

# Title IX Policy: The Final Rule

## California Online Public Schools

California Online Public Schools non-profit Board of Directors operates the following charter schools to which this policy applies:

California Online Public Schools Central Coast  
California Online Public Schools Central Valley  
California Online Public Schools Monterey Bay  
California Online Public Schools North Bay  
California Online Public Schools Northern California  
California Online Public Schools Southern California

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Title IX of the Education Amendments of 1972 protects people from discrimination based on sex in education programs or activities that receive federal funding. The U.S. Department of Education (USDOE) enforces Title IX and has created regulations relating to how schools are required to respond to reports of sexual harassment. The regulations are known as the Final Rule. The Title IX sexual harassment protections apply to California Online Public Schools that do or may receive Federal financial assistance.

Under the *Final Rule*, California Online Public Schools is required to promptly respond to and investigate every formal complaint of sexual harassment by a student. The *Final Rule* establishes an emphasis on restoring a student's access to the California Online Public Schools' education program and/or sanctioned events and activities using supportive measures. Additionally, the *Final Rule* places the burden of proof on the school and requires a strict adherence to due process measures.

## Definitions

### Actual Knowledge

Actual knowledge occurs upon receipt of notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any designated school official/employee with the authority to institute corrective measures. Under state law, school employees are mandatory reporters. In the K-12 environment any employee may receive notice of sexual harassment.

This standard is not met when the only person with actual knowledge is the respondent. Additionally, the ability or obligation to report sexual harassment or to inform a student how to make a report of sexual harassment or having training on how to report sexual harassment does not qualify an individual to have the authority to institute corrective measures on behalf of the school.

### Complainant

An individual who has alleged to be the victim of conduct that could constitute sexual harassment.

### Formal Complaint

A document filed by the complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting an investigation of the alleged sexual harassment. A complainant must be an active student participating or attempting to participate in the education program provided by California Online Public Schools.

## **Respondent**

An individual who has been reported to be the perpetrator of conduct that may constitute sexual harassment.

## **Sexual Harassment**

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

- An employee of California Online Public Schools conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct (quid pro quo).
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and offensive that it effectively denies a person equal access to a California Online Public Schools education program or sanctioned activity.
- Sexual assault as 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).

## **Supportive Measures**

Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, free of charge to the complainant or the respondent before or after the filing of a formal complaint, as well as, instances where no formal complaint has been filed.

Supportive measures are designed to restore or preserve equal access to California Online Public Schools education programs and sanctioned events and activities. Such measures are designed to protect the safety of all parties, the education environment, and ultimately deter sexual harassment.

Supportive measures may include:

- Counseling
- Deadline extensions or other course related adjustments, including changes to class schedule
- Modification of class schedules
- Restricted contact between parties
- Supportive measures provided to the complainant and/or respondent will remain confidential to the extent that confidentiality would not impair the ability of the school to provide such measures.
- Effective implementation of supportive measures is the responsibility of the Title IX Coordinator.

## **Title IX Coordinator**

The employee designated by California Online Public Schools to coordinate its efforts to comply with Title IX responsibilities will be referred to as the Title IX Coordinator. In addition to students and current employees, the Title IX Coordinator's contact information must be provided to prospective employees, parents or legal guardians, and all unions (if applicable).

The name or title, office address, e-mail address, and telephone number of the Title IX Coordinator shall be prominently posted on the school's website.

Any person, including a student's parent or guardian, may report sex discrimination and sexual harassment to the Title IX Coordinator in person, by mail, by telephone, or by email at any time, including non-business hours through the Uniform Complaint Procedures.

## **Formal Complaint**

A formal complaint of sexual harassment should be filed with the Title IX Coordinator in person, by mail, by electronic mail, or by phone using the Uniform Complaint Procedures.



## Initial Response

The school must treat complainants and respondents equitably by offering supportive measures to a complainant and respondent. The grievance process outlined below is followed prior to imposing disciplinary sanctions or other actions outside supportive measures against a respondent.

The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures and consider the complainant's wishes with respect to the use of such supportive measures, inform the complainant of the availability of supportive measures regardless of filing a formal complaint, and explain the process for filing a complaint. Anyone may report instances of sexual harassment or potential violations to the Title IX Coordinator; reports may be anonymous. However, formal complaints of sexual harassment can only be filed by the complainant or the Title IX Coordinator.

In instances where the respondent faces allegations of sexual harassment and is determined to be an immediate threat to the physical health or safety of a student or other individual, they may be removed upon completion of an individualized safety and risk assessment. If a student is removed under emergency conditions, instant notice will be provided, and the student will be afforded the opportunity to respond to the emergency removal.

An employee respondent may be placed on administrative leave during the grievance process.

## Required Grievance Procedures

California Online Public Schools are required to follow the grievance process defined by *the Final Rule* before disciplinary measures, not to include supportive measures, against the respondent are made. The procedures include:

All parties will be treated equitably through the remediation process. Remedies under *the Final Rule* are designed to restore or preserve equal access to California Online Public Schools' education program and sanctioned events and activities.

An objective and thorough investigation and evaluation of the relevant evidence will be reviewed. This includes both evidence that can establish guilt (inculpatory) and evidence that can exonerate guilt (exculpatory).

Title IX Coordinators, investigators, decision makers, and any designee tasked to assist in the informal resolution process must be free of bias or conflicts of interest. Additionally, training must be completed on:

- the definition of sexual harassment;
- the scope of California Online Public Schools' education program or sanctioned events/activities;
- the process for investigation and grievance process including, hearings, appeals, and informal resolution processes;
- how to serve impartially, including by avoiding prejudice of the facts at hand, conflicts of interest, and bias;
- any person identified as a decision maker must complete training on any technology used during any part of the grievance process, on issues of relevance of questions and evidence (including instances when questions and evidence arise that are not relevant regarding the complainant's sexual predisposition or previous sexual behaviors);
- any person identified as an investigator must complete training on issues of relevance to properly compose a report that summarizes the relevant evidence;
- all training materials must not rely on sex stereotypes and must promote objective investigations and final disciplinary decisions (adjudications) of formal complaints of sexual harassment.



- A presumption the respondent is not responsible for the alleged conduct until the conclusion of the grievance process.
- A reasonably prompt time frame for conclusion to the grievance process, filing and resolving appeals and informal resolutions processes, if offered. A temporary delay or the limited extension of time frames for good cause may be granted. In such instances, written notice outlining the reason for the delay shall be sent to all parties. Examples of good cause are the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or to provide an accommodation of disabilities.
- There will be a range of disciplinary sanctions and remedies that may be issued in the event responsibility of the respondent is determined.
- The standard of evidence used may be the preponderance of evidence standard **or** the clear and convincing standard. The chosen standard must be used throughout the complaint process.
- Include the procedures and permissible bases for the complainant and respondent to appeal.
- List the range of supportive measures available to complainants and respondents.
- Disallow the use of questions or evidence that seek disclosure of information protected under a legally recognized privilege, unless waived by the party holding such privilege.

## Notice

If a formal complaint is made, written notice will be provided to all known parties. Included within the notice are the grievance process and the informal resolution process. Any details known at the time of report of sexual harassment may include the identities of the parties involved (if known), the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident (if known). The notice will include a statement acknowledging the respondent is presumed not responsible until the conclusion of the grievance process. The parties may have an advisor who may inspect and review evidence. Such an advisor may be an attorney, though the presence of an attorney is not required. All parties will be afforded enough time to prepare. Finally, the notice will include that knowingly making false statements is against the student and employee code of conduct.

If, during an investigation, California Online Public Schools decides to investigate allegations not included in the original notice, the school will provide subsequent notice to include the additional allegations to all known parties.

## Dismissal

Under some circumstances, California Online Public Schools must dismiss a formal complaint of sexual harassment.

If the conduct did not occur while participating in the school's education program or sanctioned events or activities or did not occur in the United States, the complaint will be dismissed. However, the school may pursue action under the Section 9.2 Bullying and Prohibited Behavior.

The school may dismiss the formal complaint if:

- a complainant notifies the Title IX Coordinator in writing wishing to withdraw the formal complaint and included allegations
- the respondent is no longer enrolled, registered, or employed by California Online Public Schools, and
- specific circumstances prevent the school from gathering enough evidence to reach a determination regarding the formal complaint and/or allegations.

If conditions exist that require the school to dismiss the complaint, prompt written notice indicating a dismissal including any reason(s) must be sent to all parties.



## Consolidation of Formal Complaints

Consolidation of formal complaints to allegations of sexual harassment may occur under the following conditions due to the same facts or circumstances:

- against more than one respondent
- by more than one complainant against one or more respondents
- by one party against the other party

## Investigation

Under *the Final Rule*, the burden of proof and the burden of gathering evidence to make a determination as to responsibility of alleged sexual harassment falls to CalOPS. 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. If either or both parties are joined by an advisor, including an attorney, at a proceeding, California Online Public Schools 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 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.

## Hearings

***The Final Rule does not require hearings in the K-12 environment.***

The designated decision maker shall provide each party the opportunity to submit relevant written questions to any party or witness, permit time for parties to respond, and subsequently allow for limited follow-up questions. It is an important distinction that questions and evidence relating to the complainant's sexual predisposition or prior sexual history are not considered relevant to the final determination. The exceptions to this rule are if the pertinent information proves that someone other than the respondent committed the alleged sexual harassment, or if the evidence offered relates to specific incidents and prove consent between the complainant and respondent.

## Determination

- The decision maker may not be an investigator or the Title IX Coordinator.
- The decision maker will issue a written determination with respect to responsibility. Under *the Final Rule*, the determination must include:



- A description of the allegation that meets the definition of sexual harassment
- A full description of the procedural steps from receipt of the complaint through final determination (notices, interviews, site visits, evidence gathering methods, and hearings)
- Findings of fact supporting the final determination
- Conclusions as to the application of the school's code of conduct and the known facts
- A statement and rationale for:
  - Each allegation and determination of responsibility
  - Disciplinary sanctions imposed on the respondent, if any
  - If remedies designed to restore or preserve equal access to CalOPS's education program and/or sanctioned activities will be provided by the school to the complainant; any such remedies will be implemented by the Title IX Coordinator
- The school's allowable reasons and procedures for appeal (see Appeals section below)
- The school shall issue written determination to all parties at the same time. The determination will be considered final when the time for filing a timely appeal has passed. If the allegations are appealed, the decision is considered final upon receipt of the final written determination.

## Appeals

Both the complainant and respondent have the option to appeal under the following circumstances:

- A procedural irregularity
- New evidence that could affect the outcome – not available prior to dismissal or determination
- Conflicts of interest or bias by the Title IX Coordinator, investigator(s), and/or decision maker(s)

The school may provide additional equitable circumstances as situations warrant. If a party wishes to appeal the determination, written notice will be provided to the other party that an appeal has been filed and provide procedures that apply to both parties. A new decision maker(s) will be appointed on appeal and such person will not have participated in the complaint prior to appeal, including investigators or the Title IX Coordinator.

Both parties will be permitted and equal opportunity to submit written statements supporting or opposing the outcome. A written decision will be provided to both parties at the same time and will indicate the result of the appeal and the rationale for the final determination.

## Informal Resolution

Informal resolutions may be offered once a formal complaint is filed.

Parties are not required to participate in an informal resolution however, the school may offer this option instead of a full investigation and determination. The school will disclose information about the informal resolution process, including the right to withdraw from the informal resolution process prior to an agreed resolution. Once a party withdraws from the informal resolution process, the grievance process of the formal complaint will resume.

If both parties wish to proceed with an informal resolution, a voluntary written consent must be obtained waiving the right to an investigation and adjudication of a formal complaint. A common example of informal resolution is mediation.

The informal resolution process may not be used in instances where the school's employee is the respondent of alleged sexual harassment against a student.

## Recordkeeping

The school shall maintain a complete record for seven (7) years relating to:



- All investigations, determinations regarding responsibility, disciplinary sanctions (respondent), and remedies (complainant); including audio/audiovisual recordings and/or transcripts
- Appeals and their result,
- Any informal resolutions and their result,
- Training materials used (posted publicly on the school's website), and
- Any actions, including supportive measures, in response to a formal complaint of sexual harassment.

The records shall provide a basis for the conclusion and show the response was not deliberately indifferent. Additionally, records should document the measures to restore or preserve equal access to California Online Public Schools' education program or sanctioned events and activities. Further, records shall indicate the rationale for not providing the complainant with supportive measures, if applicable.

## Retaliation

Retaliation is prohibited. Prohibited behavior includes intimidating, threatening, coercing, or discriminating against anyone for the purpose of interfering with the rights protected by *the Final Rule*.

Specifically, retaliation because an individual made a report or complaint, testified, assisted, or participated or refused to participate in a Title IX investigation, proceeding, or hearing. Retaliation against a student for code of conduct violations that arise from the same facts and circumstances as a report or complaint of sexual discrimination/harassment is also prohibited.

Speech protected by the First Amendment does not constitute retaliation.

The identity of parties and witnesses shall remain confidential except as permitted by FERPA.

Any party that makes a false statement in bad faith may be charged with a code of conduct violation.

