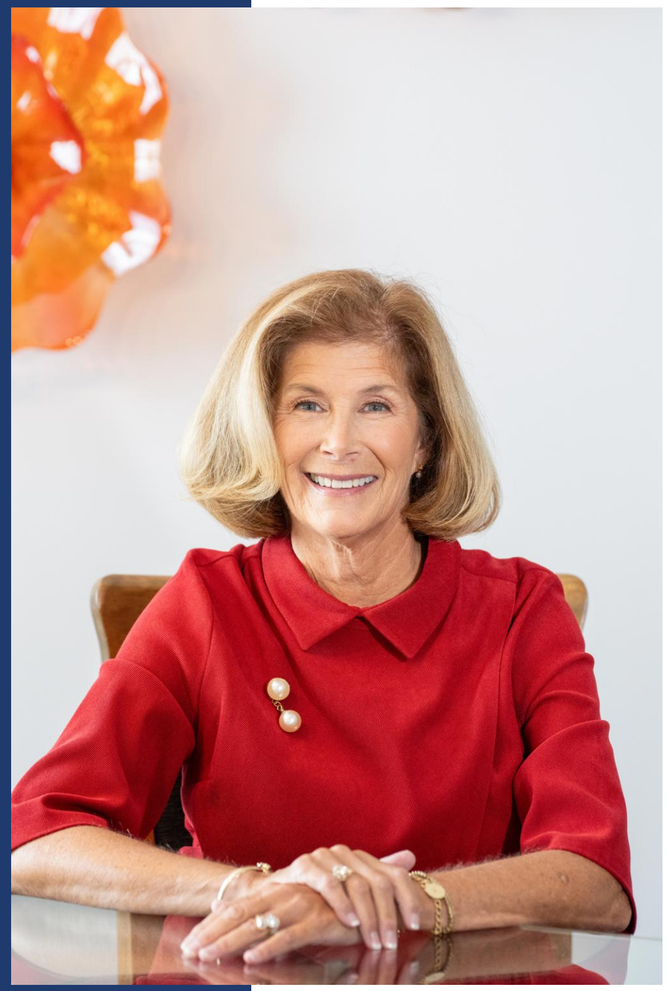


TITLE IX 2026-2027 APPEALOFFICER TRAINING



GICA COMPLIANCE COLLABORATIVE PROGRAM



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Welcome

GICA COMPLIANCE COLLABORATIVE PROGRAM

Agenda



- Definitions
- Formal Process
- Grounds for Appeal
- Forms
- Emergency Removal
- Resources



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). “
§Sec. 106.30

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; Page 631 and 634 (May 6, 2020 DoE website)

Definition

Grounds for Appeal

“A) Procedural irregularity that affected the outcome of the matter

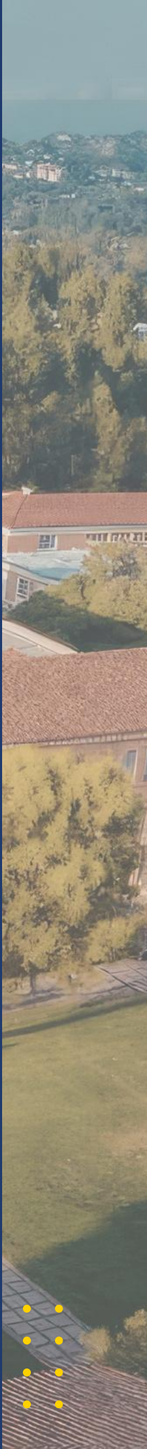
(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.”

34 CFR Sec. 106.45 (b)(8)



FORMAL PROCESS



No Conflict of Interest or 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)

Investigative Process

Written Notice Required

Written notice required

34 CFR Sec. 106.45(b)(2)

Reasonably prompt time frames

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

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)

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

Investigative 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

Live Hearing

- 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.

Investigative Process

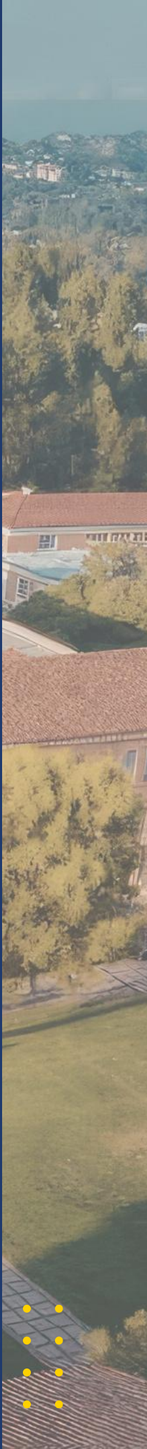
Appeal

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

34 CFR §106.45 (b)(8)



GROUNDS FOR APPEAL



General Comments

- Both parties have the right to appeal the determination and the sanctions.
- Not a rehearing; is a review of the evidence submitted.
- Typically, in writing only.
- Decision of Appeal Officer is final and cannot be appealed.

Grounds for Appeal

Procedural irregularity that affected the outcome of the matter

Grounds for Appeal

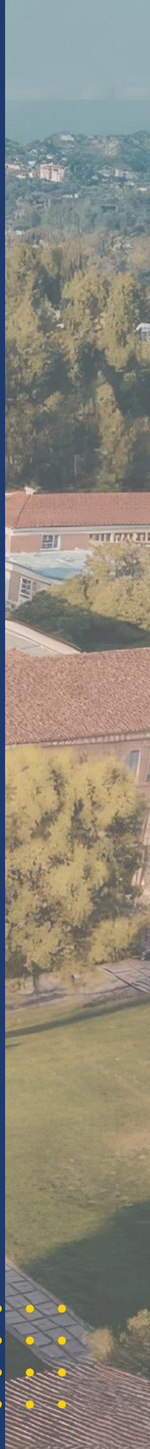
New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect

Grounds for Appeal

The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

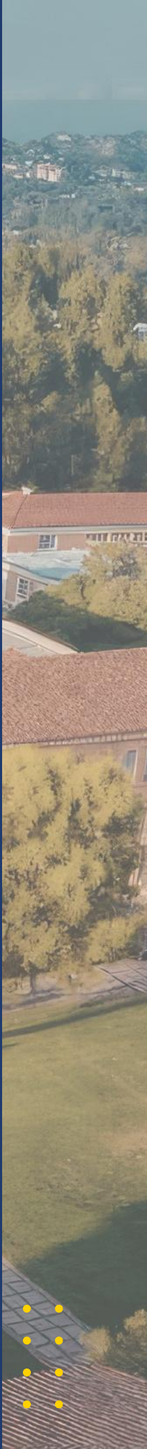


FORMS





EMERGENCY REMOVAL



Emergency Removal

“Nothing in this part precludes a recipient from removing a respondent from the recipient’s education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.”

34 CFR Sec. 106.44 (c)

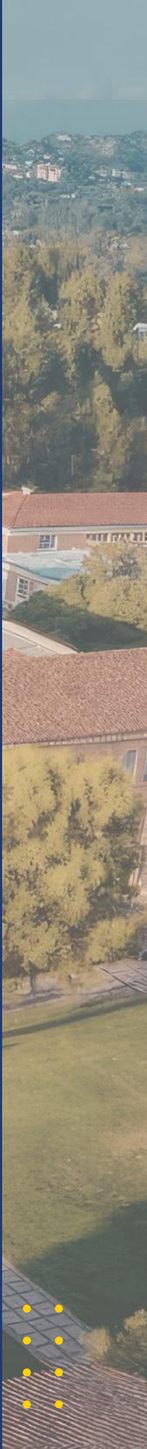
Deference

“Deference: OCR will not second guess a recipient’s removal decision based on whether OCR would have weighed the evidence of risk differently from how the recipient weighed such evidence.”

Title IX Reg; Page 766 (May 6, 2020 DoE website)



RESOURCES

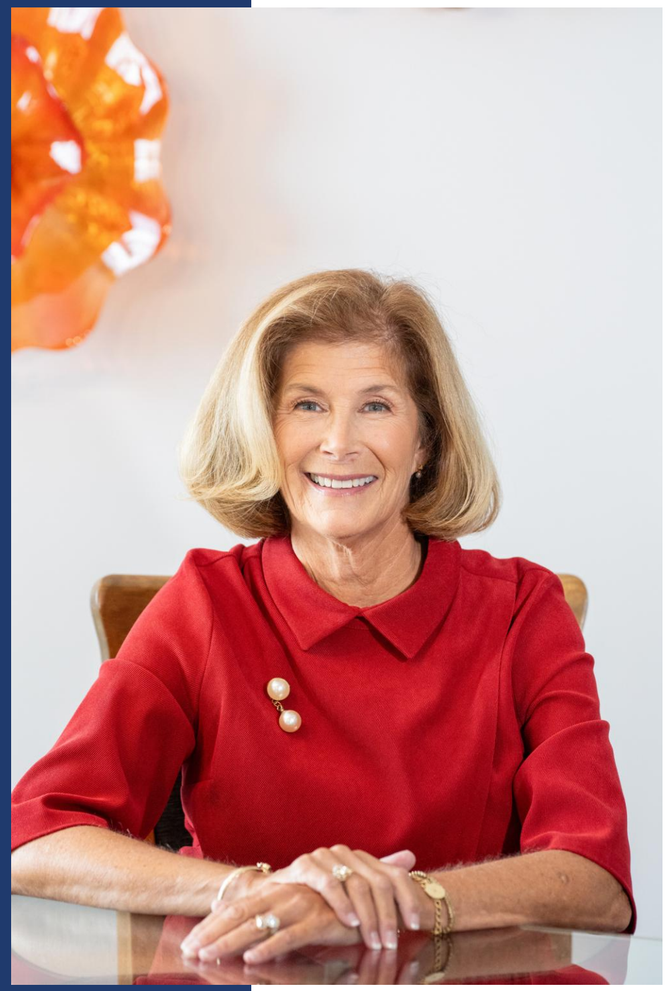


Resources



- 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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