

GICA CCP

2026-2027 Title IX Advisor Training

GICA COMPLIANCE COLLABORATIVE PROGRAM





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Welcome

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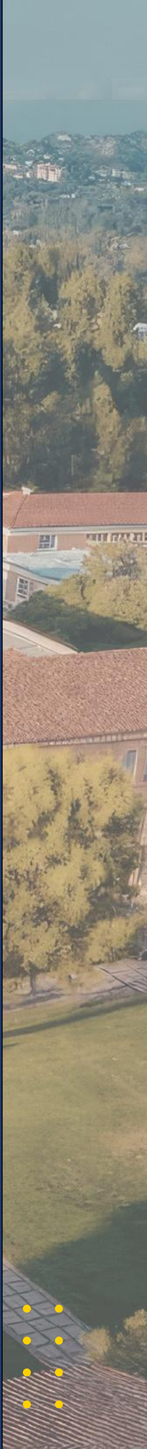
Agenda



- Definitions
- Title IX Process
- Informal Resolution Process
- Formal Process
- Role of Advisor



DEFINITIONS



Definition

Sexual Harassment

“Conduct on the basis of sex that satisfies one or more of the following:
(1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct; (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or (3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30). “

34 CFR Sec. 106.30

Definition

Sex

- “Executive Order 14168
- Federal Register :: Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government
- Dear Colleague Letter – January 31, 2025
- Dear Colleague Letter – February 4, 2025 Title IX Enforecment Directive DCL (PDF)

Definition

Education Program Activity

““[E]ducation program or activity” includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.”

34 CFR Sec. 106.44(a)

Definition

Recognized, Off-Campus Student Organization

“Recognized, Off-Campus Student Organizations: [W]here a postsecondary institution has officially recognized a student organization, the recipient’s Title IX obligations apply to sexual harassment that occurs in buildings owned or controlled by such a student organization, irrespective of whether the building is on campus or off campus, and irrespective of whether the recipient exercised substantial control over the respondent and the context of the harassment outside the fact of officially recognizing the fraternity or sorority that owns or controls the building.”

Title IX Reg.; Pages 625-626 (May 6, 2020, DoE website)

Definition

Misconduct Outside Education Program or Activity

Discretion to Levy Separate Conduct Charges for Misconduct Outside Education Program or Activity: [N]othing in the final regulations precludes the recipient from choosing to also address allegations of conduct outside the recipient's education program or activity."

- Title IX Reg.; Pages 631 and 634 (May 6, 2020, DoE website)

Definition

Formal Complaint

“[A] document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.”

34 CFR Sec. 106.30

Definition

Complainant

“[A]n individual who is alleged to be the victim of conduct that could constitute sexual harassment.”

34 CFR Sec. 106.30

“Complainant Connection to Education Program or Activity: [A] complainant must be participating in, or attempting to participate in, the recipient’s education program or activity at the time of filing a formal complaint.”

Title IX Reg.; Pages 411 and 708 (May 6, 2020, DoE website)

Definition

Respondent

“[A]n individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.”

34 CFR Sec. 106.30

“Student, Employee, and Faculty Respondents: [A]ny “individual” can be a respondent, whether such individual is a student, faculty member, another employee of the recipient, or other person with or without any affiliation with the recipient.”

Title IX Reg.; Page 146 (May 6, 2020, DoE website)

Definition

No Conflict of Interest of Bias

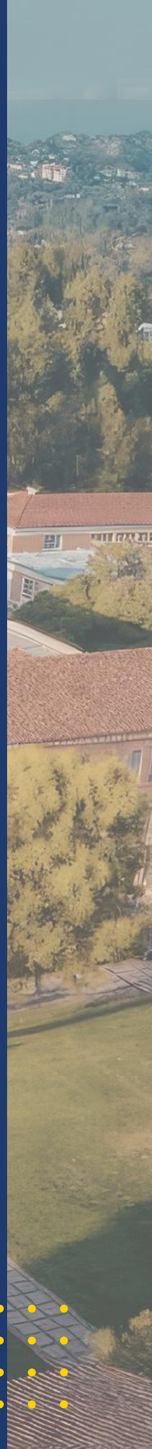
"[A]ny individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, [must] not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent."

- 34 CFR Sec. 106.45 (b)(1)(iii)



TITLE IX PROCESS





Investigative Process

Written Notice Required

Written notice required

34 CFR Sec. 106.45(b)(2)

Investigative Process

Reasonable Prompt Time Frames

“Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes.”

34 CFR Sec. 106.45 (b)(1)(v)

Investigative Process

No Gag Order

“Recipient must [n]Not restrict the ability of either party to discuss the allegation under investigation or to gather and present relevant evidence.”

34 CFR Sec. 106.45(b)(5)(iii)

Investigative Process

Presumption of Not Responsible

“Include a 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.”

34 CFR Sec. 106.45 (b)(1)(iv)

Investigative Process

Rights of Complainant and Respondent

- Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.
- Inform have right to advisor
- May inspect and review evidence
- Inform that could be subject to Code of Conduct if false statements

Investigative Process

Rights of Complainant and Respondent (cont.)

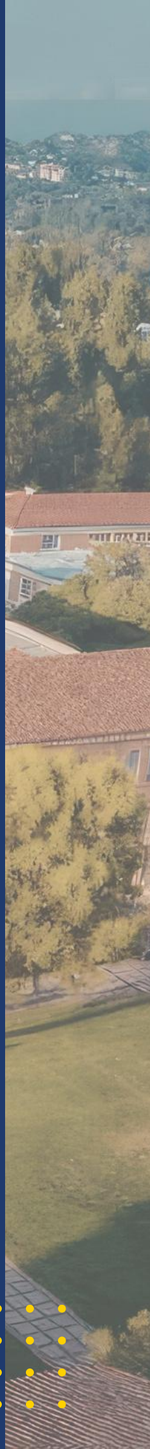
- Written notice of any meetings, hearings, etc. with sufficient time to prepare
- Requirement to supplement if additional allegations.

34 CFR Sec. 106.45(b)(5)(v); 34 CFR Sec. 106.45(b)(2)(ii); 34 CFR Sec. 106.45(b)(2)(B)





INFORMAL RESOLUTION



Informal Resolution

Institution May Not Require Informal Resolution

“Recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints. . . Similarly, a recipient may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed.”

34 CFR Sec. 106.45 (b)(9)

Informal Resolution

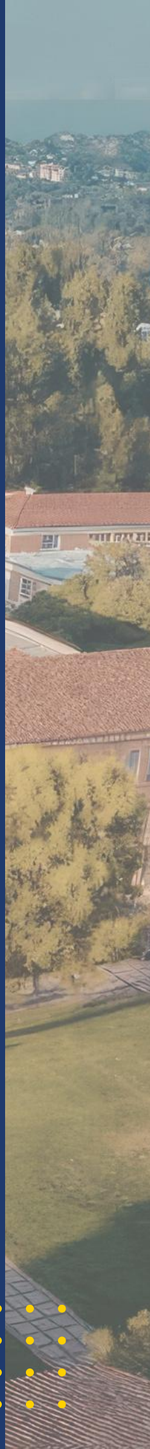
Role of the Mediator

- Resolve the matter





FORMAL RESOLUTION





Burden of proof

Defined in Institutional Policy

Preponderance of the evidence

- More likely than not.

Clear and convincing

- Higher burden of proof; the evidence is substantially more likely to be true than not true.
- Institution, not the parties, has the burden of proof.



Investigative process

Inspect and Review Evidence

“Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.”

•34 CFR Sec. 106.45 (b)(3)(vi)





Investigative process

Preliminary Report

“Prior to completion of the investigative report, the recipient must send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.”

•34 CFR Sec. 106.45 (b)(3)(vi)





Investigative process

Investigation Report

“Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, send to each party and the party’s advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.”

•34 CFR Sec. 106.45 (b)(3)(vii)





Investigative process

Non-Disclosure Agreement

“NDAs Permitted: [R]ecipients may impose on the parties and party advisors restrictions or require a non-disclosure agreement not to disseminate any of the evidence subject to inspection and review. “

• 85 Fed. Reg 30026, 30435 (May 19, 2020)





Live hearing

Role of Decisionmaker

- Parties are physically present.
- Advisors for both the Complainant and Respondent are present and conduct cross-examination.
- Rulings are made by the Decisionmakers.
- Certain questions are excluded (hearsay, rape shield protection, medical records, and privileged communications).
- Investigators typically testify/review their Investigative Report.
- Decisionmakers render the decision and sanctions.

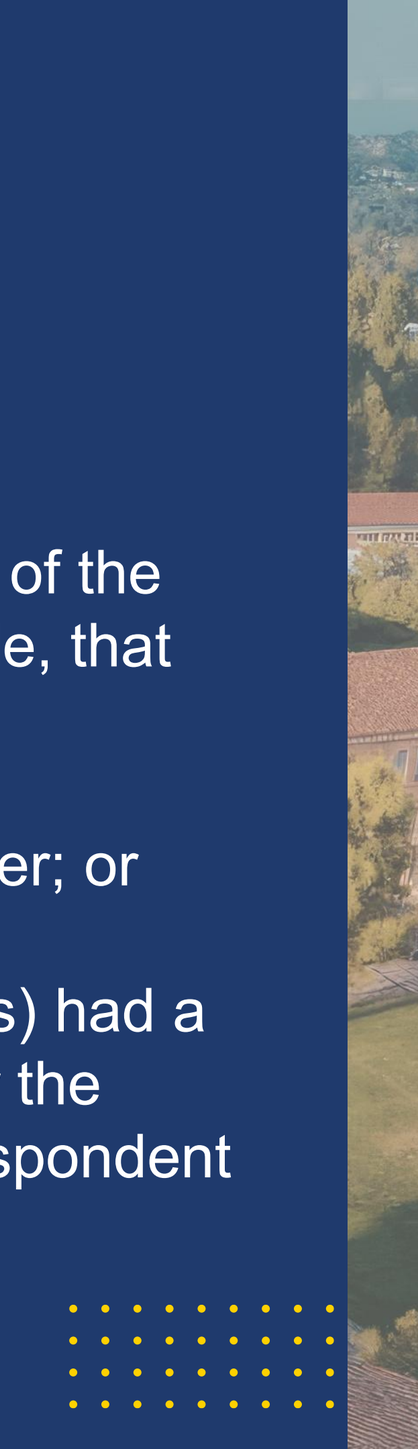




Appeal

Grounds for Appeal

- New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- Procedural irregularity that affected the outcome of the matter; or
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against the Complainants or the Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.





Appeal

Grounds for Appeal

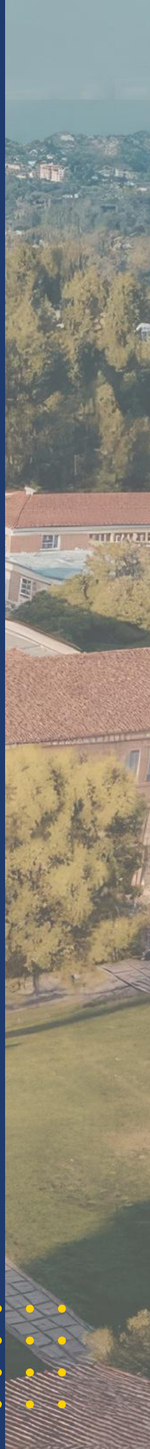
- Not a rehearing. Typically written appeal only.
- Decision of Appeal Officer is final and cannot be appealed.







ROLE OF ADVISOR



Advisor of Choice

“Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.”

34 CFR Sec. 106.45 (b)(3) (iv)

Restrictions?

- “The recipient may not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding.” 34 CFR Sec. 106.45 (b)(3) (iv)

- “Advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.” 85 Fed. Reg. 30273 (May 19, 2020)

- “Advisor is not prohibited from being a witness in the matter.” 85 Fed. Reg. 30273 (May 19, 2020)

No Gag Order

- “Recipient must [n]Not restrict the ability of either party to discuss the allegation under investigation or to gather and present relevant evidence.” 34 CFR Sec. 106.45(b)(5)(iii)

- Does not apply to Advisors – but…should an Advisor talk about the allegation?

Practical Tips – Who Would Be a Good Advisor?

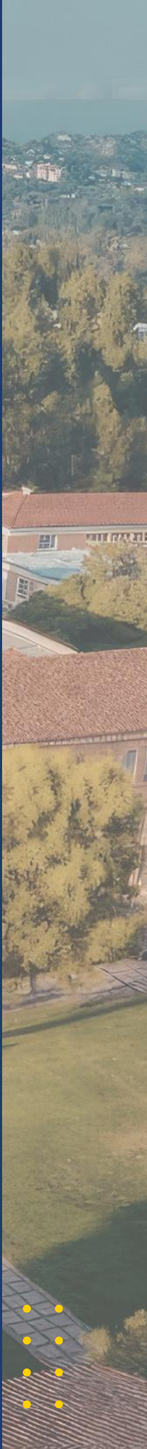
- Anyone can be an Advisor
- Understands not an “advocate”; simply an Advisor
- Ability to work with Complainant and Respondent to help them understand the process
- Conflict of interest or bias not relevant factor

Your Responsibilities

- Understand the process. Read your institutional Title IX policy.
- Understand your role. You are not an advocate and you do not “represent” the Complainant or Respondent.
- Be available to listen.
- Be confidential.



RESOURCES

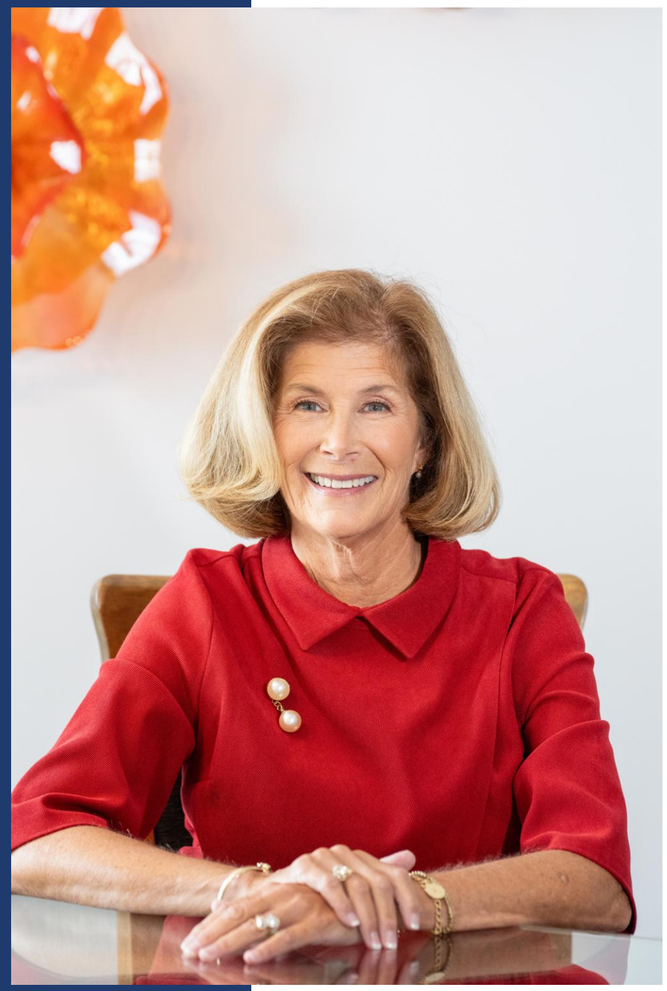


Resources



- Title IX and Sex Discrimination | U.S. Department of Education

- Federal Register: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance



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