such as notices that go out to the parties preceding informal resolution and other documents created during the process. Fourth, schools must retain all materials used to train Title Nine coordinators investigators decision makers and any person who facilitates an informal resolution. These materials also have to be posted on a recipients website, or made available for public inspection. If the recipient doesn't have a website. Fifth, schools must keep records of the supportive measures that they took in response to a report or complaint of sexual harassment. This includes situations when a recipient offers supportive measures to a complainant only, and where the alleged victim of sexual harassment opts not to proceed with a formal complaint. Even in these cases, a school's record keeping has to include the basis for its belief that it was not deliberately indifferent, and that it took measures designed to restore or preserve equal access to its education program or activity. These record keeping requirements help hold schools accountable for meeting their title nine obligations. If the department needs to investigate whether the school responded appropriately to a sexual harassment situation, the school will have documentation describing its response. Requiring these types of records also reminds the school to carefully consider every response to sexual harassment, making it more likely that every complainant and every respondent will receive the rights and benefits provided for in the final regulations.

## Other issues: Retaliation

- No school or person is allowed to retaliate against anyone for exercising rights under Title IX.
- Any person retaliated against can file a complaint with the school and the school must have procedures in place for the prompt and equitable resolution of such complaints.
- The school should keep the identities of parties and witnesses confidential, unless disclosure of someone's identity is required under other laws or is necessary in order to conduct the grievance process.

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## Retaliation: Code of Conduct Issues

- If a school charges a person with a code of conduct violation for the purpose of discouraging the person from pursuing a sexual harassment report or formal complaint, or exercising any other Title IX rights, that's retaliation.
- If a code of conduct charge is for a violation unrelated to sexual harassment yet arises from the same facts as a sexual harassment allegation, that may be prohibited retaliation.

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We understand that fear of retaliation is one reason why some people are reluctant to report sexual harassment. file a formal complaint about sexual harassment or participate in a grievance process. The final regulations state clearly that no school or person is allowed to retaliate against anyone for exercise. rights under Title Nine if any person believes they have been intimidated or threatened or coerced, or discriminated against, in an effort to chill the exercise of Title Nine rights the person retaliated against can file a complaint with the school and the school must have procedures in place for the prompt and equitable resolution of such complaints to make retaliation less likely, and to generally protect party's privacy in Title Nine situations. The final regulations also require the school to keep the identities of parties and witnesses confidential unless disclosure of someone Identity is required under other laws, or is necessary in order to conduct the grievance process.

**Non-retaliatory conduct**

- It is NOT retaliation for a school to punish someone for making a bad-faith, materially false statement during a Title IX grievance process.
  - Note: The school cannot draw a conclusion of bad faith based on the outcome of the case.
- The anti-retaliation provision in the final regulations also expressly states that engaging in protected speech under the First Amendment never constitutes retaliation.

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one form of retaliation that the final regulations call attention to is when a school charges a person with a code of conduct violation for the purpose of discouraging the person from pursuing a sexual harassment report or formal complaint, or exercising any other Title Nine rights. The final regulations specifically state that if a code of conduct charge is for a violation, unrelated to sexual harassment, yet arises from the same facts as a sexual harassment allegation that may be prohibited retaliation. The final regulations also state that it's not retaliation for school to punish someone for making a bad faith materially false statement during a time Nine grievance process, as long as the school does not draw that conclusion solely based on the outcome of the case. The anti retaliation provision and the final regulations also expressly states that engaging in protected speech under the First Amendment never constitutes retaliation. This is just one of the ways the final regulations ensure that title nine is enforced, consistent with everyone's first amendment rights.

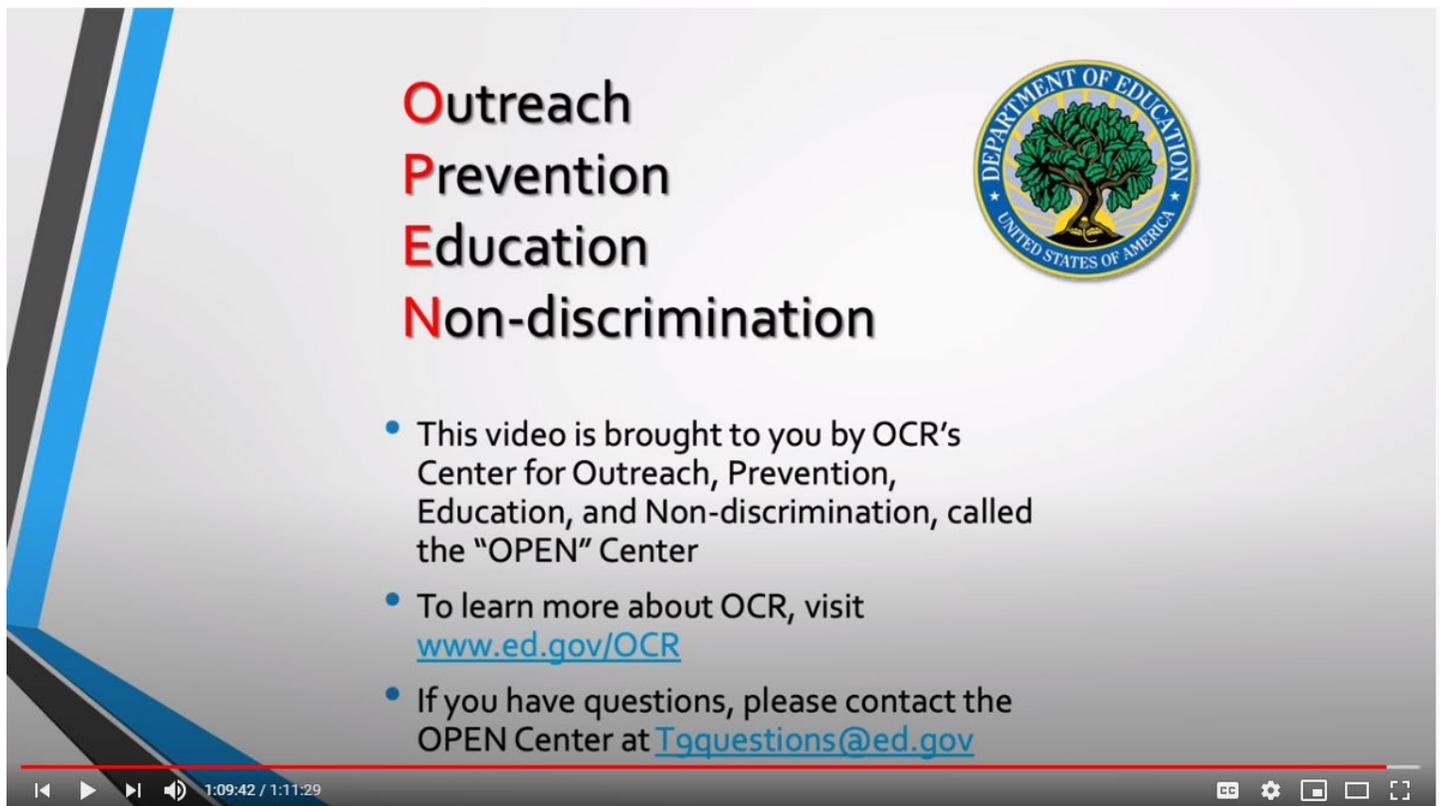
**7. Free Speech**

- OCR can never require a school to violate the First Amendment.
- When OCR investigates a school for possible Title IX violations, OCR will never view a school's attempt to suppress free speech as an appropriate response to sexual harassment.

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Our seventh and last topic is how the new regulations protect free speech. And its 2001 revised sexual harassment guidance the department recognized that title nine is not intended to regulate the content of speech, and that the offensiveness of a particular expression as perceived by some students standing alone is not a legally sufficient basis to establish a set hostile environment under Title Nine. The final regulations echo this guidance and follow other long standing department guidance that since 2003, has advised schools, students and school employees that OCR can never require a school to violate the First Amendment. The final regulations codified this fact. As part of the federal government. The department is never allowed to interpret laws or regulations in a way that makes it school restrict constitutional rights, including free speech rights. And when OCR investigates a school for possible Title Nine violations, OCR will never view a school's attempt to suppress free speech as an appropriate response to sexual harassment. In other words, a school can

never rely on restricting constitutionally protected speech as a way of showing the school satisfied. It's doing Not to be deliberately in differential alleged sexual harassment.



The image is a screenshot of a video player. The main content is a slide with a white background and a blue and grey decorative border on the left. The slide features the following text:

# Outreach Prevention Education Non-discrimination

DEPARTMENT OF EDUCATION  
UNITED STATES OF AMERICA

- This video is brought to you by OCR's Center for Outreach, Prevention, Education, and Non-discrimination, called the "OPEN" Center
- To learn more about OCR, visit [www.ed.gov/OCR](http://www.ed.gov/OCR)
- If you have questions, please contact the OPEN Center at [T9questions@ed.gov](mailto:T9questions@ed.gov)

At the bottom of the slide, there is a video player control bar with a red progress line. The time displayed is 1:09:42 / 1:11:29. The control bar includes icons for play/pause, volume, and full screen.

What if you have further questions? understandably, people will have questions about the new regulations. In that regard. The department has prepared for a robust effort to engage in technical assistance with educators and the public, which includes the creation of a new open center. The open center is standing ready to field questions regarding the new regulations and the important topic of sexual harassment and can be reached at this email address. T nine questions@ed.gov. new regulations become effective on August 14 2020 to file a complaint online, or learn more about the complaint process, please visit [orcas.ed.gov](http://orcas.ed.gov) that's o C's CRC a s dot e d dot g o v. Additionally, be sure to check out OCR a new series of short webinars available on YouTube, covering an array of relevant topics. Thank you for your commitment and the hard work that you do every day to invest in our nation's children and our future. On behalf of all of us here at FCR. We appreciate it. that each of you does this work, because you know it makes a difference in the life of students who attend your school. We look forward to continued cooperation between your school and the US Department of Education to improve educational access for all of our students.

