

Effective Compliance with Title IX (2020 Regulations) & California Law

Santa Rosa Junior College | October 23, 2025

Presented By: Amy Brandt

LIEBERT CASSIDY WHITMORE

Effective Compliance with Title IX  
(2020 Regulations) & California Law

Presented By:

Amy Brandt / October 23, 2025

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Agenda

- Introduction to SB 493 and Title IX
- Assessing reports of sexual harassment
- Triggering the Title IX grievance process
- Issues before investigation
- The investigation
- The hearing
- Determinations regarding responsibility
- Sanctions and remedies
- Appeals

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Title IX Required Training  
Components

- Definition of sexual harassment
- Scope of education program or activity
- How to conduct an investigation and prepare the investigative report
- How to implement grievance process
  - Hearings
  - Appeals
  - Informal resolution process
- How to serve impartially
- Decision-makers: Hearing technology and issues of relevance

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# Effective Compliance with Title IX (2020 Regulations) & California Law

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Senate Bill 493:  
Effective Jan. 1, 2022

- SB 493 added state-level protections against sexual harassment
- Amended the definition of sexual harassment (Cal. Ed. Code § 66262.5)
- Requires institutions to:
  - Train employees involved in grievance procedures
  - Train all employees to identify and report sexual harassment to appropriate officials

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Title IX: The Basics

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Title IX

Title IX prohibits discrimination that is:

- On the basis of sex
- In education programs or activities
- Receiving federal financial assistance

20 U.S.C. § 1681 *et seq.*  
34 C.F.R. § 106 *et seq.*

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Title IX Protections

- Title IX protection applies to **all** students and employees
- Protects students and employees from sexual harassment committed by:
  - Students
  - District employees
  - Third-parties

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Assessing Reports of Sexual Harassment & Determining Title IX Obligations

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Title IX Preemption

- To the extent that state law already provides statutes or regulations that protect individuals from sexual harassment or discrimination, a district should comply with both the state requirements and the new regulations
- Conflicts: the Title IX regulations preempt state law

34 CFR § 106.6 (a)

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Actual Knowledge – Title IX

If District has actual knowledge of sexual harassment in its education program or activity against a person in the United States:

Must respond in a manner that is not deliberately indifferent.

34 CFR § 106.44(a)

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Actual Notice – Title IX

Notice to a Title IX Coordinator or any **official with authority** to institute corrective measures.

34 CFR § 106.30

An **official with authority** has the power to institute corrective measures on behalf of the institution.

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Cal. Ed. Code: Knowledge of Sexual Harassment

“A postsecondary institution shall be presumed to know of sexual harassment if a **responsible employee** knew, or, in the exercise of reasonable care, should have known, about the sexual harassment.”

An institution may rebut this presumption of knowledge if certain elements are met.

Cal. Ed. Code § 66281.8(b)(3)(C).

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Case Study: Actual Knowledge in California

Celia, a student employee, confides in James, the Athletics Director, that a coach sexually assaulted her. The District’s policy says that all supervisors have a duty to report sexual harassment in the workplace.

***Does the District now have actual notice of a potential Title IX matter?***

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Title IX Sexual Harassment: Three Categories

- Quid pro quo: An *employee* conditioning an aid, benefit, or service on complainant’s participation in unwelcome sexual conduct
- Hostile environment harassment: Unwelcome conduct so severe, pervasive, ***and*** objectively offensive that it effectively denies a person equal access to education program or activity; or
- Sexual assault, dating violence, domestic violence, or stalking

34 CFR § 106.30

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Correct/Incorrect/Maybe

Celia, a student employee, reports that James, the Athletics Director, told her she could get more work hours if she went out with him. He asked once and did not reduce her hours after she declined.

***Does this report meet the Title IX definition of sexual harassment?***

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Title IX - Education Program or Activity

- Locations, events, or circumstances over which the District exercised substantial control over respondent and context
- Any building owned or controlled by a student organization
- Must occur against the complainant **in the United States**

34 CFR § 106.44(a)

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Employee Issues

- Must respond to sexual harassment as defined by California Fair Employment and Housing Act (FEHA)
  - Sex harassment has a different definition under FEHA
  - Supervisors must report under FEHA
- Title IX obligations might conflict with collective bargaining agreements

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Title IX - Supportive Measures

- Individualized services offered as appropriate and reasonably available without charge
- Non-disciplinary and non-punitive
- Before or after or without formal complaint
- Available to Complainant and Respondent
- Examples: deadline extensions, modified schedules, campus escorts, no contact orders, changes in work/housing location, etc.

34 CFR § 106.30(a)

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Triggering the Grievance Process

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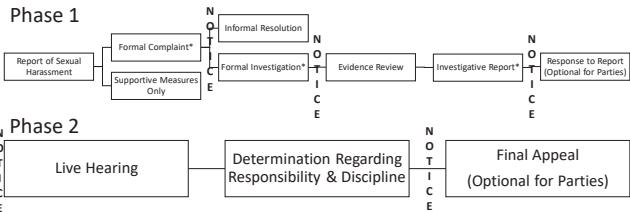
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Overview of the Title IX Grievance Process



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Title IX - When Does the Grievance Process Apply?

- For formal complaints of sexual harassment under Title IX
  - Not for informal complaints
- Not for sexual harassment that falls outside of the definition in the regulations
  - Instead follow California Law
- Not for discrimination: treating individual differently/unfavorably because of that person's sex

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Title IX: Formal Complaint

- Document filed by the **Complainant** OR signed by the Title IX Coordinator
- Alleging sexual harassment AND requesting investigation

34 CFR §106.30(a)

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Title IX: Complainant

- The alleged *victim* of sexual harassment
  - Must be participating in or attempting to participate in the district’s education program or activity
  - 3<sup>rd</sup> parties can report, but no 3<sup>rd</sup> party complaints

34 CFR 106.30(a)

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Title IX: No Formal Complaint Signed by Complainant

- If the alleged conduct falls under Title IX but the Complainant refuses to submit a formal complaint, the Coordinator must:
  - Become the signatory (but will not become the complainant) OR
  - Close the report

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Formal Complaint by Title IX Coordinator

Considerations

- Complainant’s wishes
- Ability to conduct investigation without Complainant’s participation
- District’s need to protect campus safety
  - Respondent in position of authority
- Nature of alleged harassment
  - Multiple reports against same respondent

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Title IX - Confidentiality

- The District must keep confidential the identity of
  - The Complainant, Respondent, or witness
    - Except as may be permitted by the FERPA; or
    - As required by law

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Cal. Ed. Code: Confidentiality

If a complainant reporting sexual harassment requests

- confidentiality or
- no investigation or
- disciplinary action

A district must generally grant the request, but must consider safety responsibilities and certain factors

Ed. Code § 66281.8(b)(3)

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Cal. Ed. Code: Confidentiality – Factors to Consider

- Whether there are multiple or prior reports against the respondent;
- Whether a weapon, physical restraints or battery was involved;
- Whether the respondent was a faculty or staff member with student oversight;
- The imbalance of power, if any, between the parties;
- The safety of complainant; and
- Whether a thorough investigation can be completed while maintaining the request for confidentiality.

If complainant's identity will be disclosed, complainant must receive notice prior to disclosure or investigation and District must take immediate steps to provide for the safety of complainant when appropriate.

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Title IX - Consolidating Complaints

Discretion to consolidate complaints:

- Arise out of the same facts or circumstances (so intertwined that their allegations directly relate to all parties) and
- Involve more than one complainant, more than one respondent, or counter-complaints

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The Grievance Process – Issues Before the Investigation

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Notice of Allegations

Must provide written notice to the parties, including:

- Details of the allegations: identities of the parties, conduct alleged, date and location (if known).
- Overview of the grievance process, including the option for informal resolution.
- Presumption that the Respondent is not responsible.
- Statement that a determination will occur at the end of the grievance process.
- Sufficient time for each party to prepare before any interview.
- Right to an advisor and to review evidence.
- Code of conduct provision on false statements.
- Reissued notice if new allegations are added.

34 CFR § 106.45(b)(2)(i)

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Title IX – Emergency Removal

- Available at any point in grievance process
- Possible after an individualized analysis
- Appropriate when **non-employee** Respondent poses immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment
- Must provide notice to Respondent & appeal
- Can be used to remove from class or campus

34 CFR § 106.44(c)

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Administrative Leave

- District has authority to place **employee** Respondents on administrative leave during Title IX grievance process
  - Coordinate with HR to ensure compliance with CBAs and Ed Code
  - Example: faculty admin. leave per Ed. Code 87623

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Title IX - Mandatory Dismissal

Mandatory dismissal when:

- Conduct would not constitute sexual harassment;
- Conduct did not occur within the education program or activity; or
- Conduct did not occur against a person in the United States

34 CFR § 106.45(b)(3)(i)

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Title IX - Discretionary Dismissal

Discretionary dismissal when:

- Complainant withdraws complaint;
- Respondent no longer enrolled or employed; or
- Specific circumstances prevent district from gathering sufficient evidence to reach a determination

34 CFR § 106.45(b)(3)(iii)

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Title IX - Notice of Dismissal

Must provide prompt:

- Simultaneous notice of dismissal to the Parties;
- Include reasons for dismissal; and
- Appeal process

34 CFR §§ 106.45(b)(3)(iii),  
106.45(b)(8)(i)

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Title IX - Role of Advisors

- Purpose: provide assistance and support to a party
- Individual of the party's choosing: family member, friend, an attorney, a neighbor
- Not required before hearing
- May set conduct requirements and require confidentiality agreement

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Title IX – Retaliation

- Protects everyone who participates from retaliation
  - Such as intimidation, threats, coercion, or discrimination
- Cannot take action against anyone for refusing to participate
  - No threats of discipline for insubordination

34 CFR § 106.71

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Case Study: Employee Discipline

Carlos refuses to cooperate with the investigator in a Title IX complaint investigation. The Title IX Coordinator learns that Carlos, who is a talented mechanic, is now working as an adjunct at the college.

***Can the District terminate Carlos as an adjunct immediately because of the pending complaint? Can the District discipline Carlos for insubordination?***

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## Trauma-Informed Practices

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## Trauma-Informed Practices

- Title IX allows schools to use trauma-informed approaches when responding to sexual harassment complaints (ED Q&A, July 2021)
- *Trauma-informed* means understanding how trauma can affect a participation, memory, and communication during an investigation or hearing
- These approaches strengthen fairness by improving the quality of information gathered from all parties

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## Legal Requirements in California

- Ed Code § 66281.8 requires training for employees who investigate or adjudicate complaints
- Training must include trauma-informed investigatory and hearing practices to promote impartial, equitable processes
- Applies to Title IX and non-Title IX sexual harassment matters

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Applying Trauma-Informed Principles

- Communicate clearly about process and timelines
- Provide predictable structure and options for support
- Use neutral, non-judgmental language
- Be attentive to signs of distress and allow reasonable pauses or breaks
- Document objectively. Focus on facts, not demeanor

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Impartiality

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Impartiality in Title IX

- Title IX requires an objective evaluation of all relevant evidence
- Decision-makers and investigators must be free from bias or conflict of interest
- Impartiality ensures both parties have confidence in the fairness of the process

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Recognizing Bias and Conflicts of Interest

- **Bias:** Predisposition that prevents an objective evaluation of the facts
  - May arise from personal beliefs, prior experiences, stereotypes, or relationships
  - Examples: assumptions about gender, sexual orientation, or credibility of complainants or respondents; prior involvement in similar cases
- **Conflict of Interest:** Personal, professional, or institutional relationship that could compromise neutrality or create the appearance of unfairness
  - Examples: supervisory or reporting relationships, personal friendships, prior advocacy, or involvement in related matters

34 CFR § 106.45[b][1][iii]

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Consequences of Bias or Conflict

- Conflict of interest or bias is grounds for appeal
- Undermines confidence in the process and the district
- May lead to findings overturned or loss of federal compliance

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Case Study

At the hearing, the Respondent alleges the investigator’s spouse works for the Complainant’s parent; the investigator ignored witnesses the Respondent identified, saying video showed the full incident; and the investigator claims he can’t be biased because he “teaches equity and inclusion.”

***Do these facts show bias or a conflict of interest?***

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# Effective Compliance with Title IX (2020 Regulations) & California Law

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## The Grievance Process – Informal Resolution

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### Informal Resolution

- Only after Formal Complaint before Determination
- Not required, totally voluntary
  - May not be appropriate for all formal complaints
  - Title IX Coordinator should determine if Informal Resolution is appropriate
  - Requires both Parties’ voluntary, written consent
- Title IX Coordinator should not be facilitator

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### Informal Resolution

- Must provide notice of:
- Allegations
  - Rules/requirements of the informal resolution process
  - Circumstances under which the IRP precludes Parties from resuming formal complaint arising from the same facts
  - Consequences of participating
  - Records that will be maintained or could be shared
  - Right to withdraw from process

34 CFR § 106.45(b)(9)

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Determining Whether to Offer Informal Resolution

- Considerations
  - Outcome of an individualized safety and risk analysis
  - Nature of the alleged conduct
  - Whether allegations involve multiple victims
  - Whether allegations involve a pattern of conduct
  - Other evidence-informed factors indicative of increased risk to campus safety
  - Whether the circumstances warrant the Title IX Coordinator signing a formal complaint

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Examples of Informal Resolution Processes

- Mediation
- Arbitration
- Restorative Justice

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Examples of Informal Resolutions

Informal Resolution Agreements can include:

- Academic accommodations
- Apology or agreement to repair harm
- Education/training
- Mutual restrictions/stay away orders
- Counseling/treatment
- Other sanctions or discipline
  - Restrictions on participation in district's programs
  - Voluntary resignation, withdrawal, accepting lesser discipline

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Case Study: Minors on Campus

A minor student in the dual enrollment program filed a formal complaint against another minor student in the same program. The Parties are interested in informal resolution. The Complainant agrees to participate in informal resolution with the following caveat: she does not want her parents to find out about her formal complaint or the informal resolution because she was cutting class and drinking during the incident.

*Discussion: Should the informal resolution process be offered to these students? What are things to consider?*

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The Grievance Process –  
The Investigation

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Title IX Investigations

- Fact-finding investigation to find out:
  - Did the misconduct occur?
- Investigations may vary, but must be:
  - Prompt
  - Adequate
  - Reliable
  - Impartial

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Title IX Investigator

- Role: conduct the investigation and write the report
- Can be Title IX Coordinator; Cannot be Decision-Maker or Informal Resolution Facilitator
- Be free of biases and conflicts of interest; be trained

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Evidence

- Inculpatory evidence tends to support a determination that the respondent's *is* responsible for alleged conduct; evidence that tends to establish guilt
- Exculpatory evidence tends to support a determination that the respondent *is not* responsible for the alleged conduct; evidence that tends to exonerate

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Standard of Evidence

- Title IX regulations require “preponderance of the evidence” or “clear and convincing evidence standard” 34 CFR § 106.45(b)(7)(i)
- California law requires “preponderance of the evidence” Ed. Code, § 67386
  - It is more likely than not that the fact occurred

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Credibility Determinations

Investigator may include credibility assessment but not determination of responsibility

- If an investigator’s credibility determination is actually a determination of responsibility, it violates the regulations

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Evaluating the Evidence

- Report must fairly summarize relevant evidence
- The report may include recommended findings or conclusions
- Decision-maker cannot give deference to recommended findings
- Decision-maker has obligation to objectively evaluate relevant evidence

Preamble at p. 30308

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Relevance

- Not defined in regulations
- Evidence having any tendency in reason to prove or disprove any allegation at issue (Cal. Evid. Code CFR § 210)
- Can rely on logic, common sense, experience or science

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Relevance Considerations

Does the evidence:

- Indicate bias on the part of a witness
- Corroborate an allegation
- Provide motive/justification for an allegation
- Provide witness leads
- Provide evidence that might exonerate accused

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Relevance Limits — Privileged & Sexual History Information

- The District cannot use, seek, or consider legally privileged information (e.g., attorney–client, marital, or medical records) unless voluntarily waived in writing
- Questions or evidence about a complainant’s sexual predisposition or prior sexual behavior are not relevant, unless:
  - Offered to prove someone other than the respondent committed the conduct; or
  - Concern prior sexual behavior with the respondent and are offered to prove consent.

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Consent

- Affirmative consent standard (Ed. Code § 67386)
  - Affirmative, conscious, and voluntary agreement to engage in sexual activity

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Evidence Review

Complainant and Respondent:

- At least 10 days time
- Right to inspect and review evidence *directly related to the allegations (note this is different from relevance)*
- Right to submit written response to evidence
- Investigator must consider response before completing report

34 CFR §106.45 (b)(5)(vi)

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Investigative Report

- Purpose: Summarize investigation findings — not determinations of responsibility
- Report must include:
  - Scope and methodology (individuals interviewed, evidence reviewed)
  - Chronology of key steps (complaint, notices, interviews)
  - Summary of allegations and relevant evidence (inculpatory & exculpatory)
  - Credibility assessments if permitted by policy (never conclusions of fault)
  - Policies allegedly violated and list of attachments
- Distribution:
  - Provided to both parties at least 10 days before the hearing.
  - Parties may review and submit a written response.

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The Grievance Process –  
The Hearing

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Title IX Hearing – Key Requirements

- Opportunity for Parties to appear before a decision maker to respond to the evidence
- Must provide Parties written notice of date, time, location, participants, and purpose of hearing
  - With sufficient time for Party to prepare
- Neither Party may unilaterally waive the right to a live hearing
  - Can choose whether to participate in the hearing and whether to answer cross-examination questions

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Case Study – Right to Hearing  
No, Yes, Maybe

After the District provided the Parties notice of the hearing, the employee Respondent contacted the Decision-Maker and stated he accepts responsibility and wants to bypass the hearing in order to expedite the disciplinary decision.

***Because the Respondent admitted responsibility, can the Decision-Maker issue the determination regarding responsibility without the hearing?***

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Role of Advisors in Hearing

- Only the advisor can conduct cross examination, directly, orally and in real time
- Must assign an advisor even if the party is absent at the hearing
  - *Conflict with California law procedure:* Party or advisor cannot conduct cross exam (Ed. Code § 66281.8)
  - *Follow Title IX for Title IX hearing*

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Role of Decision-Maker

- Conduct hearing
  - May ask Parties and witnesses questions
- Must objectively evaluate all relevant evidence
  - Including inculpatory and exculpatory evidence
  - No credibility determinations based on status as Complainant, Respondent, or witness
- Must independently reach a determination regarding responsibility
  - Without giving deference to the investigative report

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Case Study – No, Yes, Maybe

The Title IX Coordinator attends the hearing to serve as a hearing facilitator. She will assist in bringing witnesses into the room, running the hearing technology, and enforcing decorum rules.

**Is this a violation of the Title IX regulations?**

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Hearing Format and Procedures

- Live hearing (in-person or virtual) where all parties can see and hear each other in real time.
- Recording or transcript required; must be available for party review.
- Decision-maker may adopt reasonable procedural rules, such as:
  - Opening/closing statements
  - Relevance objections and rulings
  - Discussion of relevance determinations with decision-maker
  - Time limits or structure for questioning

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Evidence and Witnesses at Hearing

- Must make all evidence shared during review available at the hearing
- Only relevant evidence is admissible
- Parties must have an equal opportunity to present witnesses (fact or expert)
  - Witnesses not required to participate in the hearing

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Case Study – Problems with Advisor

The District sent the required notice of the hearing to the Parties and their Advisors. The Complainant’s Advisor is an attorney he hired independently. On the day of the scheduled hearing, the Complainant’s Advisor failed to appear. Neither the Complainant nor the Decision-Maker can get in contact with the Advisor.

**What should the Decision-Maker do?**

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Pre-Hearing Meeting

- Decision-Maker pre-hearing meeting with Parties and their Advisors
  - Clarify purpose and logistics of hearing
  - Establish allegations and evidence that will be considered
  - Review rights and responsibilities of Parties & Advisors
  - Confirm attendance and whether accommodations are needed
- No Ex Parte Communications: Decision-Makers should not meet or communicate with parties separately

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Conducting the Hearing –  
Cross-Examination

- Decision-Maker rules on relevance in real time; must explain why question excluded
- Parties not required to submit written questions in advance
- No negative inference if a party or witness declines to answer
- Prior statements may be considered, but consider weight of statement

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Decision-Maker Questioning

- Eliminate missing information
- Use open-ended questions
- Don’t ask compound questions
- Don’t suggest an answer in question
- Listen carefully
- Clarify unclear terms or slang
- Remember, you are a neutral

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The Grievance Process –  
The Determination Regarding Responsibility

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Timing and Standard of Evidence

- Must issue written determination after the hearing within District’s timeline
- Uses the Preponderance of the Evidence standard — whether the conduct more likely than not occurred.
- Determination becomes final when:
  - District issues the result of any appeal, or
  - Deadline to appeal passes.

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Content of Determination Regarding Responsibility

To both parties simultaneously:

- Identify allegations;
- Procedural steps;
- Findings of fact;
- Conclusions;
- Statement and rationale for each determination regarding responsibility;
- Statement regarding whether district will provide remedies for Complainant;
- Appeal procedures for Complainants and Respondents.

34 CFR § 106.45 (b)(7)(ii)

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Consent

- Consent must be informed, mutual, and ongoing
- Can be withdrawn at any time
- No consent if there is force, coercion, intimidation, threats, or duress
- Silence or lack of resistance does not imply consent
- Consent to one act or past activity ≠ consent to another
- A person incapacitated by alcohol, drugs, or sleep cannot consent

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Effective Compliance with Title IX (2020 Regulations) & California Law

Santa Rosa Junior College | October 23, 2025

Presented By: Amy Brandt

Force

- Types of Force
  - Physical violence
  - Threats
  - Intimidation
  - Coercion

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Incapacity

- Individuals cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (alcohol, drugs, mental/cognitive impairment, injury, unconscious, etc.)
- Very fact-dependent. Consider:
  - Did Respondent know or should have known Complainant was incapacitated?
  - What did Respondent observe (behavior, consumption, speech, coordination)?
  - Did Respondent supply alcohol or drugs?

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Weighing Credibility

- Trauma Informed: Not based solely on observing demeanor
  - Consider other factors
- Credibility cannot be based on complainant, respondent or witness status

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**The Grievance Process –  
Sanctions and Remedial Measures**

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**Sanctions and Remedies**

Where a determination of responsibility for sexual harassment has been made against the respondent, the District has discretion regarding disciplinary sanctions but must also provide remedies to the complainant designed to restore or preserve equal access to the District’s education program or activity.

§ 106.45(b)(1)(i)

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**Remedies**

**Non-exhaustive list of remedies for Complainants:**

- Providing escort
- Providing academic support services, such as tutoring
- Ensuring Complainant and Respondent do not attend the same classes or work in the same work area
- Providing counseling services or medical services or referrals
- Arranging for Complainant to re-take course or withdraw from class without penalty
- Reviewing any disciplinary actions taken against Complainant

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Sanctions

**Non-exhaustive list of sanctions for Respondents:**

- Written or verbal reprimand
- Required training or counseling,
- Non-academic probation (students)
- Suspension
- Expulsion (student)
- Reduction in pay
- Demotion
- Termination of employment

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Employee Discipline

- Follow Title IX grievance policy to reach a determination regarding responsibility and suggested discipline
- Recommend a sanction and refer for discipline determination:
  - Per Collective Bargaining Agreement (classified)
  - Per Education Code
- Remember cannot retry the facts determined by grievance procedures

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**The Grievance Process –  
The Appeal**

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Appeals

- Must offer both parties an appeal from dismissal or determination regarding responsibility based on:
  - Procedural irregularity;
  - Newly discovered evidence; or
  - A conflict of interest or bias by Title IX personnel.
- May offer appeal to both parties on additional bases

34 CFR §106.45 (b)(8)(i) and (ii)

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Appeal Procedure

- Party must state grounds for appeal and statement of facts supporting those grounds
- If either Party submits appeal, district must
  - Notify other Party in writing
  - Allow non-appealing Party opportunity to submit written statement in support of, or challenging, outcome

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Appeal Outcome

- Appeal Decision-Maker must issue written decision on whether to grant or deny appeal and rationale for decision
  - Must provide written decision simultaneously to Parties
- Appeal Decision-Maker may extend deadlines
  - Party may seek extension by submitting written request
  - Appeal Decision-Maker must inform Parties simultaneously whether extension granted

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Effective Compliance with Title IX (2020 Regulations) & California Law

Santa Rosa Junior College | October 23, 2025

Presented By: Amy Brandt

Questions?

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Thank you!

Amy Brandt

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