

# Responding to Sex Discrimination: Effective Institutional Compliance with Title IX and State Law

LCW Consortium | September 13, 2024

Presented By: Jenny Denny & Pilar Morin

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## Responding to Sex Discrimination: Effective Institutional Compliance with Title IX and State Law

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Jenny Denny & Pilar Morin

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### Agenda

- Definitions
- Basic requirements of the 2024 regulations
- Pregnancy protections
- Response requirements
- Grievance procedures re: sex discrimination
- Grievance procedures re: sex-based harassment involving student parties (complainants or respondents)
- California law, as applicable throughout the presentation
- Legal Challenge: Kansas v USDOE (Title IX Injunction)

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### Title IX

**Title IX prohibits discrimination:**

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

• Discrimination on the basis of sex can include sex based harassment or sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion.

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

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Preemption  
34 C.F.R. § 106.6

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**Preemption (34 C.F.R. § 106.6)**

- *Effect of State or local law or other requirements*  
Obligation to comply with Title IX not obviated or alleviated by State or local law or other requirement that conflicts with Title IX
- *Effect of FERPA*  
Obligation to comply with Title IX not obviated or alleviated by FERPA

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Definitions

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**Complainant (34 C.F.R. § 106.2)**

- A student or employee who is alleged to have been subjected to sex discrimination; or
- Other person who is alleged to have been subjected to sex discrimination and who was participating/attempting to participate in the district's education program or activity at the time of the alleged sex discrimination

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**Complaint (34 C.F.R. § 106.2)**

Oral or written request to the district that objectively can be understood as a request for the district to investigate and make a determination about alleged discrimination under Title IX

- This is consistent with FEHA and Education Code

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**Case Study**

- A student reports to the Title IX Coordinator that *on August 2, 2024*, a faculty member denied her a testing accommodation she needed due to her pregnancy. The student is frustrated and refuses to put her complaint in writing. The student states she just wants to retake the class. The District can only offer supportive measures because it does not have a written complaint. True or False?

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**Case Study – Answer**



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**Discrimination  
(34 C.F.R. § 106.10)**

- 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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**Education Program or Activity  
(34 C.F.R. § 106.31)**

“...any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient...”

- Must address sex-based hostile environment even when conduct occurred outside of education program or activity or outside US

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**Education Program or Activity (34 C.F.R. § 106.31)**

- Limited circumstances in which district can allow different treatment or separation based on sex
- Cannot adopt policy or engage in practice that prevents person from participating in education program or activity consistent with person's gender identity

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**Retaliation (34 C.F.R. § 106.2)**

- Intimidation, threats, coercion, or discrimination
- By the district, a student, or an employee or other person authorized by the district to provide aid, benefit, or service
- For the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing, or informal resolution
- Includes peer retaliation

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**Case Study**

Faculty member Dr. Spade is accused of sexually assaulting a student. Can the district issue her a notice directing her to participate in the investigation or she will be subject to discipline?

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**Case Study – Answer (34 C.F.R. § 106.2)**



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**Sex-Based Harassment (34 C.F.R. § 106.2)**

- *Quid pro quo harassment* - Conduct by an employee, agent, or other person authorized by the District
- *Hostile environment harassment.*
  - Broader definition compared to 2020 regulations
  - Unwelcome sex-based conduct that is subjectively and objectively offensive and is so severe or pervasive (based on totality of circumstances) that it limits or denies
    - List of fact-specific factors to consider
- *Specific offences/Clery Crimes* (sexual assault, dating violence, domestic violence, and stalking)

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**Sexual Harassment (California Education Code)**

**Sexual harassment:** unwelcome sexual advances, requests for sexual favors, and other conduct of sexual nature, made by someone from or in the work/ educational setting

- Quid pro quo
- Hostile Environment
  - Includes sexual battery, sexual violence, and sexual exploitation

Cal. Ed. Code §§ 212.5, 66262.5

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**Case Study**

A student reported to the Title IX Coordinator that another student distributed images that depict the Complainant engaged in sexual activities. The images were created using AI technology and shared via online platforms. The conduct all occurred off campus. The Complainant states he is nervous on campus, unable to focus on his classes, fearful of his safety, and worried the Respondent will continue to target him.

Can the District address this issue using its Title IX Grievance Procedure?

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**Case Study – Answer**

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**Compare with SB 493: Cal. Ed. Code Duties to Students**

- Primary concern must be student safety
- Must take reasonable steps to respond to incident of sexual harassment
  - Occurring in connection with or outside of its educational activities or programs
  - Occurring on or off campus
- If there is any reason to believe the incident could contribute to a hostile educational environment or otherwise interfere with a student's access to education

Ed. Code § 66281.8(b)(3)

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Basic Requirements of the 2024 Regulations  
34 C.F.R. § 106.8

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**Basic Requirements**  
**(34 C.F.R. § 106.8(a) and (b))**

- Must designate at least one employee as Title IX Coordinator
- Adopt, publish, implement nondiscrimination policy and grievance procedures consistent with regulations
- Provide notice of nondiscrimination
  - To students, applicants for admission and employment, and all unions and professional organizations

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**Training (34 C.F.R. § 106.8(d))**

Yearly training required for:

- All employees;
- Investigators, decisionmakers, and others responsible for grievance procedures or with authority to modify/terminate supportive measures;
- Facilitators of informal resolution process; and
- Title IX Coordinator and designees

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**Training (Cal. Education Code)**

- Training required for:
  - All employees;
  - Employees engaged in the grievance procedures related to sexual discrimination, including sexual violence; and
  - Students

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**Recordkeeping (34 C.F.R. § 106.8(f))**

- Maintain Title IX records for at least 7 years:
  - Complaints: informal resolution or grievance procedures and outcome records
  - Each notification the Title IX Coordinator receives: records on actions district took to meet its obligations
  - All Title IX training materials (do not need to post on website)

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**Parental, Family, or Marital Status & Pregnancy Protections (Student)**  
**34 C.F.R. § 106.40**

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**Parental Status**  
**(34 C.F.R. § 106.2)**

Status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

- A biological parent;
- An adoptive parent;
- A foster parent;
- A stepparent;
- A legal custodian or guardian;
- In loco parentis with respect to such a person; or
- Actively seeking legal custody, guardianship, visitation, or adoption of such a person

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**Pregnancy or Related Condition**  
**(34 C.F.R. § 106.2)**

- Pregnancy, childbirth, termination of pregnancy, or lactation;
- Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions

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**Nondiscrimination**  
**(34 C.F.R. § 106.40(a), (b)(1))**

- Cannot discriminate against student based on student's current, potential, or past pregnancy or related conditions
  - May provide option to voluntarily participate in separate portion of education program or activity
- Cannot adopt or implement policy, practice, or procedure concerning student's current, potential, or past parental, family, or marital status that treats students differently on the basis of sex

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**Employee Notification Requirements**  
(34 C.F.R. § 106.40(b)(2))

- Employees who are directly informed of a student’s pregnancy/related conditions must:
  - Provide Title IX Coordinator’s contact information;
  - Tell student about Coordinator’s ability to take/coordinate specific actions & ensure equal access

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**Specific Actions to Prevent Discrimination**  
(34 C.F.R. § 106.40(b)(3))

- Provide information
- Make reasonable modifications
- Voluntary access to separate and comparable portion of program or activity
- Voluntary leaves of absence
- Lactation space
- Limitation on supporting documentation

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**Comparable Treatment**  
(34 C.F.R. § 106.40(b)(4))

- Must treat pregnancy/related conditions in same manner/under the same policies as other temporary medical conditions
- Cannot require a student who is pregnant/has related conditions to provide medical certification to participate unless:
  - Certified level of physical ability/ health necessary;
  - District requires certification of all participants; and
  - Information not used as a basis for discrimination

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**California Laws Re: Employee Pregnancy**

- Cannot engage in discriminatory practices in employment accommodations on the basis of sex (including breastfeeding or medical conditions related to breastfeeding)
  - Employers required to provide reasonable accommodations for employees with a condition related to pregnancy or childbirth, including lactation. Gov. Code § 12945 (FEHA)
- Employers are required to provide reasonable break time to employees who need to express milk. Labor Code § § 1030-1033

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**California Laws Re: Student Pregnancy**

- Community colleges and state university must provide reasonable accommodations to lactating student to express breast milk, breastfeed an infant child, or address other needs related to breastfeeding
- Requires educational institutions to provide a sink in the new construction, replacement, expansion or renovation, and access to a private and secure room for breastfeeding students

Ed. Code § 66271.9

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**Discussion**

Lucia is a student in the cosmetology dept. She is four months pregnant in the fall 2024. Professor Higgins is concerned that the fumes from the hair dyes and other products are bad for the baby. He requests clearance from Lucia's doctor before she can continue in the program. Lucia states she is fine and that she plans on taking off the spring and will be back in fall of 2025.

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Response Requirements  
34 C.F.R. § 106.44

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Response Requirements  
(34 C.F.R. § 106.44(a))

“A recipient with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must respond promptly and effectively...”

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Employee Reporting Requirements  
(34 C.F.R. § 106.44(c))

- Any employee with authority to institute corrective measures or has responsibility for administrative leadership, teaching, or advising:
  - Must notify Title IX Coordinator
- All other employees:
  - Notify Title IX Coordinator; or
  - Provide contact information for Title IX Coordinator and information about how to make a complaint

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**California Law: Knowledge of Sexual Harassment and Duty to Report**

- Employee supervisors: Anyone who has any responsibility or discretion to lead others, must report unlawful discrimination. (Gov. Code § 12926(r))
- Responsible employees have duty to report sexual harassment to the Coordinator. (Ed. Code § 66281.8(b)(3)(C))

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**Confidential Employee (34 C.F.R. § 106.2)**

- Employee whose communications are privileged or confidential under Federal or State law;
- Employee whom the district designated confidential; or
- Employee conducting an Institutional Review Board-approved human-subjects research study re: sex discrimination

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**Confidential Employees Requirements (34 C.F.R. § 106.44(d))**

- Districts must notify all participants of how to contact confidential employees
- Confidential employees must explain:
  - Status as confidential;
  - How to contact Title IX Coordinator and make complaint; and
  - Role of Title IX Coordinator

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**Who Can File Complaints**  
**(34 C.F.R. § 106.45(a)(2))**

- Student/employee alleged to have been subjected to sex discrimination; or
- Person other than student/employee alleged to have been subjected to sex discrimination when that person was participating/attempting to participate in education program or activity; or
- Parent/guardian of minor, or authorized representative with legal right to act on behalf of Complainant; or
- Title IX Coordinator.

• Note: Only person alleging to have been subjected to sex-based harassment can make a sex-based harassment complaint

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**Minor Students**

- The Family Educational Rights and Privacy Act (FERPA) requires student consent to release community college records
- Districts should secure waivers from student parties who are minors to share documents with parents/guardians

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**Response Requirements**  
**(34 C.F.R. § 106.44(f))**

- When notified of conduct that reasonably may constitute sex discrimination:
  - Treat parties equitably;
  - Offer and coordinate supportive measures;
  - Notify complainant of grievance procedures and informal resolution process;

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**Response Requirements**  
**(34 C.F.R. § 106.44(f))**

- Take appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within education program or activity
- If complaint made:
  - Notify respondent of grievance procedures and informal resolution process;
  - Initiate grievance procedures or informal resolution process;
- If Title IX Coordinator initiates complaint: notify complainant and address safety concerns

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**California Law Student Request Confidentiality – Sexual Harassment**

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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**Supportive measures**  
**(34 C.F.R. § 106.2 & 106.44(g))**

- Individualized measures offered as appropriate, as reasonably available, without unreasonably burdening party
- Not punitive or disciplinary
- Without fee or charge
- Should restore/preserve access, provide support or safety during grievance procedures or informal resolution

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**Supportive measures  
(34 C.F.R. § 106.44(g))**

- May modify or terminate supportive measures at end of grievance procedures/informal resolution process
- Must provide party with timely opportunity to seek modification/reversal of district's decision to provide/deny/modify/terminate supportive measures applicable to them
  - Appeal to impartial employee
- Must provide party with opportunity to seek additional modification/termination of supportive measures if circumstances change materially

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**Supportive Measures –  
No Contact Orders**

- Title IX: Can permit “restrictions on contact applied to one or more parties...” to restore/preserve access (34 C.F.R. § 106.44(g)(1))
- California law: Cannot automatically issue mutual no-contact directive in student sexual harassment matter (Ed. Code § 66281.8)
  - Must consider specific circumstances to determine whether mutual no-contact directive is necessary or justifiable

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**Emergency Removal  
(34 C.F.R. § 106.44(h))**

- May remove student/non-employee respondent
  - Emergency basis
  - After individualized safety and risk analysis that determines imminent and serious threat to health or safety of complainant/any students/employees/others arising from allegations of sex discrimination
- Must provide respondent with notice and opportunity to challenge the decision immediately following the removal.

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**Case Study**

The District places Vice President Gomez on paid administrative leave until further notice. In that letter, the District directs Dr. Gomez to stay off campus.

*Is this an emergency removal?*

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**Administrative Leave**  
**(34 C.F.R. § 106.44(i))**

- May place an employee respondent on administrative leave during pendency of grievance procedures
- Preamble states Title IX Regs not intended to override CBA or state law
- Note CA Law for CCDs: In matters involving academic employee on administrative leave, District must end administrative leave within 90 working days, unless extended by agreement of the employee for <30 calendar days
  - District has right of assignment

Ed. Code § 87623

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**Case Study**

Student alleges that he was sexually assaulted by another student in the parking lot as he was unlocking his car. The complainant also alleges the respondent made several racial slurs during the attack, and broke the windows of his car.

Can the District investigate the assault allegations with the race harassment and destruction of property?

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**Complaint Consolidation**  
**(34 C.F.R. § 106.45(e))**

- May consolidate complaints against 1+ respondent, or by 1+ complainant against 1+ respondents, or by one party against another party, when allegations arise out of same facts/circumstances *(except where such consolidation would violate FERPA)*
  - If sex-based harassment involving student party: Must comply with § 106.46 in addition to the requirements of this section

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**Informal Resolution**  
**(34 C.F.R. § 106.44(k))**

- Can be offered if no complaint is filed
- Available at any time prior to determination at District's discretion
  - Not available for allegations of sex-based harassment of elementary/secondary school student or if in conflict with Federal, State or local law
  - May decline to offer despite parties' wishes

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**Informal Resolution**  
**(34 C.F.R. § 106.44(k))**

- Cannot require/pressure parties to participate
- Must obtain voluntary consent
- Must not require waiver of right to investigation and determination as condition of enrollment or employment or exercise other right
- Must provide specified notice prior to initiation

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**Grievance Procedures**  
**34 C.F.R. §§ 106.45 and 106.46**

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**Two Roads Diverge**

- Title IX now has two grievance procedure tracks:
  - Track 1: 106.45 sex discrimination allegations (including employees, students, and third parties)
  - Track 2: 106.46 (involving student parties in sex-based harassment allegations)
- The track that applies depends on
  - The nature of the claim (sex discrimination vs. sex-based harassment) and
  - The parties involved (employees vs. students)

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**When Does section 106.46 Apply?**

- Any complaint of sex-based harassment that involves a student party
- Student can be the Complainant or the Respondent (or both)
- For student employees: context-specific

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**Single-Investigator Model Allowed (34 C.F.R. § 106.45(g))**

- Decisionmaker may be the same person as the investigator or Title IX Coordinator (§ 106.45(b)(2))

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**34 C.F.R. § 106.45: Grievance Procedures for Sex-Discrimination and Non-Student Harassment**

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**Case Study**

You are the Title IX Coordinator at Sunny CCD. Szu Szu, a female student who works fulltime in the cafeteria and takes culinary classes on a part time basis in the evening, reports that the supervisor in the cafeteria, Chef Bart, treats women, including her, unfairly because he only offers and assigns overtime work to the male workers. She also alleges he told her repeatedly that women should clean kitchens not serve as chefs. Szu Szu reports feeling depressed, having panic attacks and thinking of dropping out.

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**Case Study – Discussion**

- Should this complaint be process via .45 or .46? Is the complainant a student or employee?
- What if Chef Bart is also Szu Szu professor in the culinary program and she and the other women are also in his classes?

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**Student Employees  
(34 C.F.R. § 106.46(b))**

- When a Party is both student and employee, Title IX Coordinator should conduct fact-specific inquiry to determine which grievance procedures apply
  - Consider Party’s primary relationship with district and whether conduct occurred while Party was performing employment-related work

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**Notice of Allegations  
(34 C.F.R. § 106.45(c))**

- Notice of allegations need not be in writing—**but best practice is to do so**
- Notice to each party must contain the same information
  - The applicable grievance procedures
  - Informal resolution process, if available
  - Identities of the parties, the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s)
  - Prohibition of retaliation
  - Parties’ equal opportunity to access evidence
- If further allegations arise—must notice again

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**Complaint Dismissal**  
**(34 C.F.R. § 106.45(d))**

- Dismissal is now permissive, never mandatory
- Must offer supportive measures to parties
- Consider FEHA and Ed Code duty to investigate
- Must notify Parties of dismissal and right to appeal
  - Regulations outline appeal procedures

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**Credibility Assessments**  
**(34 C.F.R. § 106.45(g))**

- “A recipient must provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party’s or witness’s credibility to the extent credibility is both in dispute and relevant...”
- Live cross-examination NOT required

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**Standard of Proof**  
**(34 C.F.R. § 106.45(h)(1))**

- Preponderance of the evidence, UNLESS District uses clear and convincing evidence standard in all other comparable proceedings, including proceedings relating to other discrimination complaints
- In California, we use the preponderance of the evidence standard, i.e. is it more likely than not that sex discrimination occurred

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**Investigations**  
**(34 C.F.R. § 106.45(f)(1)-(2))**

- District has burden to gather sufficient evidence to determine whether sex discrimination occurred
- Parties must receive equal opportunity to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible

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**Relevant Evidence**  
**(34 C.F.R. § 106.2)**

- Related to the allegations of sex discrimination under investigation
- Questions are relevant when they seek evidence that may aid in showing whether sex discrimination occurred
- Evidence is relevant when it may aid a decisionmaker in determining whether sex discrimination occurred

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**Impermissible Evidence (34 C.F.R. § 106.45(b))**

- Impermissible Evidence
  - Privileged information, medical records, or evidence provided to a confidential employee (unless waived)
  - Evidence of complainant's sexual interests or prior sexual conduct (unless offered to prove that someone other than the respondent committed the alleged conduct or evidence about specific incidents of the complainant's prior sexual conduct with the respondent offered to prove consent)
    - SB 493 in student sex harassment requires written explanation of why such evidence is relevant?

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**Equal Opportunity to Access Evidence (34 C.F.R. § 106.45(f)(4))**

- Parties must receive equal opportunity to access relevant and not otherwise impermissible evidence or an accurate description of this evidence
- District must provide equal and reasonable opportunity for parties to respond to the evidence/description of the evidence
  - Regulations do not define reasonable opportunity

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**Appeal of Determination (34 C.F.R. § 106.45(i))**

- Must offer parties a appeal process that, at a minimum, is the same as offered in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints

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**34 C.F.R. § 106.46: Grievance Procedures for Sex-Based Harassment Involving a Student**

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**Case Study**

You are the Title IX Coordinator at Sunny CCD. Carmela, a nursing student reports to you that another student, John, whom she has had an on-and-off romance and is the father of her child, choked her during an argument and left a bruise on her neck after she refused to have sex with him. Later that night, Carmela leaves you a voicemail recanting her statement, instead stating that she reported him because she was upset at him for other reasons. She asks you not to initiate a formal investigation because they have a son together and would not want him be disciplined.

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**Case Study – Discussion**

What should you do?

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**Written Notice to Parties  
(34 C.F.R. § 106.46(c)-(e))**

- *Written* notice of allegations to parties with sufficient time for parties to prepare
  - May delay if safety concern
- Must include content required by 106.45, plus following statements:
  - Respondent presumed not responsible until conclusion
  - Parties have right to an advisor
  - Equal opportunity to access evidence

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**Parties' Choice of Advisor**  
**(34 C.F.R. § 106.46(e))**

- Parties must have same opportunity to be accompanied to any meeting or proceeding by advisor of their choice, who may be, but is not required to be, an attorney
  - District can allow union rep + advisor, if both parties have opportunity to be accompanied by more than one person
- Recipient may establish restrictions regarding the extent to which the advisor may participate in the grievance procedures, as long as the restrictions apply equally to the parties

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**Questioning of Parties and Witnesses:**  
**(34 C.F.R. § 106.46(f))**

- Two options:
  - Parties submit questions to investigator to ask other party in individual meetings
    - Must provide parties with recording/transcript of meeting
  - Live hearing with cross-examination by decisionmaker
    - Parties may submit questions
    - Cal Law: Cross-examination of either party or any witness shall not be conducted directly by a party or a party's advisor Ed. Code § 66281.8
    - May be video/remote (must provide transcript or recording to parties afterward)

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**Inferences Based on Refusal to Answer Questions**

- A decisionmaker may *choose* to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible
- The decisionmaker must not draw an inference about whether sex-based harassment occurred based *solely* on a party's or witness's refusal to respond to such questions

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**Equal Opportunity to Access Investigative Report (34 C.F.R. § 106.46(h))**

- Must provide equal opportunity to access either the relevant and not otherwise impermissible evidence **or** written investigative report
- If recipient chooses to provide access to an investigative report, it must further provide the parties with an equal opportunity to access the underlying evidence

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**Written Determination (34 C.F.R. §§ 106.46(h))**

- Must provide written notice of determination to parties simultaneously
- Notice must include:
  - A description of the alleged sex-based harassment;
  - Information about the policies and procedures the recipient relied on;
  - The decisionmaker's evaluation of the evidence and determination whether sex-based harassment occurred;
  - If sustained finding, any disciplinary sanctions the recipient will impose on the respondent, any other remedies to be provided to the complainant, and, to the extent appropriate, other students experiencing the effects of the sex-based harassment; and
  - Appeal procedures

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**Determination of Policy Violations vs. Sanctions**

- Decision re violation of policies can be separated from decision on the sanction
  - E.g., Title IX Coordinator can make policy determination, then forward to respective administrator for student and employee sanctions
- Must train all decisionmakers as required by Title IX Regulations and SB 493

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### Cal. Grievance Procedures – Outcome of Complaint and Next Steps

- District must provide written notice to parties of the outcome of the complaint, including:
  - Whether a policy violation was found to have occurred;
  - The basis for that determination, including factual findings; and
  - Any discipline imposed
- Grievance procedures must provide assurance that the district will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate

*Cal. Ed. Code § 66281.8(b)(4)(A)(xiv)-(xv)*

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### Right to Appeal (34 C.F.R. § 106.46(i))

- Unlike 106.45, appeal process required
- Decisionmaker cannot have taken part in investigation of the allegations or dismissal of the complaint
- Bases for appeal
  - Procedural irregularity that would change the outcome;
  - New evidence that would change the outcome and was not reasonably available at time of determination; and
  - The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome

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### Cal. Grievance Procedures – Appeals

- Grievance procedures must allow either party to appeal the outcome of the grievance proceeding if the district has such an appeals process
- A district's grievance procedure may limit the grounds for an appeal, provided that any limitation shall apply equally to all parties and that the non-appealing party shall have an opportunity to respond to the appeal

*Cal. Ed. Code § 66281.8(b)(4)(A)(xx)*

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Other Overlapping Legal Obligations

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### Compliance Issues: Overlapping Legal Requirements

**State Law Mandates**

• "Yes" means "Yes" Policy	Ed Code § 67386
• District Nondiscrimination	Ed Code § 220
• Student Orientation	Ed Code § 67385.7
• District Safety Plans	Ed Code § § 67380
• Coordination with Law Enforcement	Ed Code § 67381
• Confidentiality of Sexual Assault Victims	Ed Code § 67385
• Mandated Reporting	Pen Code § 11164 et seq.
• Data Collection, analysis, notice	Ed Code § 67380

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### Cal. Affirmative Consent Standard

**Affirmative, Conscious, and Voluntary Agreement to Engage in Sexual Activity**

- Responsibility of each party
- Lack of protest/resistance does not mean consent
- Silence does not mean consent
- Must be ongoing throughout
- Can be revoked at any time

Education Code § 67386(a)(1)

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Legal Challenge: Kansas v USDOE (Title IX Injunction)

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Kansas v. USDOE (Title IX Injunction)

- On July 2, 2024, a federal judge in Kansas enjoined the Department of Education's enforcement of the 2024 Title IX regulations in Alaska, Kansas, Utah and Wyoming and also schools attended by members of the plaintiff groups or their children throughout the country
- California CCDs and schools are affected by the court order against the DOE's enforcement of the 2024 Title IX regulations
  - <https://storage.courtlistener.com/recap/gov.uscourts.ksd.152561/gov.uscourts.ksd.152561.67.2.pdf>

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CCDs Affected by Court Order

- Allan Hancock College
- American River College
- Antelope Valley College
- Cabrillo College
- Cerro Coso Community College
- College of the Canyons
- Columbia College
- Cuesta College
- El Camino College
- Folsom Lake College
- Fresno City College
- Golden West College
- Grossmont College

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### CCDs Affected by Court Order

- Miracosta College
- Mission College
- Moorpark College
- Moreno Valley College
- Mt San Antonio College
- Norco College
- Orange Coast College
- Palomar College
- Reedley College
- Saddleback College
- Santa Barbara City College
- Ventura College
- West Los Angeles College
- Yuba College

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### DOE - OCR

“Per Court order, this list of schools may be supplemented in the future. The Final Rule and these resources do not currently apply in those states and schools. Pending further court orders, the Department’s Title IX Regulations, as amended in 2020 (2020 Title IX Final Rule) remain in effect in those states and schools.”

<https://www2.ed.gov/policy/rights/reg/ocr/index.html>

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### Thank you!

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