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# Title IX Personnel Team Training

2023-2024



# Agenda

- Overview
- Important Definitions
- Scope of Connections Academy Programs, Events, and Activities
- Title IX Personnel Team
- Basic Requirements of Title IX Sexual Harassment Grievance Process

# What is Title IX?

Prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance.

Some examples:

## Title IX Sexual Harassment

- Failure to provide equal opportunity in athletics
- Discrimination in STEM courses and programs
- Discrimination based on pregnancy

# History of Title IX

- Education Amendments of 1972
- 1975-US Dept of Education published 34 CFR Part 106, which implements Title IX
- Guidance documents were used when law had not specifically addressed an issue
- 1997-US Dept. of Education published Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties
- 2001-US Dept. of Education published Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties
- 2011 and 2016-Dear Colleague Letters

New Regulations are now law: effective August 14, 2020



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# Definition of Sexual Harassment



# Sexual Harassment

- Conduct on the basis of sex that contains one or more of the following:
  - A Connections Academy employee conditioning an aid, benefit, or service of the school based on participation in unwelcome sexual conduct, commonly referred to as “*quid pro quo*”
  - Unwelcome conduct determined by a reasonable person to be severe, pervasive, and offensive that it **denies a person equal access to a CA education program or sanctioned activity**

# Sexual Harassment-Federal Definitions

Sexual assault defined by [20 USC 1092](#)(f)(6)(A)(v), dating violence, domestic violence, and stalking as defined by [34 USC 12291](#)(a)(10), (8), (30).

Sexual assault - means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI

Dating violence - means violence committed by a person-

- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - (a) the length of the relationship
  - (b) the type of relationship
  - (c) the frequency of interaction between the persons involved in the relationship

# Federal Definitions-Continued

Domestic violence - includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Stalking - means engaging in a course of conduct directed at a specific person that would cause a reasonable person to

- (A) fear for his or her safety or the safety of others; or
- (B) suffer substantial emotional distress.

# Examples of Sexual Assault Offenses

## RAPE

The carnal knowledge of a person, without the **consent** of the victim, including instances where the victim is incapable of giving **consent** because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

## SODOMY

Oral or anal sexual intercourse with another person, without the **consent** of the victim, including instances where the victim is incapable of giving **consent** because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

## SEXUAL ASSAULT WITH AN OBJECT

To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the **consent** of the victim, including instances where the victim is incapable of giving **consent** because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

# Examples of Sexual Assault Offenses

## INCEST

Non Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

## FONDLING

The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving **consent** because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

# Consent

**The assistant secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault.**

34 CFR 106.30(a)(103)



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# Scope of Connections Academy Programs, Events, and Activities

# Scope of Program and Activities

- Connection Academy schools are public virtual schools required to abide by federal regulations
- *The Final Rule* was designed to restore or preserve equal access to Connections Academy's education program as well as sanctioned events and activities

# Scope of Program and Activities

- The scope of Connections Academy programs and activities includes but is not limited to:
  - LiveLessons
  - Field Trips
  - Clubs and Activities
  - School sponsored events
  - Graduation ceremonies
  - Unique school programs

# Other Considerations

## LOCATIONS:

...locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

- School facility
- State testing
- Field Trips
- Dances
- Student Events (sports, performances, plays, graduations, etc)
- Any technology or device used to access the CA program

## STALKING

- Students can stalk other students
- When is it stalking vs. annoyance?
- Reasonable person clause?

## DATING VIOLENCE

- School dance?
- School event?
- Effectively deny access to the CA program?

## DUAL-ENROLLMENT

- Post-Secondary Rules

# Involved Parties

- **Complainant:** Individual who is alleged to be the victim of conduct that could constitute Title IX sexual harassment
- **Respondent:** Individual who has been reported to be the perpetrator of conduct that could constitute Title IX sexual harassment
- **Recipient:** Institution that receives Federal financial assistance



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# Title IX Personnel Team within a CA School

- The Title IX Coordinator
- The Investigator
- The Decision Maker



# The Role of the Title IX Coordinator

- To coordinate efforts to comply with Title IX responsibilities.
- Has authorization to complete their duties as the coordinator
- Receives complaints of sexual harassment
- Effective implementation of supportive measures
- Must be readily available and accessible

# The Role of the Title IX Investigator

- Gather the facts regarding the incident
- Investigate the incident
- Write a comprehensive report to be shared with all parties
- Remain impartial throughout the investigative process

# The Role of the Title IX Investigator (continued)

- Gathers evidence to make a determination as to the responsibility of alleged sexual harassment
- Voluntary written consent must be obtained to use a party's physician, psychiatrist, psychologist or other professional treatment records.
- An equal opportunity to present witnesses and evidence will be provided to all parties.
- The ability of either party to discuss the allegations investigated or gathered and present evidence may not be restricted.
- All parties will be provided the same opportunities to have others present at any grievance proceeding.

# The Role of the Title IX Investigator (continued)

- If either or both parties are joined by an advisor, including an attorney, at a proceeding, Connections Academy may limit or restrict their participation.
- Written notice of the date, time, location, participants and purpose of all hearings, investigations, or any related meetings will be provided to all parties.
- Such notice shall permit enough preparation time for all parties.
- Equal opportunity to inspect and review all evidence regardless of intent to rely upon said evidence in reaching the final determination will be provided to all parties.
- Prior to the investigative report, an itemized evidence list subject to review will be sent to all parties, including advisors/attorneys if applicable, in electronic format or hard copy.
- The parties will have ten (10) days to submit a written response.

# The Role of the Title IX Investigator (continued)

- The response will be considered by the investigator prior to completing the investigative report. All evidence subject to inspection and review will be available at any hearing for reference and purposes of cross-examination.
- Finally, an investigative report will be prepared to summarize the relevant evidence and sent in an electronic format or hard copy to all parties and their advisors/attorneys, if applicable. The report shall be sent to the relevant parties at least ten (10) days prior to a hearing to permit review and the opportunity to provide a written response.

# The Role of the Decision Maker

- The decision maker may not be the investigator or the Title IX Coordinator
- Evaluate evidence and apply the standard of evidence chosen by the recipient
- The decision maker will issue a written determination with respect to responsibility including:
  - A description of the allegation that meets the definition of sexual harassment
  - A full description of the procedural steps from the receipt of the complaint through the final determination
  - Facts that support the final determination
  - Conclusions as to the application of the school's code of conduct and the known facts

# The Role of the Decision Maker (Continued)

- The decision maker will issue a written determination with respect to responsibility including:
  - A statement and rationale for
    - Each allegation and determination of responsibility
    - Disciplinary sanctions imposed on the respondent
    - The school's allowable reasons and procedures for appeal
    - Whether remedies will be provided to complainants
    - Appropriate disciplinary consequences for respondents

# Formal Complaint Guidelines

**Complainant must be participating in or attempting to participate** in the education program or activity of the recipient with which the formal complaint is filed

**Parent or guardian may file a formal complaint**  
on behalf of complainant

**Document filed by a complainant means**  
a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint

# Recipient Required to Post on Website

## **Contact information**

for Title IX Coordinator

\*prominently display

## **Non-Discrimination Policy**

\*prominently display

## **Training Materials**

used to train the Title IX Personnel Team

# Supportive Measures

- Individualized Services
- **To be available to complainant and respondent**
- Non-disciplinary and non-punitive
- Offered as appropriate (as reasonably available and without fee or charge to complainant or respondent)
- To be maintained as confidential (to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measure)
- The responsibility of the Title IX Coordinator (to coordinate the effective implementation)
- To be documented for 7 years (if no supportive measures were provided to the complainant, the reasons must also be documented)



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# Basic Requirements of the Title IX Sexual Harassment Grievance Process



# Basic Requirements

- Treat complainants and respondents equitably.
- Require an objective evaluation of all relevant evidence.
- Require Title IX Personnel Team to not have a conflict of interest
- Ensure that Title IX Personnel Team receive training
- Respondent is not responsible for alleged conduct until a determination regarding responsibility is made at the end of grievance process
- Include reasonably prompt time frames for conclusion of grievance process
- Describe the range or list the possible disciplinary sanctions and remedies
- Preponderance of Evidence or Clear and Convincing Standard
- Procedures and permissible bases for the complainant and respondent to appeal
- Describe the range of supportive measures
- Do not require information protected under legally recognized privilege

# Notice of Allegations

## **Must be:**

- Provided by the recipient
- Provided to the parties who are known
- Provided upon receipt of a formal complaint

## **Must contain:**

- Notice of grievance process
- Notice of allegations of sexual harassment (including sufficient details known at the time)
- Identities of all parties involved in the incident, the conduct allegedly constituting the Title IX sexual harassment, date and location of the alleged incident
- Statement regarding respondent is presumed not responsible
- Inform parties that they may have an advisor of their choice
- Inform parties regarding false statements or false information

# Additional Allegations

IF, IN THE COURSE OF AN INVESTIGATION, THE RECIPIENT DECIDES TO INVESTIGATE ALLEGATIONS ABOUT THE COMPLAINANT OR RESPONDENT THAT ARE NOT INCLUDED IN THE NOTICE PROVIDED PURSUANT TO PARAGRAPH (B)(2)(I)(B) OF THIS SECTION, THE RECIPIENT MUST PROVIDE NOTICE OF THE ADDITIONAL ALLEGATIONS TO THE PARTIES WHOSE IDENTITIES ARE KNOWN. Section 106.45(b)(2)(ii)

# Dismissing a Formal Complaint

## **Must Dismiss:**

- If conduct alleged in a formal complaint would not constitute sexual harassment
- If conduct did not occur in the recipient's education program or activity
- If conduct did not occur against a person in the United States
- "Such dismissal does not preclude action under another provision of the recipient's code of conduct."

## **May Dismiss:**

- If complainant notifies the Title IX Coordinator in writing that they want to withdraw the formal complaint or any allegations therein.
- If respondent is no longer enrolled or employed by the recipient
- If specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

**Upon dismissal for any reason above, the recipient must promptly send written notice of the dismissal and reason(s) simultaneously to the parties.**

# Consolidating Formal Complaints

**Where allegations arise out of the same facts or circumstances:**

- 1 Complainant against multiple respondents (example: entire sports team vs. one individual)
- 2 or more complainants (example: 1 person harassing multiple individuals at the same event)

# Reminders about Formal Complaints

An investigation of sexual harassment does not occur until a formal complaint is filed.

The recipient must investigate the allegations in a formal complaint.

Report of sexual harassment puts recipient on notice

Formal Complaint initiates an investigation

# Investigation Guidelines

## Ensure

burden of proof or burden of gathering evidence rests on the recipient

## Provide Equal Opportunity

- for parties to present witnesses and other evidence
- for parties to have others present during any grievance proceeding
- for parties to inspect and review any evidence

## Do Not Restrict

the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence

## Provide Written Notice

to any party whose participation is invited or expected

# Investigation Timeline



# Determination Regarding Responsibility

Issued by Decision-Maker

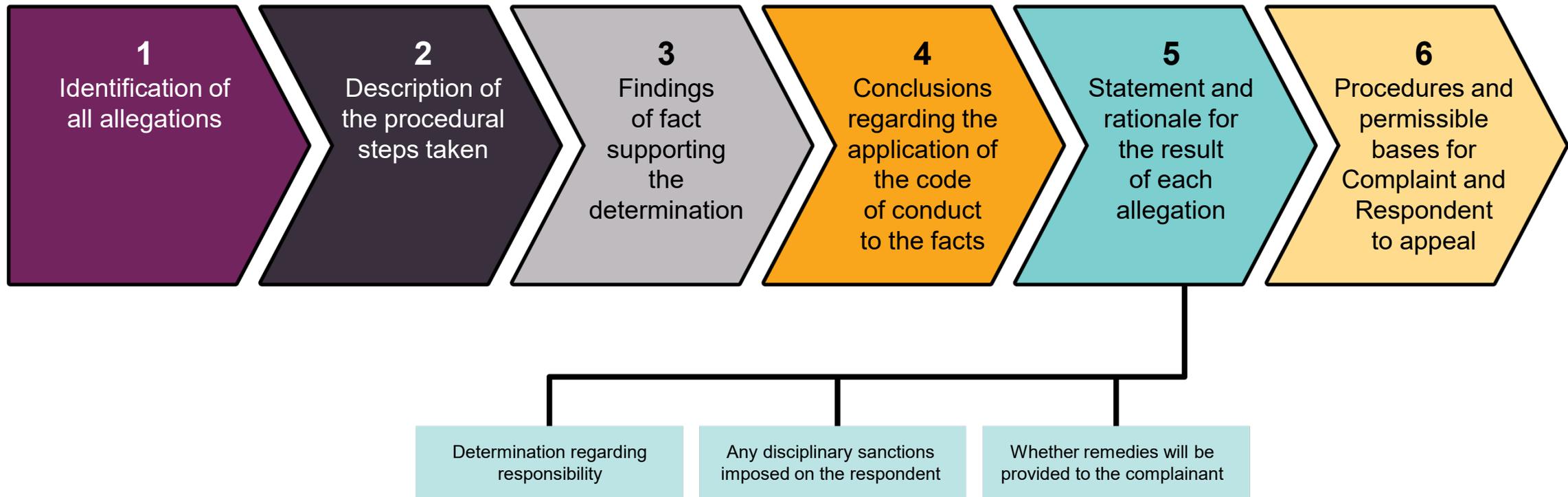
In written form

Standard of Evidence is applied

*Must be provided simultaneously to the parties.*

# Determination Regarding Responsibility

## MUST INCLUDE



# Remedies Provided to Complainant:

- Individualized Services that are similar to supportive measures
- Offered as appropriate (as reasonably available and without fee or charge to complainant)
- To be maintained as confidential (to the extent that maintaining such confidentiality would not impair the ability of the recipient to measure whether or not the remedy is being provided)
- The responsibility of the Title IX Coordinator (to coordinate the effective implementation)
- To be documented for 7 years (if no supportive measures were provided to the complainant, the reasons must also be documented)

# Appeals Must be Offered to Both Parties:

- *From a determination regarding responsibility on the following bases:*
  - Procedural irregularity that affected the outcome of the matter
  - New evidence that was not reasonably available that could affect the outcome of the matter
- *From a recipient's dismissal of a formal complaint or any allegations therein:*
  - New evidence that was not reasonably available that could affect the outcome of the matter
  - Title IX Personnel Team had a conflict of interest or bias toward the complainant or respondent that affected the outcome of the matter

*“A recipient may offer an appeal equally to both parties on additional bases.”*

# Appeal Guidelines

**Notify other party in writing when an appeal is filed**

**Implement appeal procedures equally to both parties**

**Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome**

# Required Written Notice

## **Determination regarding responsibility (provided in writing):**

- Timing: Must be provided at the conclusion of investigation

## **Decision in an appeal (provided in writing)**

- Must describe the result of the appeal and rationale for the result
- Must be provided simultaneously to both parties
- Timing: Provided at the conclusion of the appeal

# Serving Impartially

Designated individuals must:

“not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent”

| <b>YOU SHOULD:</b>     | <b>YOU SHOULD NOT:</b>                           |
|------------------------|--|
| Remain neutral         | Prejudge facts                                   |
| Be fair in actions     | Have a conflict of interest                      |
| Use objective criteria | Show bias toward a specific person or in general |

# Confidentiality Applies **EXCEPT** When:

Permitted by FERPA and Required by any law.

To carry out the purpose of 34 CFR part 106

- Schools must not restrict the ability of either party to:
  - discuss allegations under investigation
  - gather and present relevant evidence

# Retaliation

NO RECIPIENT OR OTHER PERSON MAY INTIMIDATE, THREATEN, COERCE, OR DISCRIMINATE AGAINST ANY INDIVIDUAL FOR THE PURPOSE OF INTERFERING WITH ANY RIGHT OR PRIVILEGE SECURED BY TITLE IX.

**34 CFR 106.71 (a)**

# The School Must Determine

**CA schools should check with their authorizing district to determine processes regarding the following items:**

- Informal resolutions
- Hearings (not required in the K-12 environment)
- Standard of Evidence

**\*If the authorizing district does not have processes developed, the school should develop their own internal processes.**

# Informal Resolutions

An informal resolution may be offered to a complainant after complaint but before final determination.

There is no waiver of rights. A complainant may decide not to proceed with an informal resolution at any time prior to the final determination and resume the normal grievance process.

Informal resolutions are not explicitly defined in the regulations and offer more flexibility for all parties.

Informal resolutions must be **voluntary!**

Not permitted when the claim involves an employee & student.

The most common form of informal resolution is mediation.

# Hearings

The School must determine whether hearings:

- Are beneficial (hearings are optional for K-12)
  - For recipients that are elementary and secondary schools, the recipient's grievance process may, but need not, provide for a hearing.
- Must allow questioning
- Local Education Agency (typically district) provided advisor
- Separated for each party
- Questions are relevant to the preceding (including credibility)
- Recording/transcript
- Allow for follow-up questions and answers

# Standard of Evidence

- Select One Standard
- Consistently Applied

## PREPONDERANCE OF THE EVIDENCE

The evidence shows that the allegation is more likely to have occurred than to have not occurred. (greater than 50% chance that the allegations are true)

Less rigorous burden of proof.

## CLEAR AND CONVINCING EVIDENCE

The evidence shows the claim is highly and more likely to be true than untrue. (High probability, but still less than “beyond a reasonable doubt”)

This is a medium level of burden of proof.

# Recap of the Impact of New Requirements

## Training:

- In-depth training for personnel team (required)
- Basic sexual harassment training for all employees (recommended)

## Personnel Team:

- Designate and authorize at least one Title IX Coordinator
- Title IX Team creation
- Single Investigator Model not allowed
- Flexibility of assignments

# Timeline

Investigative timeline (whole process should be completed in 20 days)

- Provide all evidence to parties (allow 10 days for investigator to review evidence and submit their investigative report) - with or without a hearing
- Prepare Investigative Report
  - Provide report to all parties (10 days prior to Hearing/Determination)
  - Allow parties to submit writing response, provide additional time

# Hearing

Hearings at the K-12 level are optional.

If the parties request a hearing:

- The designated decision maker shall provide each party the opportunity to submit relevant written questions to any party or witness, permit time for response, and allow additional time (if necessary) for limited follow-up questions
- Appeal (additional time beyond 20 days)

# Training Required

## Personnel Team

### ALL Team Members

- Title IX definition of sexual harassment
- Scope of the education program/activity
- Conducting an investigation
- Grievance process
- Hearings (*if conducting hearings*)
- Appeals
- Impartiality
  - Prejudging facts
  - Conflicts of Interest
  - Bias
- Informal resolution (*if offering informal resolution*)

### Investigators:

- Issues of relevance
  - Evidence

### Decision Makers:

- Issues of relevance
  - Evidence
  - Questions
- Technology used in hearings (*if conducting hearings*)

# Contact Information

**Ahmer Sheriff**

Inhouse Attorney

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# Required Survey

[Title IX Training Completion Survey](#)

**Please submit no later than March 31, 2021**



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**THANK YOU!**

