

PRESENTED BY:



Unparalleled Charter School Legal Services

YOUNG, MINNEY & CORR, LLP

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Firm Overview

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

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

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

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

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

With our main office located in Sacramento, YM&C is also uniquely positioned to influence the public policy debate in California – helping shape the future of charter schools.

For more information on our team of expert attorneys and services, please visit www.ymclegal.com or call us at **916-646-1400**.

Rikeshia Lane Of Counsel

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Rikeshia Lane's primary practice areas include assisting schools in compliance with special education, Section 504, Title IX, and conducting and overseeing a variety of investigations. Rikeshia regularly advises clients on due process complaints before the Office of Administrative Hearings, compliance complaints with the California Department of Education, and civil rights complaints with the Office for Civil Rights. She also assists clients with challenging IEP meetings, internal employee-related investigations, student discipline, student and employee First Amendment rights, and general compliance with policies and procedures.

Before joining Young, Minney & Corr, LLP, Rikeshia worked for law firms representing school districts, county offices of education, and special education local plan areas in California. Rikeshia focused on special education, student services, and investigations. Rikeshia previously worked as Campus Counsel in the California State University's Office of General Counsel. At CSU, Rikeshia provided legal advice to one of the 23 campuses, CSU East Bay, and worked closely with its President and members of the Cabinet.

Rikeshia has also worked as an Adjunct Professor at the University of Southern California Gould School of Law, where she taught first-year law students in the Legal Writing and Advocacy Program. Using her background in teaching, Rikeshia also provides training to administrators and staff on special education compliance.

When not in the office, Rikeshia enjoys laughing with her daughter, CrossFit, running half-marathons, and the antics of her three cats.

PRACTICE AREAS

Student Rights & Discipline
Special Education

EDUCATION

- Columbia Law School (J.D.)
- University of California, Los Angeles (B.A.)



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Casey L. Fee

Senior Counsel

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Casey Fee's primary practice areas include litigation, facilities, corporate compliance, and student matters. Prior to joining Young, Minney & Corr, LLP, she practiced employment law and litigation for over three years, which involved defense of employment claims including discrimination, harassment and retaliation. She has also defended public schools in prosecuting employee discipline and discharge matters, workers compensation claims, and requests for reasonable accommodation.

Casey is a California native and was raised in a family of educators and administrators. Her mother was an adaptive physical education teacher for over 30 years, her step-father was a Program Specialist for 17 years, and her father was the Principal of the first ever charter school in her hometown of Livermore.

PRACTICE AREAS

Litigation
Student Rights & Discipline
Facilities

EDUCATION

- University of the Pacific, McGeorge School of Law (J.D.)
- Arizona State University (B.A.)

MASTERING THE NEW TITLE IX REGULATIONS: MANDATORY ANNUAL TRAINING

Wednesday, May 15, 2024

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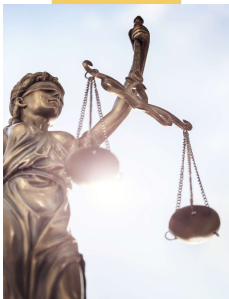




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DISCLAIMER

- 1 This training cannot substitute for personalized legal advice.
- 2 Our advice is based upon the latest available guidance which is subject to change in this ever-evolving landscape.
- 3 After the training there will be a Q&A.





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YM&C FIRM MISSION


- 1 We champion outstanding choices in education for all students.
- 2 We believe a quality public education is a civil right.
- 3 We work and fight alongside you to ensure student needs are always put first.

PRESENTERS:

RIKESHA LANE, ESQ.
Of Counsel

CASEY FEE, ESQ.
Senior Counsel



AGENDA

- ✔ New Regulations - Implementation and Key Changes
- ✔ Scope of Title IX
- ✔ Title IX Coordinator
- ✔ Important Definitions
- ✔ Response to Sex Discrimination
- ✔ Grievance Procedures
- ✔ Impartiality and Relevance
- ✔ Student Pregnancy and Related Conditions
- ✔ Policy, Notice, and Training
- ✔ Recordkeeping
- ✔ Questions and Answers







NEW TITLE IX REGULATIONS



NEW TITLE IX REGULATIONS

Implementation

- Effective August 1, 2024
 - Apply to sex discrimination that allegedly occurred on or after August 1, 2024
- There are several court cases around the country seeking to prevent implementation of the new regulations
 - 15 states disagree with the revised definition of “sex” to include gender identity and sexual orientation
 - California law already provides protections for these categories

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NEW TITLE IX REGULATIONS

Key changes from the current regulations

- Broadens the definition of sexual harassment;
 - New definition for “Sex-based harassment”
- Clarifies that Title IX’s prohibition of sex discrimination includes protections against discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity;

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NEW TITLE IX REGULATIONS

Key changes from current regulations (cont.)

- Bolstered requirements related to lactation space, reasonable modifications for students who are pregnant or have pregnancy-related conditions, and reasonable lactation break time for employees;
- New training requirements; and
- Streamlined grievance procedures.

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SCOPE OF TITLE IX

What is Title IX?

- “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . .” (20 USC § 1681; 34 CFR Part 106)
- Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

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SCOPE OF TITLE IX

What does this apply to?

- Applies to sex-based discrimination occurring in the U.S.
 - BUT schools must address a sex-based hostile environment even when some contributing conduct occurred outside of the U.S.
 - If the sex-based harassment occurs outside a school's education program or activity or outside the U.S., and the harassment does not contribute to a hostile environment within the school's education program or activity, Title IX would not apply.
- Applies to recipients of Federal financial assistance operating education programs or activities

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SCOPE OF TITLE IX

What does this apply to? (cont.)

- Applies to **students and employees** and may also apply to third-party complaints if the third party was participating or attempting to participate in the school's education program or activity at the time of the alleged sex discrimination
 - Consider volunteers, family members, contractors, community members at school events, employees of related non-profits, etc.

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13

SCOPE OF TITLE IX

"Education program or activity"

- Includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by a postsecondary institution, and conduct that is **subject to the school's disciplinary authority**
- Includes conduct that occurs in off-campus settings that are operated or overseen by the school such as field trips, online classes, and athletic programs; conduct that takes place via school-sponsored electronic devices, computer and internet networks, and digital platforms; and conduct that occurs during off-campus school-sponsored training programs
- Not necessarily dictated by the geographic location of the incident; requires a fact-specific inquiry

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14

SCOPE OF TITLE IX

"Sex-based harassment"

- Sexual harassment and sex-based harassment
- Quid pro quo harassment by an **employee, agent, or authorized person**
 - **Explicitly or impliedly** conditioning the provision of an aid, benefit, or service on a person's participation in unwelcome sexual conduct
- Hostile environment harassment
 - Unwelcome sex-based conduct that, based on the **totality of the circumstances**, is subjectively and objectively offensive and is **so severe or pervasive** that it **limits or denies** a person's ability to participate in or benefit from the school's education program or activity
- Specific offenses – sexual assault, stalking, dating violence, and domestic violence

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15

SCOPE OF TITLE IX

Hostile Environment Factors

- The degree to which the conduct affected the complainant's ability to access the school's education program or activity;
- The type, frequency, and duration of the conduct;
- The parties' ages, roles within the school, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct and the context in which the conduct occurred; and
- Other sex-based harassment in the school's education program or activity

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SCOPE OF TITLE IX

“Sexual Assault”

- An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation
 - Includes, but is not limited to, the touching of another person's private body parts for the purpose of sexual gratification, forcibly and/or against that person's will, or in instances where the victim is incapable of giving consent due to age or incapacity.

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17

SCOPE OF TITLE IX

Examples of Sex-Based Discrimination

- Sex-based harassment and sexual violence
- Pregnancy discrimination
- Failure to provide equal athletic opportunity
- Unequal access to educational resources (such as STEM or career and technical education)
- Discriminatory application or enforcement of dress code or discipline policies
- Retaliation against a person who has reported sex discrimination

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TITLE IX COORDINATOR

Must designate and authorize **at least one employee** to serve as the “Title IX Coordinator.” The Title IX Coordinator:

- Coordinates the school’s efforts to comply with the requirements of Title IX and the regulations
- May delegate duties, but **one Title IX Coordinator must retain ultimate oversight** of Title IX compliance
- Receives reports and complaints of sex discrimination and harassment and inquiries about the application of Title IX
- **Monitors for barriers** to reporting conduct that reasonably may constitute sex discrimination and takes steps reasonably calculated to address such barriers

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TITLE IX COORDINATOR QUALIFICATIONS

- May serve as an investigator and decisionmaker for complaints
- Must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent
- Must serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Must receive required training

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COORDINATOR RESPONSE TO SEX DISCRIMINATION

Once notified of potential sex discrimination, the Title IX Coordinator must:

- Treat complainants and respondents equitably
- Offer and coordinate supportive measures, as appropriate, for complainants
 - If grievance procedures are initiated or an informal resolution process is offered, offer and coordinate supportive measures, as appropriate, for the respondent
- Notify the complainant or, if the complainant is unknown, the reporting individual, of the grievance procedures and informal resolution process, if available and appropriate. If a complaint is made, notify the respondent of the same

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COORDINATOR RESPONSE TO SEX DISCRIMINATION

- In response to a complaint, initiate the grievance procedures, or the informal resolution process if available, appropriate, and requested by all parties
- In the absence of a complaint, determine whether to initiate a complaint by considering, at a minimum:
 - Complainant's request not to proceed with a complaint and Complainant's reasonable safety concerns;
 - Risk that additional acts of sex discrimination would occur if a complaint is not initiated;
 - Severity of the alleged conduct, including whether the discrimination, if established, would require removal or discipline of a respondent to end the discrimination and prevent its recurrence;

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COORDINATOR RESPONSE TO SEX DISCRIMINATION

Determination factors (cont.):

- The age and relationship of the parties, including whether the respondent is an employee;
- The scope of the alleged conduct – is there a pattern, is it ongoing, or does it impact multiple individuals?
- The availability of evidence (especially if the complainant won't participate); and
- Whether the school could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures.

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COORDINATOR RESPONSE TO SEX DISCRIMINATION

- May initiate a complaint if the conduct as alleged:
 - Presents an **imminent and serious threat to the health or safety** of the complainant or other person, or
 - Prevents the school from **ensuring equal access** on the basis of sex to its education program or activity
- Must notify the complainant before initiating a complaint and appropriately address reasonable safety concerns, including by providing supportive measures
- Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the school's education program or activity

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IMPORTANT
DEFINITIONS

WHAT IS A COMPLAINT?

A Complaint is:

- An **oral or written request** to the school that objectively can be understood as a request for the school to investigate and make a determination about alleged sex discrimination
- Does not have to be formal or use specific words
- May be made to any employee

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WHO CAN MAKE A COMPLAINT?

A Complainant is:

- A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX (not just sexual harassment)
- A non-student or non-employee who is alleged to have been subjected to conduct that could constitute sex discrimination and was participating or attempting to participate in the school's education program or activity at the time of the alleged sex discrimination

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WHO CAN MAKE A COMPLAINT?

Who else can make a complaint?

- Title IX Coordinator;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant;
- For complaints of sex discrimination other than sex-based harassment:
 - Any student or employee; or
 - Any person who was participating or attempting to participate in the school's education program or activity at the time of the alleged sex discrimination
 - Does not have to be someone who personally experienced discrimination

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WHO IS THE RESPONDENT?

A Respondent is:

- A person alleged to have violated the prohibition on sex discrimination
- When a sex discrimination complaint alleges that a school's policy or practice discriminates on the basis of sex, **the school is not considered a "Respondent"**

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SUPPORTIVE MEASURES

- Free, individualized measures offered as appropriate, as reasonably available, **without unreasonably burdening either party, not for punitive or disciplinary reasons**
- Designed to restore or preserve equal access to the education program or to protect parties' safety or the educational environment
- Available to a complainant once the Title IX Coordinator is notified of conduct that reasonably may constitute sex discrimination under Title IX
- Available to a respondent once grievance procedures are initiated or informal resolution is offered

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SUPPORTIVE MEASURES

- May include counseling, extensions of deadlines or other course-related adjustments, campus escort services, increased security and monitoring of certain areas of the campus, restrictions on contact applied to one or more parties, leaves of absence, changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative, and training and education programs related to sex-based harassment.
- Must not disclose information about any supportive measures to anyone except to whom they are offered/provided unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity, or when an exception applies.

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SUPPORTIVE MEASURES

- Must provide parties a timely opportunity to seek, **from an appropriate and impartial employee, modification or reversal** of the school's decision to provide, deny, modify, or terminate supportive measures applicable to them
 - Impartial employee must be someone other than the employee who made the challenged decision and must have the authority to modify or reverse the decision
- Parties also have the opportunity to seek modification or termination of a supportive measure applicable to them if circumstances change materially
- If a party is a **student with a disability**, the Title IX Coordinator must consult with one or more members of the student's IEP Team, if any, or 504 Team, in implementing supportive measures

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CONFIDENTIAL EMPLOYEE

- An employee of the school whose **communications are privileged or confidential under Federal or State law**. Confidential status is only for information received while functioning within the scope of their duties to which privilege or confidentiality applies;
- An employee **designated by the school** as confidential for providing services to persons related to sex discrimination. Confidential status is only for information received about sex discrimination in connection with providing those services; and
- Employees of a postsecondary institution conducting certain research.
- School **must notify** all participants in the school's education program or activity of **how to contact its confidential employees**, if any

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CONFIDENTIAL EMPLOYEE

Confidential Employee Requirements:

- Must explain to any person who informs them of conduct that reasonably may constitute sex discrimination under Title IX:
 - The employee's status as confidential for Title IX purposes;
 - Circumstances in which they are not required to notify the Title IX Coordinator about potential sex discrimination;
 - How to contact the Title IX Coordinator and make a complaint of sex discrimination; and
 - That the Title IX Coordinator may be able to offer and coordinate supportive measures and initiate an informal resolution process or an investigation under the grievance procedures.

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RESPONSE TO SEX DISCRIMINATION

A school **MUST ACT** whenever it has information about potential sex discrimination in its education program or activity

- A school with “**knowledge of conduct that reasonably may constitute**” sex discrimination in its education program or activity must respond “**promptly and effectively**” and address sex discrimination in the school
- All employees at an elementary or secondary school (who are not confidential employees) **MUST** notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination
 - Unless the employee is the subject of the sex discrimination

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INFORMAL RESOLUTION

A school may offer an informal resolution process if it has information about conduct that may constitute sex discrimination under Title IX, **not just when a complaint is filed**

- Informal resolution is not required
 - Can decline to offer when not appropriate or when alleged conduct would present a future risk of harm to others
- Prohibited when an employee is accused of sex-based harassment of a student or if it would conflict with applicable law
- Parties cannot be required or pressured to agree to informal resolution; must obtain parties' voluntary consent
- Parties may end informal resolution process and proceed with the investigation at any time

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INFORMAL RESOLUTION

Required Notice

Before informal resolution, parties must first be provided with notice of:

- Allegations;
- Requirements of the informal resolution process;
- Right to withdraw and proceed with grievance procedures;
- Resolution precludes use of grievance procedures arising from the same allegations;
- Potential terms of resolution agreement (e.g., restrictions on contact and participation in activities or events);
- Notice that resolution agreement is binding only on the parties; and
- What information is retained and how it may be disclosed by the school

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INFORMAL RESOLUTION

- **Facilitator of the informal resolution process cannot be the same person as the investigator or the decisionmaker**
- Facilitator cannot have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent
- Title IX Coordinator must take other appropriate prompt and effective steps to ensure sex discrimination does not continue or recur

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EMERGENCY REMOVAL

- Title IX regulations allow for removal of a respondent on an emergency basis, provided that the school:
 - Undertakes an **individualized** safety and risk analysis;
 - Determines that an **imminent and serious threat** to the **health or safety** of a complainant or other persons arising from the allegations of sex discrimination justifies removal; and
 - Provides the respondent with **notice and an opportunity to challenge** the decision **immediately** following the removal
- May place an employee respondent on administrative leave during the pendency of Title IX grievance procedures
- IDEA, 504, and ADA rights still apply

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DISCLOSURES OF PERSONAL INFORMATION

- Must **not** disclose personally identifiable information obtained in the course of Title IX compliance, **except**:
- With prior written consent from a person with the legal right to consent;
 - When the information is disclosed to a parent, guardian, or other authorized legal representative with a right to receive the disclosures;
 - To carry out Title IX obligations;
 - As required by Federal law or regulations, or the terms and conditions of a Federal award; or
 - When required by State or local law or permitted under FERPA, to the extent the disclosures are not otherwise in conflict with Title IX

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GENERAL REQUIREMENTS

General Requirements for Sex Discrimination Grievance Procedures

- Must be in writing; if different procedures apply to some complaints, explain how the school will determine which procedures apply
- Treat complainants and respondents equitably
- Respondent is presumed not responsible until a determination is made at the conclusion of the procedures
- **Title IX Coordinator, investigator, and decisionmaker may be the same person** and shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent

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GENERAL REQUIREMENTS

General Requirements for Sex Discrimination Grievance Procedures (cont.)

- **Reasonably prompt timeframes for all major stages** - evaluation; investigation; determination; and appeal, if any
- Temporary good cause extensions allowed with notice to the parties explaining the reason for the delay
- Reasonable steps to protect the privacy of parties and witnesses, with limitations
- Objective evaluation of all evidence that is relevant and not otherwise impermissible

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NOTICE OF ALLEGATIONS

- Upon initiation of the grievance procedures
- Must identify the parties involved and include sufficient details about the allegations
- Must include grievance procedures, any informal resolution process, and certain statements about retaliation and access to relevant and not otherwise impermissible evidence or a description of it

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DISMISSALS

- Dismissals permitted, but not required. Allowed when:
 - The school is unable to identify the respondent after taking reasonable steps to do so
 - Respondent is not participating in the school's education program or activity or employed by the school
 - The conduct alleged, even if proven, would not constitute sex discrimination under Title IX. Must first make reasonable efforts to clarify the allegations with the complainant.
 - Complainant voluntarily withdraws any or all of the allegations, the Title IX Coordinator declines to initiate a complaint, and the alleged conduct remaining, if any, would not constitute sex discrimination under Title IX even if proven

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DISMISSALS

- Must promptly notify the complainant of the basis for the dismissal and right to appeal.
- If the respondent has been notified of the allegations, then the school must also notify the respondent of the dismissal, the basis for the dismissal, and the right to appeal.
- Notification does not have to be in writing (except postsecondary)
- A school that dismisses a complaint must, at a minimum, offer supportive measures to the complainant as appropriate, and in certain circumstances, offer supportive measures to the respondent
- Title IX Coordinator must take other appropriate steps to ensure that sex discrimination does not continue or recur

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APPEALS OF DISMISSALS

- **Required to offer appeals of dismissals on certain bases**
- Appeal decisionmaker must be trained and must not have taken part in the investigation or dismissal of the complaint
- If the dismissal is appealed, the school must:
 - Notify the parties of the appeal and provide the notice of allegations to the respondent if not previously provided;
 - Implement appeal procedures equally for the parties;
 - Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
 - Notify the parties of the result and the rationale

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INVESTIGATIONS

- Investigation must be adequate, reliable, and impartial
 - Burden is on the school to gather sufficient evidence and review all evidence gathered
 - Parties must have an equal opportunity to present fact witnesses and inculpatory and exculpatory evidence that are relevant and not otherwise impermissible
- A school must provide a process for the decisionmaker to question parties and witnesses to assess credibility if credibility is in dispute and relevant to evaluating an allegation of sex discrimination

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INVESTIGATIONS - EVIDENCE

Parties must have equal access to evidence:

- School must provide access to the relevant, permissible evidence or an accurate description of it
 - If description only, must provide equal access to the relevant and not otherwise impermissible evidence upon request of any party
- Have a reasonable opportunity to respond
- A school must take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained through the grievance procedures

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DETERMINATION

- Must use the preponderance of the evidence standard unless a clear and convincing standard is applied in all other comparable proceedings.
 - “51%”: the evidence demonstrates that it is more likely than not that the conduct occurred as alleged
- Must comply with the grievance procedure requirements before imposing any discipline on a respondent for sex discrimination prohibited by Title IX.
- **Notify the parties in writing of the determination, the rationale, and the procedures and permissible bases for appeal, if applicable.**
- Must not discipline those participating in the grievance procedures for making a **false statement** or for engaging in **consensual sexual conduct** based solely on the determination of whether sex discrimination occurred.

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APPEAL

- An appeals process must be at least “the same as it offers in all other comparable proceedings”
 - Appeals process is not mandatory (except for appeals of dismissals) if appeals are not offered in other comparable proceedings
- Schools would not be required to provide a right to appeal, other than for complaint dismissals or in grievance procedures for a complaint of sex-based harassment involving a student at a postsecondary institution.
- Procedures and permissible bases for appeals must be provided if appeals are available.

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IMPARTIALITY AND RELEVANCE

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IMPARTIALITY

Investigators, Decision-Makers, and Facilitators must:

- Serve impartially including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias (including implicit bias).
- Avoid sex-based biases and stereotypes.
E.g., "Boys will be boys"
- Not make credibility determinations based on a person's sex or status as a complainant, respondent, or witness.
- Presume respondent is not responsible until a determination is made at the conclusion of the grievance process. Cannot be presumed responsible for not participating in Title IX process.
 - No discipline can be imposed for the alleged sex discrimination while the Title IX process is pending.

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55

RELEVANCE OF EVIDENCE

- Investigations and determinations of responsibility must include an objective evaluation of all evidence - inculpatory and exculpatory - that is relevant and not otherwise impermissible.
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence.
- Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.
- Investigator and decision-maker may give different weight to evidence or evaluate evidence differently.

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56

RELEVANCE OF EVIDENCE

Factors that may affect weight given to relevant evidence:

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

Credibility factors:

1. Corroboration
2. Consistency
3. Motivation/interest
4. Plausibility
5. Bias/hostility

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57

RELEVANCE OF EVIDENCE

Impermissible evidence under Title IX includes:

- Information protected under a legally recognized privilege
- Evidence provided to a confidential employee, unless voluntarily waived by the person holding the privilege
- Evidence about the complainant's sexual interests
- Evidence about the complainant's prior sexual conduct except when:
 - Used to prove that someone other than the respondent committed the conduct alleged; or
 - Is evidence about the complainant's prior sexual conduct with the respondent and offered to prove consent.

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58

RELEVANCE OF EVIDENCE

Impermissible evidence under Title IX (cont.):

- A party's (or witness's) treatment records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional/paraprofessional, unless the school obtains that party's or witness's voluntary, written consent to use such records for the grievance procedures

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59



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STUDENT PREGNANCY
AND RELATED
CONDITIONS

NONDISCRIMINATION

- Must not discriminate against any student or employee based on their current, potential, or past pregnancy or related conditions
- Students may voluntarily participate in a comparable separate portion of the school's education program or activity

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TITLE IX COORDINATOR NOTICE

- When a student, or a person who can legally act on behalf of the student, informs **any employee** of the student's pregnancy or related conditions, unless the employee reasonably believes that the Title IX Coordinator has already been notified, the employee must **promptly**:
 - Provide that person with the Title IX Coordinator's contact information; and
 - Inform that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access

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TITLE IX COORDINATOR ACTIONS

Once Notified of Student's Pregnancy or Related Conditions:

- **Inform the student**, and if applicable, the person who notified the Title IX Coordinator of the student's pregnancy or related conditions and has a legal right to act on behalf of the student, of the school's obligations under:
 - § 106.40(b)(1) through (5), which relates to the **rights of students who are pregnant** or have related conditions; and
 - § 106.44(j), which includes **rules on disclosures of personal information**
- Provide the school's **Title IX notice of nondiscrimination**
- Provide a **lactation space** other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used for expressing breast milk or breastfeeding as needed

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TITLE IX COORDINATOR ACTIONS

Once Notified of Student's Pregnancy or Related Conditions (cont.):

- **Make reasonable modifications** to policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access
 - Based on the student's individualized needs; **must consult with the student**
 - Not required to fundamentally alter the nature of the school's education program or activity
 - **Student may accept or decline** reasonable modifications offered
 - If a student accepts an offered reasonable modification, the school must implement it

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TITLE IX COORDINATOR ACTIONS

Examples of Reasonable Modifications

- Breaks to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom
- Intermittent absences to attend medical appointments
- Access to online or homebound education
- Extensions of time for coursework and rescheduling of exams/tests
- Allowing a student to sit or stand, or carry or keep water nearby
- Counseling
- Changes in physical space or supplies (for example, access to a larger desk or a footrest)
- Elevator access

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TITLE IX COORDINATOR ACTIONS

Once Notified of Student's Pregnancy or Related Conditions (cont.):

- Student may **voluntarily access any separate and comparable portion** of the school's education program or activity
- Student may **voluntarily take a leave of absence** for the time deemed medically necessary by the student's licensed healthcare provider, or if the student so chooses, the time allowed under any school leave policy for which the student qualifies.
- **Reinstate the student upon their return** to the academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began.

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TITLE IX COORDINATOR ACTIONS

Once Notified of Student's Pregnancy or Related Conditions (cont.):

- **Don't require supporting documentation unless necessary and reasonable** to determine reasonable modifications or additional actions related to lactation space, leaves of absence, or access to a separate and comparable portion of the program. Documentation is not required when:
 - It's for lactation or other obvious needs;
 - Sufficient documentation was already provided;
 - It allows the student to have and drink water, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom; or
 - The action is available to other students for other reasons without supporting documentation

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POLICY, NOTICE AND
TRAINING
REQUIREMENTS

POLICY AND NOTICE REQUIREMENTS

- Schools must adopt, publish, and implement a Title IX policy and Title IX grievance procedures
- Provide notice of nondiscrimination to: (1) applicants for admission and employment, (2) students, parents/guardians, employees, and (3) all unions or professional organizations holding collective bargaining or professional agreements with the school
- Must **prominently display the notice** on the school's **website** and in each **handbook/catalog, announcement, and application form** that it makes available to the stakeholders listed above or uses for the recruitment of students or employees

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49

POLICY AND NOTICE REQUIREMENTS

The notice of nondiscrimination must state:

- The name or title, office address, email address, and telephone number of the Title IX Coordinator(s).
- That the school does not discriminate on the basis of sex and prohibits sex discrimination in its education program or activity as required by Title IX and the regulations.
- How to locate the nondiscrimination policy and grievance procedures.
- How to make reports and complaints of sex discrimination.
- That inquiries about the application of Title IX and Part 106 to the school may be referred to the Title IX Coordinator(s), to the Office for Civil Rights, or both.



29

REQUIRED TRAINING TOPICS

Required trainings must be provided annually and promptly upon hiring or change of position that alters Title IX duties

All Employees

1. The school's obligation to address sex discrimination in its education program or activity;
2. The scope of conduct that constitutes sex discrimination, including the definition of "sex-based harassment"; and
3. All applicable notification and information requirements under §§ 106.40(b)(2) and 106.44.

Investigators, Decisionmakers, and Other Specified Persons

1. The "all employees" topics; obligations under § 106.44 (response to sex discrimination); school's grievance procedures under § 106.45, and if applicable § 106.46 (postsecondary);
2. How to serve impartially; meaning and application of "relevant"; and types of evidence that are impermissible despite relevance.



REQUIRED TRAINING TOPICS

Facilitators of the informal resolution process

1. The "all employees" topics; and
2. The rules and practices associated with the school's informal resolution process; and
3. How to serve impartially, including by avoiding conflicts of interest and bias.

Title IX Coordinator and designees

1. The trainings required of all employees, investigators, decisionmakers, other specified persons, and facilitators of the informal resolution process;
2. Their responsibilities under § 106.8(a) (designation of Title IX Coordinator), § 106.40(b)(3) (student pregnancy), § 106.44(f) (Coordinator requirements) and § 106.44(g) (supportive measures);
3. The school's and Title IX's recordkeeping requirements; and other training necessary to coordinate the school's compliance with Title IX.





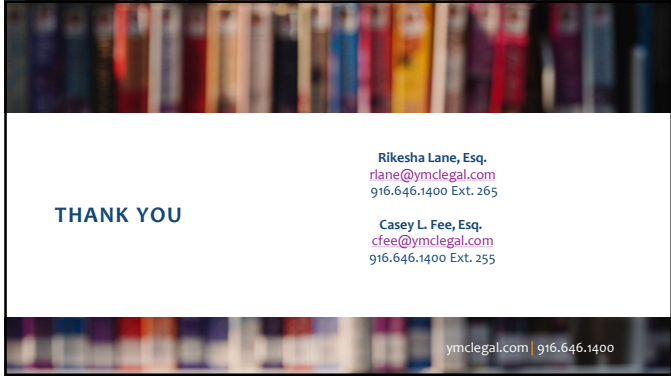
RECORDKEEPING

Must maintain the following records for a period of **seven years**–

- For each complaint of sex discrimination, records documenting the informal resolution process or the grievance procedures, and the resulting outcome.
- For each notification the Title IX Coordinator receives of potential sex discrimination: records documenting actions taken to address the potential sex discrimination
 - Should include supportive measures offered and implemented
- All training materials, available upon request

YM&C 74





THANK YOU

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