



# Understanding Title IX Requirements

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Presented by: Katherine Guilford  
September 11, 2025

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Katherine Guilford's practice focuses on conducting impartial school and workplace investigations for public and private sector employees, providing advice and counsel to employers, conducting workplace audits, and delivering interactive workplace training. As an investigator, Katherine takes a respectful and holistic approach to ensure all parties and witnesses feel heard during emotionally charged investigations. Katherine has the skill and experience to manage sensitive and high-level investigations. Katherine has conducted investigations involving C-suite executives, elected officials, police officers, and minors in K-12 schools, regarding a range of allegations including serious allegations of sexual misconduct, discrimination, and retaliation. Katherine regularly conducts Title IX investigations for universities and K-12 school districts, and has served as a Title IX adjudicator for these employers. An Association of Workplace Investigators Certificate Holder, Katherine is trained in trauma-informed interviewing practices and child forensic interviewing.



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# UNDERSTANDING TITLE IX REQUIREMENTS

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## Table of Contents

	<u>Page No.</u>
<b>Welcome!</b> .....	<b>1</b>
Agenda .....	1
<b>Why Are We Here?</b> .....	<b>2</b>
Title IX of Civil Rights Act (1972).....	2
True or False? .....	2
Is This Conduct “On the Basis of Sex”? .....	3
Why is Title IX Important? .....	3
<b>History and Process</b> .....	<b>4</b>
1972 – 1992: Focus on Athletics .....	4
1992: Deliberate Indifference .....	4
Scenario 1 .....	5
Did the School Intentionally Violate Title IX? .....	5
1999: Severe, Pervasive, and Objectively Offensive .....	6
Scenario 2 .....	6
Was the Conduct Severe, Pervasive, or Objectively Offensive? .....	6
2011: “Dear Colleague” Requirements .....	7
Due Process and Live Hearings.....	7
Is it Fair? Three scenarios.....	7
2020: Regulations .....	8
Scenario 2 Redux.....	8
Senate Bill 493 .....	8
True or False? .....	9
<b>2024 Regulations; What Happened?</b> .....	<b>9</b>
<b>When in Doubt, Report!</b> .....	<b>10</b>
Typical Title IX Complaint Process.....	10
More Things to Consider .....	10
What About Sex Discrimination?.....	11
What About Gender Identity? .....	11
<b>Definitions</b> .....	<b>12</b>
Sexual Harassment (Title IX) .....	12
Sexual Harassment (SB 493).....	13
Let’s Compare .....	13
Title IX v. SB 493.....	13
Sexual Assault (Title IX)* .....	14
Sexual Violence (SB 493) .....	15

---

## UNDERSTANDING TITLE IX REQUIREMENTS

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Let's Compare .....	15
Dating/Domestic Violence (Title IX).....	16
Sexual Exploitation (SB 493 Only) .....	16
Stalking.....	17
Retaliation .....	17
<b>Consent, Bias, and Trauma</b> .....	<b>18</b>
Consent .....	18
Why Adopt "Affirmative Consent?" .....	19
Consent in Action .....	19
Is Affirmative Consent Realistic?.....	19
Did they Consent?.....	20
Incapacitation .....	20
Fact, Nature, or Extent .....	20
Knew or Should Have Known.....	21
<b>Bias</b> .....	<b>21</b>
Many Types of Bias .....	21
Does Bias Make Us Evil? .....	22
Honorable Mention: Survivorship Bias .....	22
Affinity Bias and Confirmation Bias .....	22
Stereotyping .....	23
Common Stereotypes around Sexual Harassment.....	23
Reasoned Conclusion or Nasty Stereotype? .....	23
Self-Serving Bias .....	24
Biases Around Trauma.....	24
<b>Disclaimer</b> .....	<b>24</b>
What is Trauma? .....	25
Impact on the Brain .....	25
<b>All of Us Have Experienced Trauma</b> .....	<b>26</b>
What Can We Do? .....	26
Who Would you Rather Talk to? .....	26
Combatting Bias by Understanding Trauma .....	27
<b>Title IX Team Primer</b> .....	<b>27</b>
The Title IX Coordinator's Role .....	27
Other Important Title IX Roles .....	28
A Complaint Comes In.....	28
Intake Interview .....	29
The Dreaded Question... ..	29
Wait... Private But Not Confidential? .....	30

---

## UNDERSTANDING TITLE IX REQUIREMENTS

---

Should I ask About the Allegations? .....	30
Should I ask...? .....	31
What's a Formal Complaint? .....	31
To Sign or Not to Sign? .....	31
Scenario 1 Redux.....	32
Grievance Procedures Under Title IX.....	32
Jurisdiction .....	33
Jurisdiction: Participation.....	33
Jurisdiction: Location.....	34
Jurisdiction: Subject Matter .....	35
I Don't Have Jurisdiction: What Now? .....	35
Is Informal Resolution Possible? .....	35
Notice of Investigation .....	36
Drafting the Allegations .....	36
Does the Conduct Violate Your Policies? .....	37
Remember: The Investigator's Finding will Mirror your Notice.....	37
Scenario 3 .....	37
Remainder of Grievance Process .....	38
 <b>Questions/Comments .....</b>	 <b>10</b>




SAN MATEO COUNTY  
COMMUNITY  
COLLEGE DISTRICT

## Understanding Title IX Requirements

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# Welcome!

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## Agenda

Morning	Afternoon
<ul style="list-style-type: none"> <li>9:00 am to 10:30 am               <ul style="list-style-type: none"> <li>History</li> <li>Complaint process</li> </ul> </li> <li>10:30 am to 10:45 am – Break</li> <li>10:45 am to 12:00 pm               <ul style="list-style-type: none"> <li>Definitions</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>1:00 pm to 2:15 pm               <ul style="list-style-type: none"> <li>Consent</li> <li>Bias</li> <li>Trauma</li> </ul> </li> <li>2:15 pm to 2:30 pm – Break</li> <li>2:30 pm to 4:00 pm               <ul style="list-style-type: none"> <li>Grievance primer for Title IX Coordinators (Mandatory for TIX team, anyone may join)</li> </ul> </li> </ul>

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## Why Are We Here?

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## Title IX of Civil Rights Act (1972)

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

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## True or False?

- Title IX is only about athletics.
- Title IX only protects women.
- Title IX requires schools to accommodate student pregnancies.
- Only 50% of students report after they experience sexual harassment.

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### Is This Conduct "On the Basis of Sex"?

- While walking across campus, a male student screamed at a female student and chased her into a classroom.
- A student is pregnant and had to miss an important deadline to give birth. Her professor has a very strict no-late-assignments policy, so he declined to give her an extension.
- A professor calls girls "honeybee" and boys "champ."
- A female student hides in the women's bathroom and looks through the cracks of the stalls to watch other women undress.

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### Why is Title IX Important?

- One in five of all students have experienced sexual harassment from faculty/staff
- One in three students have experienced sexual harassment from peers
- One in five female students/one in twenty male students experienced sexual assault

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### Why is Title IX Important? (Cont.)

- One in three students with a disability experienced sexual assault in college
- Students of racial minorities more likely to have experienced sexual assault (rates highest for Black and Hispanic students)
- LGBTQ+ students nine times as likely to experience sexual assault

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## History and Process

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### 1972 – 1992: Focus on Athletics

- Focus on equal access to athletic programs in schools
  - Participation in athletics must be “substantially proportionate” to enrollment numbers
- Huge strides for equality in this area
  - In 1972, one in 27 women played sports
  - By 2016, one in every five women played sports
- 1972 – 1992, less prevalence of sexual harassment claims

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### 1992: Deliberate Indifference

- Franklin v. Gwinnett County Public Schools (1992 U.S. Supreme Court)
- Schools may be liable for money damages for sexual harassment when a staff member “intentionally violates” Title IX
  - What is an “intentional violation?”
    - A school district official knew of sexual harassment;
    - The official reacted with deliberate indifference

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## Scenario 1

A student went to his professor's office hours to discuss a confusing math problem. The professor called him "sweet cheeks," and told the student he would get a better grade if he solved the math problem while sitting on the professor's lap

The student felt uncomfortable, but he needed a good grade to transfer to a four-year university. So, he sat on the professor's lap to finish his homework

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## Scenario 1 (Cont.)

The student reported the professor to the professor's supervisor, but the supervisor said the student "obviously consented," and "that professor is straight; you must have misunderstood," and dismissed the student

The student returned to class, and the professor's uncomfortable behavior continued for the rest of the semester

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## Did the School Intentionally Violate Title IX?

Did a school district official know of the sexual harassment?

- Did someone with the power to stop the harassment know about the harassment?

Did the school district official react with deliberate indifference?

- Was the response prompt?
- Was it thorough?
- Was it impartial?
- Was the response clearly unreasonable in light of the known circumstances?
- What got in the way?

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## 1999: Severe, Pervasive, and Objectively Offensive

- Davis v. Monroe County Board of Education (1999 U.S. Supreme Court)
  - Schools may be liable for peer-on-peer sexual harassment if:
    - The school responded to a complaint with deliberate indifference, and;
    - The harassment was "so severe, pervasive, and objectively offensive that it can be said to deprive the victim's access to the educational opportunities or benefits provided by the school"

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## Scenario 2

- Student A attended a class every morning at 9:00 a.m. Two times per week, Student B was assigned to use a leaf blower to clear leaves for work-study
- One time, Student B purposefully used the leaf blower to blow Student A's skirt up
- Student A only wore pants to class going forward and continued to attend class as usual
- Every time Student A saw Student B outside her classroom, she got upset
- At the end of the semester, Student A realized her usually high grade in that class had dropped

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17

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## Was the Conduct Severe, Pervasive, or Objectively Offensive?

- Severe
  - Circumstances
  - Threats or violence
  - Degree of embarrassment or humiliation
- Pervasive
  - Widespread
  - Frequent
  - Unreasonable interference with school
- Objectively Offensive
  - Reasonable person standard
- Impact of depriving access to educational benefits and opportunities

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## 2011: "Dear Colleague" Requirements

- Know or should know (constructive knowledge)
- Immediate action
- Training
- Off-campus conduct
- Severe, pervasive, OR objectively offensive
- Title IX Coordinator
- Investigate even without a formal complaint
- Single investigator model okay
- Notices to the parties
- Prompt timeframes

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## Due Process and Live Hearings

What is due process?

- Opportunity to present evidence
- Opportunity to review evidence
- Impartial decisionmakers
- Opportunity for live cross-examination

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## Is it Fair? Three scenarios

- A student complains that her ex-boyfriend, another student, sexually assaulted her. The school immediately expels him, stating he can return later if the investigation clears him.
- During an investigation, the student complainant asks for extra time to review the evidence. The investigator agrees and also gives the student respondent extra time.
- A school schedules a live hearing. Unbeknownst to them, the hearing officer is the complaining student's brother. The student respondent objects, but the school's processes don't allow objections to hearing officers.

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## 2020: Regulations

- Actual knowledge
- Formal, written complaint required
- Only within the scope and control of educational program or activity
- Severe and pervasive and objectively offensive
- No single investigator models
- Live hearings with cross-examination

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## Scenario 2 Redux

- Student A attended a class every morning at 9:00 a.m.  
Two times per week, Student B was assigned to use a leaf blower to clear leaves for work-study  
One time, Student B purposefully used the leaf blower to blow Student A's skirt up  
Student A only wore pants to class going forward and continued to attend class as usual  
Every time Student A saw Student B outside her classroom, she got upset  
At the end of the semester, Student A realized her usually high grade in that class had dropped
- Was the conduct severe AND pervasive AND objectively offensive?

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## Senate Bill 493

- Amends Section 66262.5 of the Education Code
- Applies to all higher education institutions in California that receive state funding
- Different definition of "sexual harassment"
  - No requirement of severe, pervasive, and objectively offensive
  - Negative impact on academic performance
  - Creates an intimidating, hostile, or offensive work or educational environment

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## Senate Bill 493 (Cont.)

- Broader jurisdiction (off-campus conduct)
- Broader pool of mandatory reporters, including
  - Most directors, coordinators, and deans
  - Athletic directors/coaches
  - Faculty
- Back to “knew or should have known” standard

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## True or False?

- If a student comes to you with a complaint of sexual harassment, you must report it within 24 hours.
- If a student asks you to keep their concern about sexual harassment confidential, you don't need to make a report.
- If an incident happened off campus, you can ignore it.

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## 2024 Regulations; What Happened?

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## When in Doubt, Report!

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## Typical Title IX Complaint Process

- Student makes a complaint
- Title IX team conducts an intake with the complainant
- Title IX team assesses jurisdiction
- Once jurisdiction is met, Title IX office issues a Notice of Investigation to all parties
- Investigator collects evidence, and reaches factual determinations
- Parties review the evidence
- Title IX team schedules a live hearing with an Adjudicator/Hearing Officer
- Hearing Officer makes policy determinations
- Campus decides appropriate sanctions

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## More Things to Consider

- Gender parity in athletics programs
  - Equivalent benefits, opportunities, and treatment
  - Equal opportunity for scholarships
  - Substantially proportionate participation
- Accommodating pregnant students
  - Ensure pregnant students have equal access to educational programs and activities
  - Required to provide reasonable accommodations
  - Work with your Title IX and Disability teams

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## What About Sex Discrimination?

- Schools must address sex-based discrimination and lack of equity under Title IX
- However, schools do not have to use the highly specific grievance process used for sexual harassment complaints
- Take sex-based discrimination complaints seriously, using processes outlined in your policies

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## What About Gender Identity?

- Federally, it's up in the air right now
- Not explicitly stated in Title IX itself.
  - State of Tennessee v. Cardona (2025 U.S. District Court) vacated the 2024 regulations because the Department of Education exceeded its authority by adding discrimination based on gender identity to Title IX.
  - February 4, 2025, Department of Education Office for Civil Rights announced intent to enforce Title IX consistent with January 20, 2025, executive order—sex is defined as “male and female” and “not changeable.”

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## What About Gender Identity? (Cont.)

- Luckily, California law is unequivocal
- California Education Code 220-221
  - Prohibits public schools and non-religious private schools from discriminating on the basis of sex, gender, gender identity, gender expression, sexual orientation, and transgender status
  - Students have the right to go by their chosen name and pronouns, to express their gender, to use restrooms based on their gender, and to update the name and gender on their records

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## Definitions

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## Sexual Harassment (Title IX)

Conduct on the basis of sex that satisfies one or more of the following requirements:

- An employee conditioned the provision of aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity
- Sexual assault, dating violence, domestic violence, or stalking

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## Sexual Harassment (SB 493)

Unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

- Submission to the conduct is explicitly or implicitly made a term or a condition of employment, academic status, or progress
- Submission to, or rejection of, the conduct is used as the basis of employment or academic decisions

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## Sexual Harassment (SB 493) (Cont.)

- Submission to, or rejection of, the conduct is used as the basis for decisions regarding benefits and services, honors, programs, or activities available through the school
- Conduct had the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment
- Sexual violence, sexual battery, and sexual exploitation

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## Let's Compare

Jane is attending a finance class taught by Professor F. 50% of the grade is based on class participation. If someone raises their hand and answers a question, Professor F gives them points towards their final grade

Professor F refers to male students by their last names. However, he refers to all female students as, "sweetheart," or "honey"

Jane doesn't like these names, so she avoids raising her hand in class, even when she knows the answer. As a result, her participation credit is low

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## Title IX v. SB 493

Is this conduct severe and pervasive and objectively offensive under Title IX?

Does it have the purpose or effect of having a negative impact upon the student's academic performance under SB 493?

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## Sexual Assault (Title IX)\*

**Sex offenses:** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent

**Rape:** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object, including instances where the victim is incapable of giving consent

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## Sexual Assault (Title IX) (Cont.)\*

**Criminal Sexual Contact:** The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

Or, the forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for purpose of sexual degradation, sexual gratification, or sexual humiliation

- Including in instances of incapacity

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## Sexual Assault (Title IX) (Cont.)\*

**Incest:** Non-forcible sexual intercourse between persons who are related to each other where marriage is prohibited by law

- In California: parent/child, grandparent/grandchild, great-grandparent/great-grandchild, brother/sister, half-brother/half-sister, uncle/niece, aunt, nephew

**Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent (age 18 in California)

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## Sexual Violence (SB 493)

**Sexual Violence:** Means physical sexual acts perpetrated against a person without the person's affirmative consent, including:

- **Rape:** Defined as penetration, no matter how slight, of the vagina or anus with any part or object, or oral copulation of a sex organ by another person, without the consent of the victim
- **Sexual Battery:** The intentional touching of another person's intimate parts without consent, intentionally causing a person to touch the intimate parts of another without consent, or using a person's own intimate part to intentionally touch another person's body without consent

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## Let's Compare

Josh and his friends had a contest going to see who could have the most women touch their genitals during the fall semester

To up his numbers, Josh threw a Halloween party on campus with a game where participants reached into a closed box to guess its spooky contents; One box had peeled grapes, one box had spaghetti, and Josh put his penis into the third box

Later, Josh bragged to his friends that six female students touched his penis during the game

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## Let's Compare (Cont.)

Would this conduct be considered rape or criminal sexual contact under Title IX?

Would this conduct be considered rape or sexual battery under SB 493?

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## Dating/Domestic Violence (Title IX)

**Dating violence:** Violence against a person who is or has been in a social relationship of a romantic or intimate nature of the victim

**Domestic violence:** Violence committed:

- By a current or former spouse or intimate partner
- By a person with whom the victim shares a child in common
- By a person who is cohabitating with the victim as a spouse or intimate partner

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## Dating/Domestic Violence (Title IX) (Cont.)

- By any other person similarly situated to a spouse under the law
- By any other person against a victim protected from that person's act under the law

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## Sexual Exploitation (SB 493 Only)

A person taking sexual advantage of another person for the benefit of anyone other than that person without that person's consent, including, but not limited to:

- Prostituting another person
- Trafficking of another person
- Recording of images, including video or photograph or audio of another person's sexual activity or intimate parts, without that person's consent

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## Sexual Exploitation (SB 493 Only) (Cont.)

- Distributing images, including video or photograph, or audio of another person's sexual activity or intimate parts, if the individual distributing the images or audio knows or should have known that the person depicted did not consent to the disclosure
- Viewing another person's sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy, without that person's consent, for the purpose of arousing or gratifying sexual desire

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## Stalking

Engaging in a course of conduct, based on or motivated by sex, that is directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress

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## Retaliation

- No school 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, because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing

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## Consent, Bias, and Trauma

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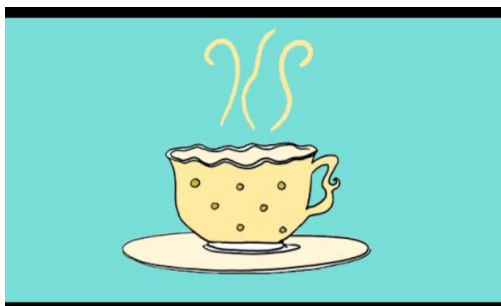
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## Consent

- Not specifically defined in Title IX regulations
- "Affirmative consent" defined in Section 67386 of the California Education Code
  - Affirmative, conscious, voluntary agreement to engage in sexual activity
  - It is the responsibility of each person involved in the sexual activity to ensure that the person has the affirmative consent of the other to engage in the sexual activity
  - Affirmative consent must be ongoing throughout a sexual activity, and can be revoked at any time

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## Why Adopt "Affirmative Consent?"

- Consent, by definition, is affirmative
- Why bother clarifying that consent is "affirmative"?
- Criminal definition of rape (CA Penal Code Section 261):
  - "Rape is an act of sexual intercourse accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another"
- With affirmative consent, proof of force or resistance is not necessary

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## Consent in Action

- Consent must usually be given contemporaneously with sexual activity
  - Past consent does not automatically mean current consent
- Consent for each escalation of sexual activity
  - Consent for one action not consent for another
- Consent can be withdrawn at any time
  - Either verbally or nonverbally
  - All activity must stop

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## Is Affirmative Consent Realistic?

- Think back to your last sexual activity
  - Did you verbally consent?
  - Did you verbally consent to each escalation?
- Verbal consent helpful, but not the only consideration
  - Length of relationship
  - Nature of the relationship
  - Norms of communication
  - Nonverbal communication
  - Totality of the circumstances
- Strict application of affirmative consent possible, but not realistic

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## Did they Consent?

- Jaime and Matt have been in a romantic relationship for the last three years. Jaime leaned in to kiss Matt, and Matt smiled and leaned forward to meet him.
- Lenny and Carol have an agreement where every time Carol groans, Lenny has consent to kiss her. Carol hit her head on a cabinet and groaned, and Lenny kissed her.
- Gina and Clarissa met each other for the first time at a party. At the party, Clarissa thought that Gina had a "horny look in her eye," so she kissed her.

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## Incapacitation

Respondent knew, or a reasonable person should have known, that Complainant was unable to consent because C was incapacitated, in that C was:

- Asleep or unconscious
- Unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication
- Unable to communicate due to a mental or physical condition

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## Fact, Nature, or Extent

- Much higher bar than most students realize.
- "Black out drunk"
  - Many students think if they are "black out drunk," they did not consent
  - Alcohol typically impacts memory before it impacts understanding
- Friend drives home:
  - Did she understand the fact that she was driving?
  - Nature?
  - Extent?

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## Knew or Should Have Known

- Let's assume the Complainant didn't understand the fact, nature, or extent of the sexual activity
- Second prong, Respondent knew or should have known
- Things to consider:
  - Respondent's observations and interpretations
  - Other witnesses' observations and interpretations
  - Complainant's observable behavior (real-life examples)
    - Needs to be carried
    - Running inappropriately
    - Sitting on the bathroom floor

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## Bias

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## Many Types of Bias

- Affinity bias
- Attribution bias
- Beauty bias
- Conformity bias
- Confirmation bias
- Survivorship bias
- The halo effect
- Stereotypes
- Anchoring bias
- Self-serving bias
- Institutional bias

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## Does Bias Make Us Evil?

- Biases are mental shortcuts, not moral failings
- Awareness first step to combatting
  - Awareness of self
  - Awareness of others
- Title IX regulations focus on:
  - Bias for or against complainants
  - Bias for or against respondents
- We'll focus on:
  - Affinity bias
  - Confirmation bias
  - Stereotyping
  - Self-serving and institutional bias

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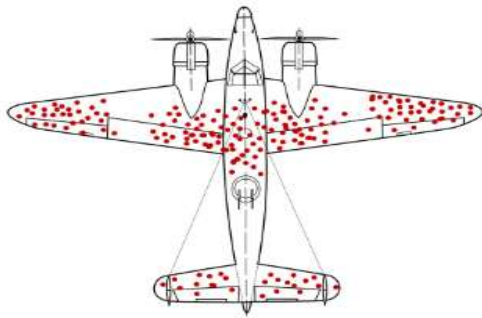
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## Honorable Mention: Survivorship Bias



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## Affinity Bias and Confirmation Bias

- Affinity bias—the tendency to favor people who share similar interests, backgrounds, and experiences
  - Gender
  - Race
  - Culture
  - Ideas
- Confirmation bias—tendency to interpret information in a way that confirms prior beliefs
  - Not seeking facts
  - Interpreting
  - Remembering
  - Ignoring

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## Stereotyping

- Assumptions based on group membership
  - Not based on individuals
  - Not based on surrounding facts
- What is bias for or against complainant/respondent?
  - Generally
    - People who make complaints
    - People who are complained about
  - But also...
    - Gender
    - Race/culture

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## Common Stereotypes around Sexual Harassment

- Complainants lie about harassment to benefit themselves
- Provocative clothes + alcohol = consent
- Real victims scream and fight
- If someone is unattractive, it's implausible they were harassed
- Straight men only harass women, and vice versa
- People who harass are usually mentally ill
- Women cannot harass men
- Men enjoy romantic/sexual attention, even if it's unwanted
- People who say "no" are playing hard to get

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## Reasoned Conclusion or Nasty Stereotype?

- Krista reported to the Title IX Coordinator that her teacher harassed her. The Coordinator knew Krista previously asked for extra credit from the teacher, and the teacher declined. So, they dismissed the complaint
- The investigator determined Krista's allegation was not credible, because the teacher was not on campus on the date they allegedly harassed Krista, and three witnesses heard Krista say she was going to "get" the teacher by making a false complaint
- What's the difference?

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## Self-Serving Bias

- The tendency to believe something that makes your job easier.
- "Wouldn't it be easier if this allegation weren't true?"
- Watch out for:
  - Exhaustion
  - Burn out
  - Compassion fatigue

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## Biases Around Trauma

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## What is Trauma?

"A result from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life-threatening and that has lasting adverse effects on the individual's social, emotional, or spiritual well-being"

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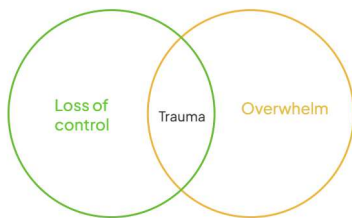
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## Impact on the Brain

- Oh no! There's a threat!
- Amygdala—the part of the brain stimulated by a threat.
  - Hypothalamus—floods the brain with hormones to get the body ready for:
    - Fight (cortisol)
    - Flight (adrenaline)
    - Freeze (opioid peptides)
    - Fawn (oxytocin)
  - Hippocampus takes a backseat
    - Reasoning
    - Logic
    - Timing

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## All of Us Have Experienced Trauma

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### What Can We Do?

- Understanding:
  - May not be able to remember sequential order
  - May remember events by sounds, scents, feelings
  - May have gaps in memory
- Build rapport
  - Acknowledge the process is difficult (without being biased)
  - Create a physically and emotionally safe environment
  - Be transparent
- Offer back control

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### Who Would you Rather Talk to?



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## Combating Bias by Understanding Trauma

- "How can they not remember? They must be making it up"
- "If he scared her so much, why did she keep hanging out with him? She must be lying"
- "If it was really a big deal, he would have reported right away"
- "They sounded so robotic and dull while talking about it—there's no way this actually upset them"

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## Title IX Team Primer

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## The Title IX Coordinator's Role

Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the "Title IX Coordinator."

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## Title IX Coordinator's Role (Cont.)

- Many responsibilities, including:
  - Promoting gender equity in education
  - **Overseeing response to Title IX complaints**
  - **Determining if jurisdiction exists under Title IX**
  - **Overseeing investigations**
  - Overseeing hearings
  - Overseeing the sanction process
  - Training students, staff, and faculty
  - Ensuring proper posting of notices
  - Identifying and addressing patterns of gender inequality revealed by reports and complaints

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## Other Important Title IX Roles

- Deputy Title IX Coordinators
  - Program-specific support for the Title IX Coordinator
- Confidential resources
  - Create a safe environment outside of the formal grievance process
- Support persons/advocates
  - Provide support for the parties through the grievance process
- Advisors
  - Provide advice to parties through the grievance process
- Hearing Coordinators
  - Manage and coordinate live hearings

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## A Complaint Comes In...

- "Once a recipient has actual knowledge of sexual harassment in an education program or activity of the recipient, it must respond promptly in a manner that is not deliberately indifferent"
- Actual knowledge—Title IX Coordinator knows, or any official with authority to institute corrective measure.
- Title IX Coordinator must promptly contact the Complainant and discuss:
  - Supportive measures
  - The option to file a formal complaint
  - The formal complaint process

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## Intake Interview

- Consider accessibility—translation, interpretation, accommodation
- Set the tone:
  - Tell me if you don't understand
  - Correct inaccurate statements
- Amount of information can be overwhelming—encourage students to bring a trusted advisor
- Discuss supportive measures

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## Intake Interview (Cont.)

- Discuss what the formal complaint process looks like
  - Don't push for immediate answers, doing nothing is an option. Coming back later is an option
- Discuss what informal resolution looks like
- Clarify misconceptions about the process
- Answer questions
- Handouts may be helpful
- Follow up with an email

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## The Dreaded Question...

- Is the grievance process confidential?
- Be direct and transparent:
    - Supportive measures are kept confidential
    - Grievance process is private, but not confidential
    - Consider suggesting confidential resources
  - Explain:
    - The school's response may be limited based on the level of privacy/confidentiality requested by Complainant
    - Cannot guarantee privacy if doing so would jeopardize safety

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## The Dreaded Question... (Cont.)

- Only those with a need to know will be informed
- Remember, under the formal grievance process, R is one of those people who need to know (due process)

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## Wait... Private But Not Confidential?

- Private
  - Information related to a complaint will be shared with a limited number of individuals who “need to know” in order to assist in the assessment, investigation, and resolution of the report
- Confidential
  - Resources designated by the institution to allow for the provision of services and support without concern of reporting, e.g., victim advocates, SA-related services, gender-based resource centers, advisors

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## Should I ask About the Allegations?

- Intake is not an investigation interview
- Attempt to gather enough information to identify the policies and procedures applicable to the reported conduct, but be careful of:
  - Retraumatizing C, especially if they may not choose to make a formal complaint
  - Memory considerations
  - Risk of becoming a witness (consider your documentation)

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## Should I ask...?

- "Can you walk me through your concerns today?"
- "When you mentioned he made you feel icky, can you help me understand what that means?"
- "When she put her hand in your underwear, did she penetrate your vagina?"
- "Why did you wait six months to report this?"

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## What's a Formal Complaint?

- A formal complaint is a written document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment and requesting that the recipient investigate the allegation of sexual harassment
- What if...?
  - The Complainant wants to withdraw the complaint?
  - The Respondent is no longer enrolled or employed?
- Discretion to dismiss
  - But pay attention to "deliberate indifference"!

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## To Sign or Not to Sign?

- Considerations against signing:
  - Disempowering for the Complainant, and can increase trauma
  - Complainant may choose not to participate, impacting available evidence and R's due process rights
- Factors that may weigh in favor of signing:
  - Pattern
  - Predation
  - Threat
  - Violence/Weapon
  - Minors

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## Scenario 1 Redux

- A student went to his professor's office hours to discuss a confusing math problem. The professor called him "sweet cheeks," and told the student he would get a better grade if he solved the math problem while sitting on the professor's lap
- The student felt uncomfortable, but he needed a good grade to transfer to a four-year university. So, he sat on the professor's lap to finish his homework
- The student reported the conduct to the Title IX office, but later asked to withdraw his complaint—he just wanted to focus on transferring

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## Scenario 1 Redux (Cont.)

Should you sign the formal complaint?

- Pattern
- Predation
- Threat
- Violence
- Minors

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## Grievance Procedures Under Title IX

Under the regulations, a "formal complaint" initiates the grievance process. Grievance procedures must include:

- Equal treatment for the parties
- Impose discipline only after following the process
  - Presumption of innocence
- An objective evaluation of all the relevant evidence
- No conflict of interest or bias by the Coordinator, investigator, or decision-maker
- Coordinator, investigator, and decision-maker are different people

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## Grievance Procedures Under Title IX (Cont.)

- Reasonably prompt time frames
- Description of possible sanctions
- Standard of evidence
- Live hearing with right to cross-examination
- Appeal rights
- Supportive services

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## Jurisdiction

Three prong assessment:

- Participation
- Location
- Subject matter

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## Jurisdiction: Participation

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed

- Students (includes on-campus and online or distance education)
- Dual enrollment students
- Faculty
- Staff
- Alumni
- Students who dropped out because of SH

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## Jurisdiction: Participation (Cont.)

- The school has no authority to take disciplinary action under Title IX if Respondent is not affiliated with the institution in any way
  - Guests
  - Vendors
  - Former employees
  - Students from different schools

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## Jurisdiction: Location

- Respond promptly in a manner not deliberately indifferent to actual knowledge of sexual harassment in an education program or activity of the school against a person in the United States
  - Person in the United States
  - What's an education program or activity?
    - Locations, events, or circumstances over which the school exercises substantial control over both the respondent and the context in which the sexual harassment occurs
    - Includes any building owned or controlled by a student organization that is officially recognized by the school

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101

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## Jurisdiction: Location (Cont.)

- No expectation that schools exercise jurisdiction over off-campus incidents UNLESS
  - The property is owned or controlled by the school
  - The property is being used for a program or event sponsored by the school (or organization recognized by the school)
  - The property is owned or controlled by an organization recognized by the school
- Always remember "deliberate indifference"!

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102

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## Jurisdiction: Subject Matter

- Sexual harassment, as defined by the regulations
- Sex/gender discrimination
  - Address promptly, but not necessarily using the SH grievance process
- Any other policy violation that is sex-based that causes a discriminatory effect
- Pregnancy discrimination
- Retaliation

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103

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## I Don't Have Jurisdiction: What Now?

- Mandatory dismissal under Title IX grievance process, BUT:
  - Harassment/discrimination policies
  - Student handbook
  - Student conduct policies
  - Acceptable use of technology policies
  - Professionalism policies
  - What other actions?
- Written notice to the parties required. Dismissal or non-dismissal may be appealed

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104

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## Is Informal Resolution Possible?

- Allowed at any time prior to making a final determination at the discretion of the Title IX Coordinator
- Completely voluntary
- Written consent
- Not available for employee/student harassment
- Must stop, prevent, and remedy
- You may (cautiously) consider options such as:
  - Mediation
  - Restorative practices
  - Transformative justice

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105

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## Notice of Investigation

- You have a formal complaint and jurisdiction.
- Must issue a Notice of Investigation to both parties that included:
  - Notice of the grievance process, including any informal resolution process
  - Notice of the allegations, including sufficient details know at the time, including:
    - Identities of the parties involved
    - The conduct allegedly constituting sexual harassment
    - The date and location of the alleged incident

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106

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## Notice of Investigation (Cont.)

- Include a statement that R is presumed not responsible
- Notice that parties may have an advisor of their choice
- Notice that the parties will have the opportunity to review evidence prior to completion of the investigation report
- If any, any provision from the code of conduct that prohibits making false statements or submitting false information

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107

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## Drafting the Allegations

- Accurate encapsulation of the alleged conduct
- The allegations in the NOI tell your investigator what factual questions you need answered
- What questions do we need answered?
  - Did R engage in conduct that, if true, may violate your policies?
  - (consider) whether there were any aggravating factors that may weight on disciplinary decisions?

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108

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### Does the Conduct Violate Your Policies?

- On August 30, R ate 30 hot dogs at C's party. C was disgusted and upset, because there was no food left for everyone else
- On September 10, R stared "creepily" at C's and her female friends, singling them out because they are women
- On July 4<sup>th</sup>, R touched C's thigh without her affirmative consent

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109

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### Remember: The Investigator's Finding will Mirror your Notice

- If you charge, "On September 4, 2025, Respondent approached Complainant and began behaving inappropriately"
  - Might be exactly what C alleged, not helpful because investigator will find:
- "Substantiated: On September 4, 2025, Respondent approached Complainant and behaved inappropriately"
  - Not enough information for the decisionmaker to determine if there was a policy violation

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110

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### Scenario 3

On December 15, 2024, Deana forgot her books in her classroom and did not remember until late at night, around 9:00 p.m. Deana drove onto campus and walked back to her classroom.

Deana entered the classroom and saw Hughes, a student who was taking a late nap in the classroom. Startled, Hughes jumped up and ran at Deana, shouting, "F you, bitch!"

Hughes knocked her bag out of her hands. When Deana leaned over to pick up her bag, Hughes slapped Deana's buttock with his right hand.

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### Scenario 3 (Cont.)

- How did you frame the allegations?
- Which of your policies would this conduct, if true, violate?
- Did you have enough information?
  - If not, how did you handle it?
- Do you want the investigator to find out anything else?

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112

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### Remainder of Grievance Process

- Overseeing the investigation
- Ensuring policies and timelines are followed
- Evidence review
- Preliminary findings or material disputed facts?
- Coordinating the hearing
- Coordinating sanctions
- Coordinating appeals

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113

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### Final Thoughts

- You are an important part of the team!
- Students and staff rely on you to foster a safe environment
- These issues are tricky and exhausting, lean on your supports
- When in doubt, remember deliberate indifference

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114

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115

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116

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