



Title IX Training

Stephanie Klupinski
Attorney, Callender Law
stephanie@callenderlawgroup.com
February 5, 2026

Topics Covered



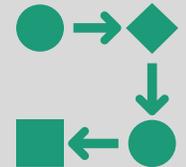
Intro, Overview, and Terminology



Title IX Team



Scope of School's Education Program or Activity



Step-by-Step Process



Intro, Overview, and Terminology

Introduction to Title IX

- Title IX was passed in 1972 and states: "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." (In NC this includes gender)
- The DOE released new Title IX regulations under the first Trump administration, which went into effect on **August 14, 2020 (the "2020 regulations")**
- The Biden Administration made changes to those regulations but now everyone is back to the 2020 regulations.



Title IX: Enforcement

- U.S. Department of Education's Office of Civil Rights oversees Title IX compliance and other federal civil rights laws applying to school.
- OCR issues regulations about Title IX. See 34 C.F.R. Part 106
- OCR has the power to receive complaints about violations of Title IX, investigate complaints, issue remedial measures and sanctions, and even strip a school's federal funding for violations of Title IX.



Overtone of 2020 Changes to Regulations

Focus on due process

Equitable treatment of accuser and accused.

Eliminating immediate disciplinary actions taken against accused.

Slowing down of handling of Title IX cases (e.g., time given to parties to review the case file, time given to review and ask questions regarding the investigative report, etc.).

- K-12 cases have tended to be handled faster than college/university cases due to school administrations' ability to more efficiently summon students.
- New notice requirements, for example, prevent front offices from simply calling a respondent down to talk about allegations, as they may have done before.

Key Definitions

- **Advisors:** Parties may have an advisor participate (can be an attorney).
- **Complainant** means an individual who has reported being the victim of conduct that could constitute sexual harassment, or on whose behalf the Title IX Coordinator has filed a formal complaint.
 - *Note: parents may file complaints for their children.*
- **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- **Recipient** means the institution charged with receiving and handling complaints (i.e., the school).
- **Formal complaint** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.

Sexual Harassment Definition

Sexual Harassment means conduct on the basis of sex that falls under one or more of the following:

- 1) **Quid pro quo harassment.** An employee conditioning an educational aid, benefit, or service on an individual's participation in unwelcome sexual conduct.
- 2) **Unwelcome conduct on the basis of sex** that is *so severe, pervasive, and objectively offensive* that it effectively denies a person equal access to the school's education program or activity (i.e., hostile environment).

Note: THIS IS NARROW

- 3) **Sexual assault** as defined in the Clery Act, or dating violence, domestic violence, or stalking as defined in the Violence Against Women Act.



Title IX Team

The Title IX Team

- Regulations expressly prohibit the Single Investigator Model, where the investigator is also the decision-maker determining responsibility in Title IX cases.
- Thus, the decision-maker must be separate from the Title IX Coordinator or investigator.
 - *Rationale:* one person cannot effectively serve as detective, prosecutor, judge, and jury.
- As such, schools should consider splitting roles for handling Title IX issues.



4-part Title IX team:

Title IX Coordinator, Investigator,
Decision-maker, and Appeals Board

The Title IX Team



Regulations expressly prohibit the Single Investigator Model, where the investigator is also the decision-maker determining responsibility in Title IX cases.



The decision-maker must be separate from the Title IX Coordinator or investigator. Why? One person cannot effectively serve as investigator, prosecutor, judge, and jury.



As such, schools should consider splitting roles for handling Title IX issues.

Title IX Coordinator

- Must have one designated employee to coordinate efforts to comply with and carry out responsibilities under Title IX.
- Contact info for Coordinator MUST be on website and in handbook.
- This person will coordinate the school's response to all reports and complaints involving possible sex discrimination, including sexual harassment; monitor outcomes; identify patterns; assess effects on school climate.
- They also will provide training and technical assistance to staff on school policies and procedures related to sex discrimination and Title IX.
- Also must document responses to complaints; documentation must include actions taking and any supportive measures provided. Also document why supportive measures might not have been provided.

Title IX Coordinator

When notified of conduct that reasonably may constitute sex discrimination, a Title IX Coordinator must:

- Treat the complainant and respondent equitably.
- Offer and coordinate supportive measures.
- Notify complainant and respondent of grievance procedures and informal resolution processes.
- Initiate grievance procedures and, if requested, informal resolution processes.
- Determine whether to initiate complaint in the absence of complaint or withdrawal of allegations.
 - If self-initiating, notify complainant prior and address reasonable concerns about safety.
- Take steps to ensure that sex discrimination does not continue.

Role of the Investigator



Facilitate interviews



Document and make concerned parties aware of status of investigation proceedings



Share relevant evidence



Issue an investigative report summarizing evidence before a determination regarding responsibility is made

Role of the Decisionmaker

- In Title IX cases, the decisionmaker is primarily tasked with issuing a determination regarding responsibility after reviewing the evidence and findings of the investigation.
- The decisionmaker may be a faculty member, administrator, or other person (such as a school board member), depending on the circumstances of the complaint.



Role of the Appeals Board

The job of the appeals board is to review the case and its determination and issue a ruling at the conclusion of their review.

The appeals board may consist of faculty, administrators, or other actors (such as school board members) depending on the circumstances of the appeal.



Duty to Avoid Bias and Conflicts of Interest

- Focus on integrity of process. Not the outcome.
- Recognize and understand what your biases are and put them aside.
- Cultural competency – understand unconscious biases.
- Title IX team must not be biased or conflicted.
 - *Bias* is a mental inclination or tendency; prejudice; predilection.
 - *Conflict of interest* means a real or seeming incompatibility between one's private interests and public duties.
 - May not be biased for or against Complaints or Respondents, generally.
 - May not be biased for or against any individual Complainant or Respondent involved in the complaint.



Scope of Responsibility

Scope of Responsibility

- “Actual knowledge”
- of “sexual harassment” (as defined)
- that occurred within the school’s “education program or activity”
 - includes locations, events, or circumstances over which the recipient exercised substantial control over the respondent and the context in which the sexual harassment occurred
 - Note that this is a broad definition. Look at whether conduct occur in location/context where school:
 - Owned premises
 - Exercised oversight, supervision or discipline, or
 - Funded, sponsored, promoted or endorsed event
- against a “person in the United States.”



NOTE: a school may address sexual harassment affecting its students or employees that falls *outside* Title IX’s jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline

- This includes issues occurring outside Title IX’s narrow sexual harassment definition, education programs or activities, as well as issues occurring outside of the United States.

Actual Knowledge

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a School's Title IX Coordinator, or any official of the School who has authority to institute corrective measures on behalf of the recipient.

For K-12 Schools, this means that **ALL teachers and staff** are required to report allegations of misconduct that they have witnessed or heard about to the Title IX Coordinator.



Actual Knowledge, Continued

No limit to how schools may receive notice of sexual harassment, or who can provide it. It can be from any person, including those unaffiliated with the school.

Info can be oral, personally observed, news article, social media post, etc.

Schools must respond to notice of alleged facts that, if true, could be considered sexual harassment.

All staff and teachers must report allegations of misconduct they have heard about to Title IX Coordinator.

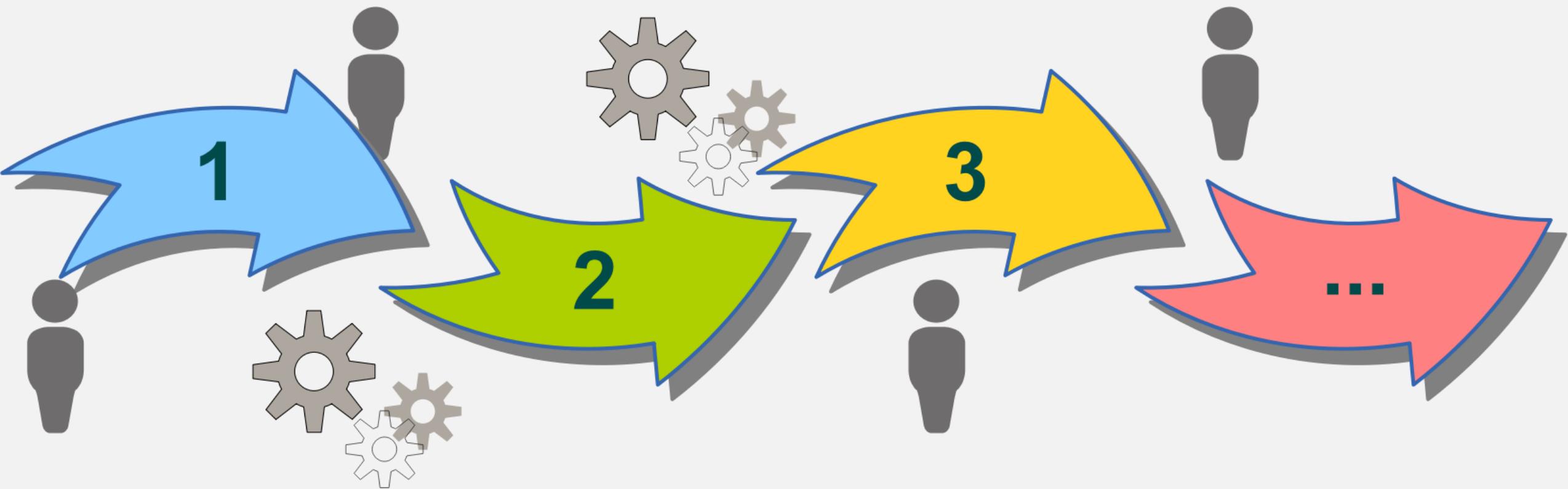
Sexual Harassment

Conduct on the basis of sex that satisfies one or more of the following:

Quid pro quo harassment. When an employee conditions an educational aid, benefit, or service on an individual's participation in unwelcome sexual conduct.

SPOO. Unwelcome conduct on the basis of sex determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the school's educational program or activity; or

Sexual Assault/Violence/Stalking. Sexual assault as defined in the Clery Act, or dating violence, domestic violence, or stalking as defined in the Violence Against Women Act.



Step-by-Step Process

Step 1: Assess the Situation

FIRST...know that the complaint or information can come from employee, student, or parent. It does not have to come from the complainant directly.

Ask the complainant any clarifying questions you feel are necessary. If the complaint is verbal, ask the complainant to put it in writing. If they refuse, write a statement of what you were told.

Promptly notify the Title IX Coordinator of the complaint or incident that was brought to your attention. They can determine whether formal written complaint should be made, who should conduct the investigation, and the initial investigation strategy.

Determine mandatory and discretionary reporting obligations (e.g. law enforcement if potential criminal activity). This might happen after an initial assessment, as discussed later.

Considerations when Deciding Whether Title IX Coordinator Should Initiate a Complaint

Complainant's **request** not to proceed

Complainant's **reasonable** safety **concerns**

Risk that **additional** acts of sex discrimination might occur without a complaint

Severity of the alleged sex discrimination

Would a finding of responsibility result in removal or imposition of another sanction?

Age and **relationship** of the parties

Scope of the alleged sex discrimination

Availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred

Whether the recipient could **end** the alleged sex discrimination and **prevent** its recurrence without initiating its grievance procedures

Step 2: Supportive Measure (Immediately and Ongoing)

In consultation with the Title IX Coordinator, determine whether **interim non-disciplinary, non-punitive measures** should be put into place, before the investigation is completed, to protect or support the complainant and/or respondent. Interim measures should:

- be considered on a case-by-case basis
- not unfairly penalize the complainant or the respondent
- consider both the complainant's and the respondent's rights to access educational programs and activities



Step 2 (Continued): Supportive Measures

Appropriate supportive measures to consider include, but are not limited to, the following:

- Physical separation of the complainant and the respondent
- Offer medical, counseling or other support services to the complainant
- No contact orders
- Support services for bringing forth and defending allegations of sexual harassment/misconduct
- Any other measures requested by the complainant or respondent

Hold Off on Discipline Until Process Complete

- Title IX regs impose an intensive and lengthy process for
- intake, investigation, and determination of conduct
- involving sexual harassment or assault
- **This entire process MUST be completed BEFORE any discipline is imposed**
- If the conduct does (or seems like it might) implicate Title IX, **STOP** and call the Title IX Coordinator **BEFORE** investigating and **BEFORE** imposing any discipline, except....



Emergency Removal in Certain Limited Situations

- No discipline without following grievance process...
- Except you can do emergency removal if evidence that the respondent might be a danger to the school community.
- In that case, refer to Threat Assessment Team



Step 3. Conduct a Title IX Complaint Screening

Conduct a preliminary investigation to determine whether Title IX applies.

Does the conduct alleged meet the definition of Title IX?

- Quid Pro Quo
- Unwelcome conduct on the basis of sex that is **so severe, pervasive, and objectively** offensive that it effectively denies a person equal access to the school's education program or activity (i.e., hostile environment).
- Sexual assault as defined in the Clery Act, or dating violence, domestic violence, or stalking as defined in the Violence Against Women Act.

If it does not meet this definition, notify the parties and follow your Code of Conduct.

Step 4: Start the Title IX Formal Process

If the
conduct
alleged, if
true, meets
the criteria
for Title IX,
then:

Make sure you have a **formal written complaint**.

Send a **Notice of Allegations** Letter to all Complainant and Respondent notifying them of the complaint, procedures, next steps, and timeline.

Consider offering **informal resolution**. Ask parties if they would like to proceed with the formal process or the informal process.

- Both parties must agree to the informal process
- Either party can ask to end informal process at any time
- Cannot use informal process if complaint involves staff member conduct vis a vis a student

Informal Resolution

1. Schools, in their discretion, can offer informal resolution options, such as mediation or restorative justice.
2. In order to pursue this option:
 - Both parties must give voluntary, informed, written consent.
 - Schools cannot require pursuing informal resolution as a condition of enrollment or employment.
 - Schools cannot offer informal resolution unless a formal complaint has been filed.
 - Schools cannot offer informal resolution for allegations that an employee sexually harassed a student.
3. If matter resolved through informal resolution, notify all parties of the resolution in writing.
4. Resolution through informal resolution can include supportive measures as well as discipline through the school's code of conduct.

Note 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 with respect to formal complaint. And parties can use informal resolution at any time even if they decline at first. You can offer it again, not just at the beginning.

Informal Resolution

IF PARTIES DID NOT RESOLVE MATTER THROUGH INFORMAL RESOLUTION, OR IF PARTIES DO NOT AGREE TO INFORMAL RESOLUTION, YOU MUST START THE FORMAL RESOLUTION PROCESS.

IF WENT THROUGH INFORMAL PROCESS, THEN WILL NEED TO DO ANOTHER NOTICE OF ALLEGATIONS TO SET PROCESS AND TIMELINES AS WELL AS PROVIDE INFORMATION ON INVESTIGATOR AND DECISION MAKER.

THEN INVESTIGATOR SHOULD BEGIN THEIR INVESTIGATION.

Step 5 – The Investigation



- Start the investigation!
- Schools **must investigate the allegations in any formal complaint** and send written notice to both parties (complainants and respondents) of the allegations upon receipt of a formal complaint.
- During the grievance process and when investigating:
 - The **burden of gathering evidence and burden of proof** must remain on schools, not on the parties.
 - Schools **must provide equal opportunity** for the parties to present fact and expert witnesses and other inculpatory (implying responsibility) and exculpatory (denying responsibility) evidence.
 - **Evidence** must be **relevant** and not otherwise impermissible.
 - Schools **must not restrict** the ability of the parties to discuss the allegations or gather evidence
 - Parties must have the same opportunity to select an **advisor of the party's choice** who may be, but need not be, an attorney.

Investigator Responsibilities

- Review and collect all evidence including interviews.
- Provide opportunity for each party to inspect and review all direct evidence including documents and videos and interviews.
- Each party given 10 days to provide a response to the evidence they have reviewed.
- After interviews completed, evidence reviewed and gathered and responses reviewed, draft investigative report, which should Detail the steps taken during your investigation and the evidence considered, including:
 - How the issue was brought to your attention and what actions you took
 - Description of who you interviewed and what they told you
 - Description of the documents you reviewed
 - Assessment of the credibility of each witness
- Send investigative report to parties.



A Word About Interviews



- Depending on the circumstances, you may want to request a **written statement**. If so, make sure it is signed and dated.
- Do *not* promise confidentiality. However, every effort should be made to keep the identity of the involved parties confidential to avoid retaliation.
- Do not use, rely on, or seek disclosure of information protected under a legally recognized privilege (i.e., medical information), unless the person holding such privilege has waived the privilege.

Write and Share Investigation Report

Once done collecting evidence, the investigator must share findings.

- The law requires schools provide opportunity for each party (complainant and respondent) to inspect and review all direct evidence, including documents, videos and interviews.
- Each party receives 10 days to review and, if desired, provide a response to the evidence they have reviewed.
- After the interviews are completed, the evidence has been gathered and shared, and any responses from parties submitted, the investigator should draft investigative report.
- The investigative report shall detail the steps taken during the investigation and the evidence considered, including the following:
 - How the issue was brought to your attention and what actions you took
 - Description of who you interviewed and what they told you
 - Description of the documents you reviewed
 - Assessment of the credibility of each witness
- Send parties an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for parties to respond.

Investigation Reminders

Notice

Schools must send written notice of any investigative interviews, meetings, or hearings.

Share Evidence

Schools must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence.

Share Report

Schools must send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond.

Step 6

Decision Maker

- After the Investigator 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.
- Allow parties a few days to provide you with their questions.
- Then send any relevant questions to the party.



Decision-Maker



The School, through the Title IX Coordinator or other authorized School official, shall designate a Decision-maker with regard to a Title IX complaint. The Decision-maker shall not be the Title IX Coordinator or Investigator, and shall not be someone with a conflict of interest or bias.

Decision-maker must start with the presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

All Complainants are afforded rape shield protections, deeming questions and evidence about a complainant's prior sexual behavior irrelevant, unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.

Decision-Maker



Use the preponderance of the evidence standard in reaching her/his decision.

Issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant.

The written determination must be sent simultaneously to the parties along with information about how to file an appeal.

Step 8 Appeal

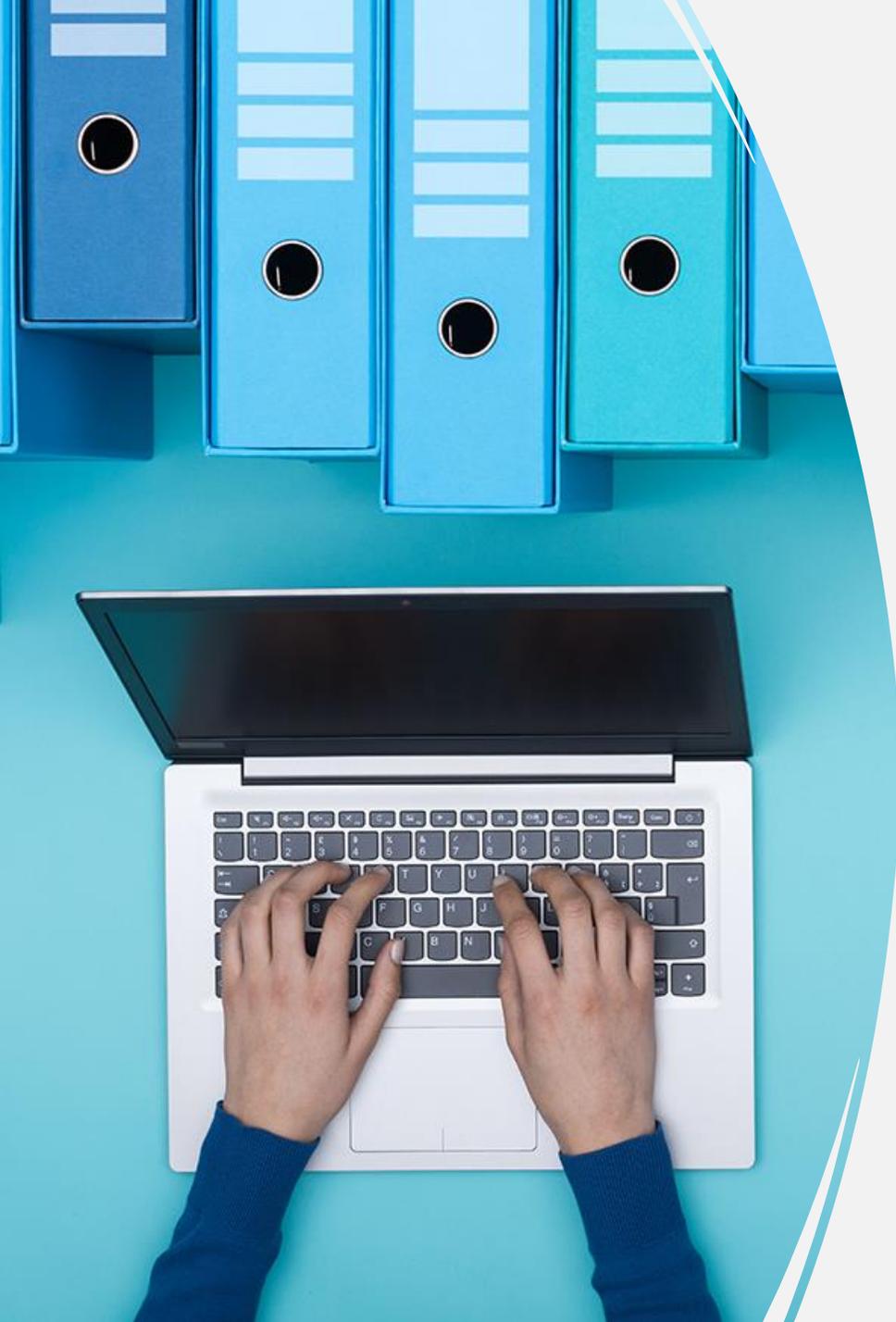
The new regulations dictate that schools must offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on the following bases:

- procedural irregularity that affected the outcome of the matter.
- newly discovered evidence that could affect the outcome of the matter.
- Title IX personnel had a conflict of interest or bias that affected the outcome of the matter.
 - NOTE: schools may also offer an appeal equally to both parties on additional bases.



Additional Notes and Reminders





Record Keeping

Title IX regulations require the school to keep the following records for 7 years:

- Sexual harassment investigation documents, including any determination regarding responsibility, any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, any remedies provided to the complainant
- Appeals and results therefrom
- Informal resolution and results therefrom
- All materials used to train coordinators, investigators, decision-makers, and persons who facilitate an informal resolution process (such materials must also be made available on school website)

The school should meticulously keep records in case it must ever document how its behavior was not “deliberately indifferent” in a Title IX proceeding.

Retaliation Prohibited

- Expressly prohibits retaliation against any individual for exercising Title IX rights:
 - Protections for individuals making a complaint, testifying, or otherwise assisting.
 - Prohibiting charges against an individual for another code of conduct violation not involving sex discrimination or sexual harassment arising out of same circumstances.
 - Requirements for confidentiality of all individuals involved.
- Notable exceptions:
 - exercise of First Amendment Rights.
 - making a materially false statement during a proceeding.
- Any person retaliated against can file a complaint with the school, and the school must address the complaint promptly and equitably, as with Title IX complaints.
- NOTE: Schools should make every effort to keep the identifies of parties and witnesses confidential to avoid retaliation complaints.

Mandatory Dismissal of Complaint

Schools **must dismiss** allegations of conduct that:

- do not meet the new definition of sexual harassment
- did not occur in a school's education program or activity and/or are
- not against a person in the U.S.



NOTE: such dismissal is only for Title IX purposes and **does not** preclude the school from addressing the conduct in any manner the school deems appropriate.

Discretionary Dismissal of Complaint

Schools may, in their discretion, **dismiss a formal complaint or allegations therein if:**

1. the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein;
2. if the respondent is no longer enrolled or employed by the school; or
3. if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.

NOTE: Schools must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.

