



# Title IX Procedures for Student Sexual Harassment Complaints

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A presentation for the School Site Title IX Coordinators at San  
Dieguito Union High School District

March 29, 2022

*This presentation is intended to be augmented by oral remarks.*



## Overview of Training

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- Part 1: Overview of Title IX and the New Regulations
- Part 2: Procedures for Processing Student Sexual Harassment Complaints Under Title IX
- Part 3: Recognizing Bias
- Part 4: Hypotheticals
- Part 5: A Look Ahead; Key Take Aways; And Q&A



**Part 1:  
Overview of  
Title IX and the  
New  
Regulations**

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## What is Title IX?

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- Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. §1681 *et seq.*, is a Federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities.
- All public schools receiving any Federal funds must comply with Title IX. Under Title IX, discrimination on the basis of sex can include sexual harassment or sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion.
- “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.” (Title IX of the Education Amendments Of 1972.)
- Under the Biden Administration, “sex” is extended to include sexual orientation and gender identity.





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# Background History

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- Title IX was originally enacted in 1972 to provide equal educational opportunities to female students and athletes.
- Since its passage, several courts interpreted Title IX to apply to sexual harassment in the educational environment and workplace.
- The U.S. Department of Education Office for Civil Rights (“OCR”) oversees Title IX.
- U.S. Supreme Court decisions shape Title IX legal standards.
- Title IX legal standards are also shaped by OCR guidance.

# New Regulations Went Into Effect In August 2020

- In August 2020, the “Final Rule” went into effect that significantly changed the framework for how educational institutions process sexual harassment complaints:
  - The “Final Rule” clarified the definition of “Sexual Harassment” that comes within the ambit of Title IX.
  - Clarified that Title IX applies to students and employees.
  - It provides support to both parties.
  - It provides specific procedures for filing a Title IX Complaint.
  - It offers more due process protections to Respondents.
  - The Final Rule clarifies that Title IX **pre-empts** existing state laws, as well as District policies and procedures regarding the processing of sexual harassment complaints.

## **New Regulations Specifically Require Training**

“A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in § 106.30, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.” 34 C.F.R. § 106.45.

## The District's Obligation To Respond To Sexual Harassment Under Title IX.

- A school district with **actual knowledge** of sexual harassment in an education program or activity against a person in the United States, must respond promptly **in a manner that is not deliberately indifferent**.
- A school district's response must treat complainants and respondents **equitably** by offering supportive measures to both parties; and by following the Title IX grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent. 34 C.F.R. § 106.44.





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## The District's Obligation To Respond To Sexual Harassment Under Title IX

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- The District's obligation is triggered by actual knowledge
  - **In the K-12 setting, there is "actual knowledge" when *any* school personnel is on notice.**
  - District policy require employees to report complaints of sexual harassment within 1 day to the Title IX Coordinator.
- The District cannot respond in a manner that is deliberately indifferent. Under Title IX, a school district is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. 34 C.F.R. § 106.44.

## Different Procedures Under State and Federal Law

- Essentially, the new Title IX regulations create a **dual complaint procedure** for sexual harassment complaints depending on the nature of the conduct alleged. (*Note: Only one procedure will be followed.*)
- **Title IX Procedures** - A sexual harassment complaint that meets the definition of a “formal complaint” under Title IX must be processed under Title IX Procedures. (AR 5145.71 Title IX Sexual Harassment Complaint Procedures)
- **Uniform Complaint Procedures** – A sexual harassment complaint that does not meet the definition of a “formal complaint” must still be addressed using the District’s Uniform Complaint Procedures. (BP/AR 1312.3)

An aerial photograph of a coastal city, likely San Diego, showing a long pier extending into the ocean. The city is densely packed with buildings, and the beach is visible in the foreground. The sky is blue with some clouds.

## Formal vs. Informal Complaints

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- Initiation of Title IX Grievance Process Depends On Whether a Formal Complaint Has Been Filed.
- The Title IX Coordinator can only proceed with the Title IX Grievance Process if the Complaint is formal as defined by the Title IX regulations.
- A formal complaint is a written document filed and signed by the complainant or Title IX Coordinator, alleging sexual harassment, as defined under Title IX, and requesting that the institution investigate the allegations against a respondent. 34 CFR § 106.30.



## Who can be a Complainant?

- The complainant is the individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- The complainant must be participating in or attempting to participate in the District's education program or activity at the time of filing a formal complaint.
- Parents or third-parties may file a complaint, but they are not "complainants."

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## Who can be a Respondent?

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- The respondent is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- Anyone can be a Respondent
- SDUHSD *may* dismiss the case if the Respondent is no longer enrolled or employed.





## Educational Program or Activity

Title IX applies to persons **in the United States** with respect to **education programs or activities** that receive Federal financial assistance.

- An “educational program or activity” is very broad.
- The test is whether the District exercised “substantial control” over both the respondent and complainant, and the context in which the harassment occurred.
- E.g., Conduct occurring during an educational program or activity would include conduct occurring on campus; conduct occurring at a field trip; conduct occurring at a sports event after school. By contrast – this would not apply to a trip abroad or conduct at a private residence.

# Three Types of Sexual Harassment

Sexual harassment is defined to include any three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is intended to protect:

- 1. Quid Pro Quo Harassment**
- 2. Sexual Violence – such as sexual assault, dating violence, domestic violence, or stalking**
- 3. Hostile Environment (Severe, Pervasive, *and* Objectively Offensive Conduct)**

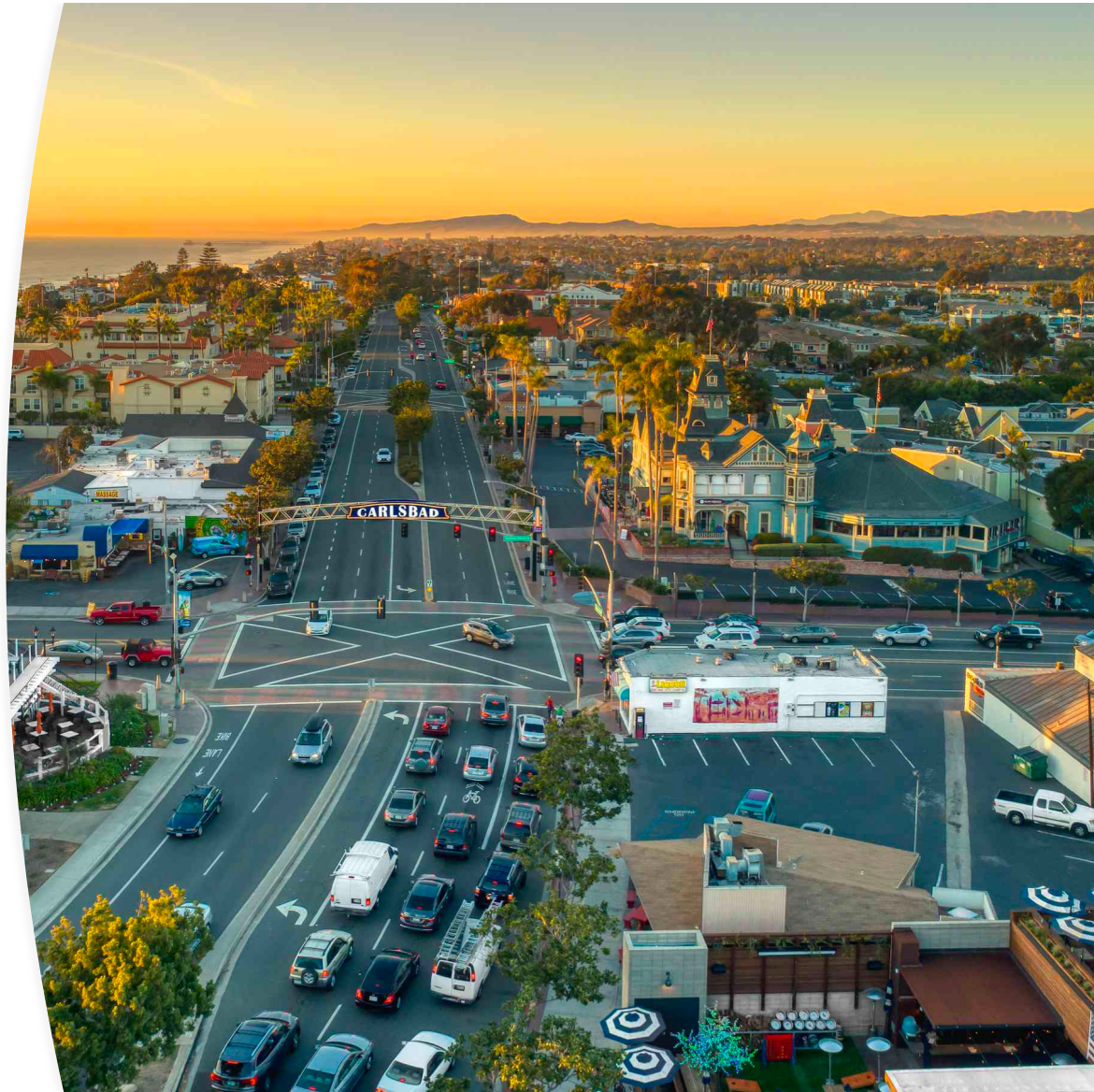
*Note: Quid-Pro Quo and Sexual Violence are NOT evaluated for severity, pervasiveness, offensiveness, or a denial of equal educational access because such misconduct is sufficiently serious to deprive a person equal access.*

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## Type #1: Quid Pro Quo Harassment

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- ***Quid Pro Quo Harassment: An employee of the school district conditioning the provision of an aid, benefit, or service of the school district on an individual's participation in unwelcome sexual conduct.***
- ***Example: Mark is April's teacher. Mark tells April he will give her an "A" in the class if she goes out on a date with him. Mark told April that if she ever reports him, he will ensure she fails her class.***





## Type #2: Sexual Assault, Dating Violence, Domestic Violence, Or Stalking

- *“Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).*
- *Example:* Emily and Michael have been in a romantic relationship for several months. Emily and Michael get into a fight. Michael physically attacks Emily on campus and injures her.
- *Example:* Mathilda and Liam used to date. Liam breaks up with Mathilda. Mathilda starts to follow Liam to his classes on a daily basis. Mathilda calls Liam 20-30 times day and makes statements that reasonably causes him to fear for his safety.

## Type #3: Hostile Educational Environment

- ***Hostile Educational Environment – 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 district's education program or activity.***
  - This is more restrictive than the definition of sexual harassment under California law, which only requires that the conduct be either severe or pervasive.
  - Single incidents of teasing, name-calling, or other common forms of peer-on-peer harassment among children are unlikely to rise to this level.
- ***Example:*** Dalia and Brandon have class together once a week over a 5-month period. Each week, Dalia gropes Brandon's buttocks and makes sexually explicit statements to him. Brandon has repeatedly asked Dalia to stop but she refuses. Brandon becomes so anxious and upset over Dalia's behavior that he starts skipping school.

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## **Conduct that does meet the definition of Title IX sexual harassment may still constitute sexual harassment under California law and other District policies.**

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- The California Education Code also prohibits discrimination on the basis of sex in schools. (California Education Code §§ 220-221.1.) Other state and federal laws also prohibit discrimination and ensure equality in education.
- SDUHSD also has several policies that prohibit and address sexual harassment:
  - Board Policy/Administrative Regulation No. 1312.3 – Uniform Complaint Procedures
  - Board Policy No. 5145.7 – Sexual Harassment
  - Board Policy No. 5145.3 Nondiscrimination/Harassment

# SDUHSD's Sexual Harassment Policy Is Broader Than Title IX

- SDUHSD applies to quid pro quo sexual harassment and sexual violence.
- With respect to the hostile educational environment type of sexual harassment it is broader:
  - *Unlawful discrimination, including sexual harassment, occurs when prohibited conduct is so severe, persistent, **or** pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects a student's educational opportunities. (Board Policy No. 5145.3 "Nondiscrimination")*
- Students are (in relevant part) directed to report **off-campus** sexual harassment that has a continuing effect on campus. (Board Policy 5145.7 "Sexual Harassment")

# Retaliation Prohibited

- Title IX expressly prohibits retaliation against individuals who exercise their rights under Title IX including participating or refusing to participate in a Title IX grievance process.
- No one is allowed to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing.
- To protect against retaliation, the District has an obligation to keep confidential the identify of complainants, respondents, and witnesses, except as may be permitted by FERPA, or as required by law, or as necessary to carry out a Title IX proceeding.
- Complaints alleging retaliation may be filed using the Title IX grievance procedures.
- The exercise of rights protected under the First Amendment does not constitute retaliation.



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## The Title IX Grievance “Team”

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Overview of the Title IX Team:

1. The Title IX Coordinator
2. Investigator(s)
3. Decision-Maker(s)
4. Facilitators of Informal Resolution Process

# The Title IX Coordinator


The District is obligated to ensure its educational community knows how to report to the Title IX Coordinator.

- Title IX Coordinators are designated.
- The contact information for the Title IX Coordinator should be provided to employees, students, applicants for admission, employment, parents/legal guardians, and unions.
- Schools must prominently display the required contact information for the Title IX Coordinator.
- Any person may report sex discrimination, including sexual harassment, to the Title IX Coordinator at any time, including during non-business hours.

# School Site Level Title IX Coordinator Duties

- Receive verbal and written sexual harassment complaints from students and employees
- Within one day of receipt of a complaint:
  - Contact the complainant regarding availability of supportive measures;
  - and (if no complaint has been filed) explain process for filing a complaint under Title IX (See *SDUHSD's Checklist for Determining Whether A Student Sexual Harassment Complaint Meets The Definition of "Formal Complaint" Under Title IX.*)
- Implement and document supportive measures as appropriate for both parties. Notify District Level Title IX Coordinator of supportive measures in place.
- Refer all sexual harassment complaints to the District Level Title IX Coordinator. The District Level Title IX Coordinator will be responsible for evaluating the appropriate procedure and for sending out written acknowledgement letters and providing notice for next steps.
- Familiarize yourself with the Title IX Grievance Process. (See *SDUHSD's Title IX Student Sexual Harassment Grievance Process Flow Chart.*)





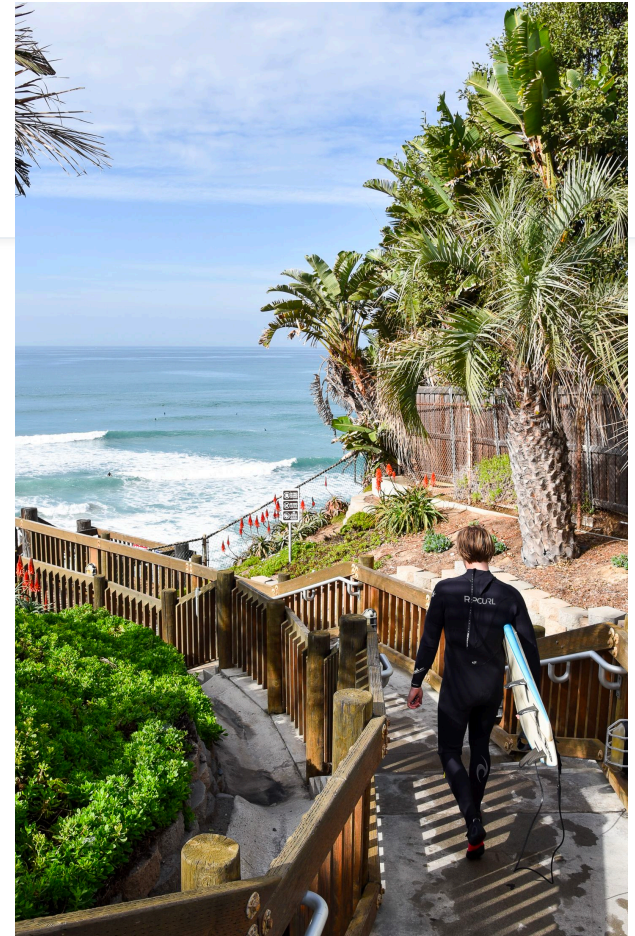
**Part 2: Procedures for  
Processing Student  
Sexual Harassment  
Complaints Under Title  
IX**

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## The Student Title IX Grievance Process Begins With A Formal Title IX Complaint

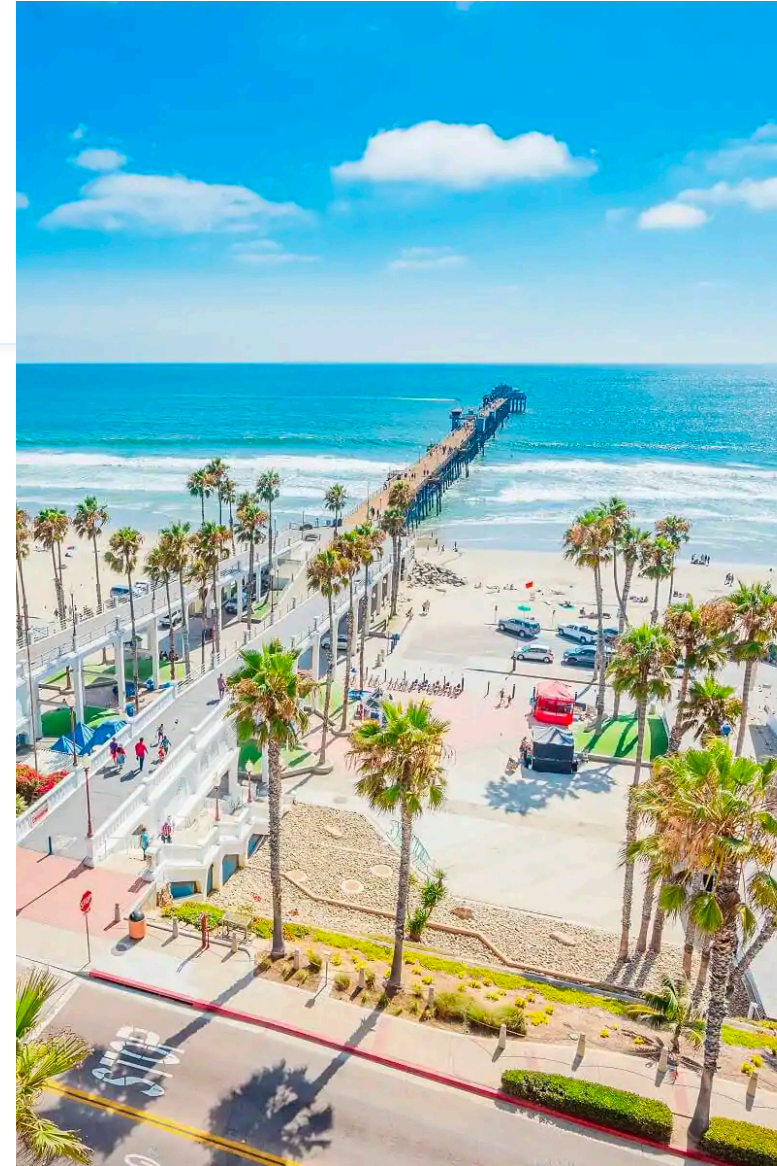
- A student who is the alleged victim of sexual harassment or the student's parent/guardian may submit a report of sexual harassment to the District's Title IX or to any other available school employee.
- All school employees are required by District policy to forward the report to a School Site Title IX Coordinator within one day of receiving the report. (AR 5145.71.)



# School Site Title IX Coordinator Duties

## What happens when you receive a complaint?

1. **Within one day** - Offer supportive, non-punitive measures to both parties if appropriate and memorialize the supportive, non-punitive measures provided (as discussed) even if no formal complaint is filed.
2. **Within one day** - verbally advise student of their right to file a written, formal complaint if they have not already done so. (See *SDUHSD's Checklist for Determining Whether A Student Sexual Harassment Complaint Meets The Definition of "Formal Complaint" Under Title IX.*)
3. **As soon as reasonably possible**, refer all sexual harassment complaints to the District Level Title IX Coordinator. The District Level Title IX Coordinator will be responsible for evaluating the appropriate procedure and for sending out written acknowledgement letters and providing notice for next steps.



## Supportive Measures

The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures (as defined in § 106.30), consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. 34 C.F.R. § 106.44.

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# Supportive Measures

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- Supportive measures shall be offered as appropriate, as reasonably available, and without charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
- Such measures shall be nondisciplinary, nonpunitive, and designed to restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment or to deter sexual harassment.



# Supportive Measures

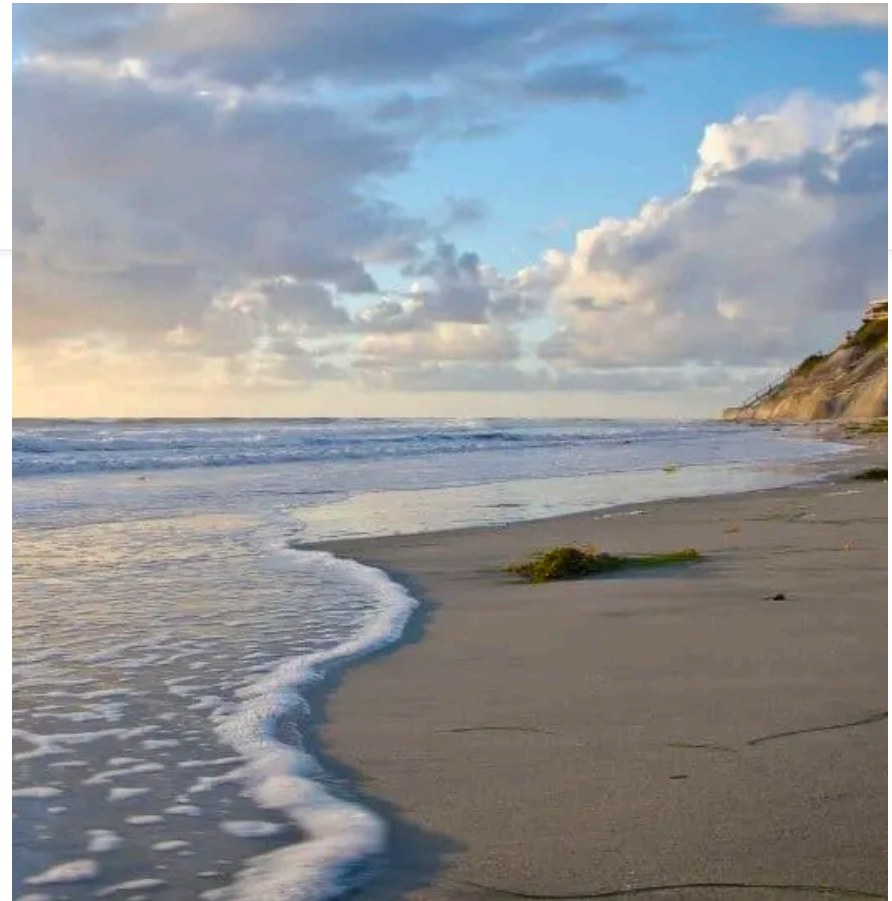
- Supportive measures may include, but are not limited to, counseling, course-related adjustments, modifications of class schedules, mutual restrictions on contact, increased security, and monitoring of certain areas of the campus.
- Title IX requires the District to keep supportive measures confidential except as necessary to provide the supportive measures. This is intended to protect the confidentiality of complainants, respondents, and witnesses during a Title IX process.
- If the District does not provide a complainant with supportive measures following a formal complaint, then the District must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

# Exception: Emergency Removal

- Re-Cap: A student shall not be disciplined for alleged sexual harassment under Title IX until the investigation has been completed. Supportive Measures are intended to be non-punitive and for the benefit of both parties.
- However, on an emergency basis, the District may remove a student from the District's education program or activity, provided that:
  - The District conducts an individualized safety and risk analysis,
  - The District determines that removal is justified due to an immediate threat to the physical health or safety of any student or other individual arising from the allegations, and
  - The District provides the student with notice and an opportunity to challenge the decision immediately following the removal.
- This authority to remove a student does not modify a student's rights under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.
- If a District employee is the respondent, the employee may be placed on administrative leave during the pendency of the formal complaint process.

## Your Role With Respect to Supportive Measures

- School Site Title IX Coordinators will implement supportive measures as appropriate given the nature of the allegations and the parties involved, and will notify the District Level Title IX Coordinator of the supportive measures being implemented.
- Supportive Measures may only be shared with other District employees and personnel as necessary to implement the supportive measures.





## Title IX Coordinator – Option To File The Formal Complaint

- Even if the alleged victim chooses not to file a formal complaint, the Title IX Coordinator **shall** file a formal complaint in situations when a **safety threat** exists.
  - In addition, the Title IX Coordinator **may** file a formal complaint in other situations as permitted under the Title IX regulations, including as part of the District's obligation to not be deliberately indifferent to known allegations of sexual harassment.
- In such cases, the Title IX Coordinator shall provide the alleged victim notices as required by the Title IX regulations at specific points in the complaint process.
- Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during a grievance process, and must comply with the requirements for Title IX personnel to be free from conflicts and bias.

# Dismissal of Sexual Harassment Complaint

- Schools must dismiss allegations of conduct that does not fall within the jurisdiction of Title IX.
- Schools may, in their discretion, dismiss a formal complaint or allegations if the complainant, in writing, indicates that he or she desires to withdraw the formal complaint or allegations.
- Schools may, in their discretion, dismiss a formal complaint or allegations if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.
- In the event a dismissal, schools must give the parties written notice and reasons for the dismissal. The school can still, however, process the allegations or complaint under other procedures, e.g., Uniform Complaint Procedures.
- Under AR 5145.71, parties have 10 days to appeal a dismissal.



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# Application of SDUHSD's Uniform Complaint Procedures

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- If a student sexual harassment complaint does not fall under Title IX, then it shall be processed under SDUHSD's Uniform Complaint Procedures. (BP/AR 1312.3 - Uniform Complaint Procedures.)
- Title IX Coordinators will still provide non-punitive, supportive measures even if no formal complaint has been filed (as previously discussed).

# Once a Formal Title IX Complaint is filed, then the District Level Title IX Coordinator Shall Provide Written Notice

The Written Notice must include:

- Notice of the **allegations** including the identifies of the parties involved, If known, and the conduct allegedly constituting sexual harassment, and the date and location of the incident, if known.
- Notice of the **grievance process** (include a copy of AR 5145.71.)
- Notifies the respondent that the respondent is **presumed not responsible** for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- Notifies the parties that they may have an **advisor of their choice**, who may be, but is not required to be, an attorney...and they may inspect and review evidence.
- Notifies the parties of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- **Memorializes the supportive, non-punitive measures** to the parties.
- Per AR 5145.71, it shall also include **the name of the investigator, facilitator of an informal process, and decision-maker** and shall inform the parties that if at any time party has concerns regarding conflict of interest or bias regarding any of these persons, the party should immediately notify the Title IX Coordinator.

# Once a Formal Complaint is filed, then the District Level Title IX Coordinator Shall Initiate The Grievance Process

Here is an overview of the Title IX Grievance Process for Student sexual harassment complaints:

1. District Level Title IX Coordinator Sends written notice of the allegations, procedures, and rights available to the parties.
2. Investigation
3. Parties' Right to Review Evidence and Respond
4. Hearing (Optional in K-12 Settings)
5. Parties' Right to Submit Written Questions To Other Parties
6. Written Determination Issues by Decision Maker
7. Appeal (available for specific reasons)

***Note: see Flow Chart in Supplemental Training Materials.***

# Title IX Grievance Process: Informal Resolution

- When a formal complaint of sexual harassment is filed, the District may offer an informal resolution process, such as mediation, at any time prior to reaching a determination regarding responsibility. The District shall not require a party to participate in the informal resolution process or to waive the right to an investigation and adjudication of a formal complaint.
- The District may facilitate an informal resolution process provided that the District:
  - Provides the parties with written notice disclosing the allegations, the requirements of the informal resolution process, the right to withdraw from the informal process and resume the formal complaint process, and any consequences resulting from participating in the informal resolution process, including that records will be maintained or could be shared.
  - Obtains the parties' voluntary, written consent to the informal resolution process
  - Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student

## Title IX Grievance Process: Investigation

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The District must investigate the allegations in any formal complaint.

The investigation must be conducted by a trained, unbiased investigator shall conduct a thorough, equitable, and prompt investigation. Investigations must be thorough and fair.

The burden of gathering evidence and burden of proof must be on the District, not on the parties.

Both parties must be given an opportunity to present evidence.



## **Title IX Grievance Process: The Parties' Right To Review Evidence And Respond**

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Before the investigation is complete, the District must give the parties and their advisors 10 days to review the evidence gathered and respond.

The parties and their advisors (if any) must also receive a copy of the investigative report at least 10 days prior to the date of determination regarding responsibility.

*Typically, the investigator will draft a report that the parties are able to review and comment on. The report should include as attachments all inculpatory and exculpatory evidence.*





## Title IX Grievance Process: The Parties' Right To Submit Written Questions

- Regardless of whether a hearing occurs, the Decision-Maker must afford each party the opportunity to submit written, **relevant** questions that a party wants asked of any party or witness, and provide each party with the answers, and allow for additional limited follow-up questions from each party.
- Questions about a complainant's sexual predisposition or prior sexual behavior is generally irrelevant. Prior sexual behavior is only relevant if offered to prove that someone other than the respondent committed the alleged misconduct, or if offered to prove consent.



# Title IX Grievance Process: Hearings

- Postsecondary institutions must have “live hearing with cross examination.”
- K-12 school districts have the *discretion* to afford the parties with an evidentiary hearing.
- During a hearing:
  - Evidentiary decisions will be made by a hearing officer
  - Advisors must be provided
  - Cross-examination is allowed by advisors, including questions challenging credibility
  - Transcripts or audio recordings required

## Title IX Grievance Process: Decision-Maker Determines Responsibility

- The Decision Maker (who cannot be the Title IX Coordinator or Investigator) will issue a written determination regarding responsibility that is sent simultaneously to all parties.
- The Decision Maker must apply the **preponderance of the evidence** standard per Administrative Regulation 5145.71. (*This is the same burden of proof in most civil cases.*)
- The Decision Maker must provide a written decision within 60 days unless extended for good cause. (Administrative Regulation 5145.71. )



# Written Decisions

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The written decision shall include the following:

1. Identification of the allegations potentially constituting sexual harassment;
2. A description of the procedural steps taken from receipt of the formal complaint through the written decision, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the District's code of conduct or policies to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, any disciplinary sanctions the District imposes on the respondent, and whether remedies designed to restore or preserve equal access to the District's educational program or activity will be provided by the District to the complainant; and
6. The District's procedures and permissible bases for the complainant and respondent to appeal.

# Title IX Grievance Process: Right To An Appeal

Either party may appeal the District's decision or dismissal of a formal complaint or any allegation in the complaint, if:

1. the party believes that a procedural irregularity affected the outcome,
2. new evidence is available that could affect the outcome, or
3. a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision-maker(s) affected the outcome.

# Title IX Grievance Process: Right To An Appeal

- Per Administrative Regulation 5145.71, the parties have the right to file an appeal within 10 days.
- A different Decision Maker will issue a decision within 20 days.
- The District's decision may be appealed to the California Department of Education within 30 days of the written decision in accordance with BP/AR 1312.3.
- Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights within 180 days of the date of the most recently alleged misconduct.

## Remedies

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- When a determination of responsibility for sexual harassment has been made against the respondent, the District shall provide remedies to the complainant.
- Such remedies may include the same individualized services described above in the section "**Supportive Measures**," but need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent.
- **Remedies must be designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant.**



**EQUAL ACCESS**

## Corrective/Disciplinary Action

- The District shall not impose any disciplinary sanctions or other actions against a respondent, other than supportive measures, until the complaint procedure has been completed and a determination of responsibility has been made.
- For students in grades 4-12, discipline for sexual harassment may include suspension and/or expulsion.
- After the completion of the complaint procedure, if it is determined that a student at any grade level has committed sexual assault or sexual battery at school or at a school activity off school grounds, the principal or Superintendent shall immediately suspend the student and shall recommend expulsion.



## **Corrective/Disciplinary Action (Continued)**

Other actions that may be taken with a student who is determined to be responsible for sexual harassment include, but are not limited to:

1. Transfer from a class or school as permitted by law
2. Parent/guardian conference
3. Education of the student regarding the impact of the conduct on others
4. Positive behavior support
5. Referral of the student to a student success team
6. Denial of participation in extracurricular or cocurricular activities or other privileges as permitted by law.

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# Record Maintenance

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The Superintendent or designee (District Level Title IX Coordinator) shall maintain for a period of seven years:

1. A record of all reported cases and Title IX investigations of sexual harassment, any determinations of responsibility, any audio or audiovisual recording and transcript if applicable, any disciplinary sanctions imposed, any remedies provided to the complainant, and any appeal or informal resolution and the results therefrom.
2. A record of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, including the District's basis for its conclusion that its response was not deliberately indifferent, the measures taken that were designed to restore or preserve equal access to the education program or activity, and if no supportive measures were provided to the complainant, the reasons that such a response was not unreasonable in light of the known circumstances.
3. All materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), and any person who facilitates an informal resolution process. The District shall make such training materials publicly available on its web site, or if the District does not maintain a web site, available upon request by members of the public.



# Part 3: How To Serve Impartially



# Impartial Process

“Any individual designated by a recipient as a Title IX Coordinator... **must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.**” 34 C.F.R. § 106.45.

The Parties may appeal a decision if a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision-maker(s) affected the outcome.

*Note: the regulations do not provide a definition for conflicts of interest, bias, or impartiality.*

# Recognizing Bias

**What is difficult about bias, is that we may not always recognize it.**

- **Bias:** prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair.
- **Stereotypes:** a widely held but fixed and oversimplified image or idea of a particular type of person or thing.
- **Conscious or Explicit Bias:** “Explicit bias is the traditional conceptualization of bias. With explicit bias, individuals are aware of their prejudices and attitudes toward certain groups. Positive or negative preferences for a particular group are conscious. Overt racism and racist comments are examples of explicit biases.”
- **Unconscious or Implicit Bias:** “Implicit bias involves all of the subconscious feelings, perceptions, attitudes, and stereotypes that have developed as a result of prior influences and imprints. It is an automatic positive or negative preference for a group, based on one’s subconscious thoughts. However, implicit bias does not require animus; it only requires knowledge of a stereotype to produce discriminatory actions.”

# Potential for Bias In the Title IX Context

- **Biases related to gender.** *For example, the Title IX Coordinator assumes all respondents are male and all complainants are female.*
- **Biases related to economic status/social standing.** *For example, there is an assumption that a respondent is innocent based on his/her grades or academic achievement.*
- **Biases related to race.** *For example, finding one party less believable or trustworthy because they are a different race.*
- **Biases related to sexual orientation.** *For example, a Title IX Coordinator assumes sexual harassment cannot occur between individuals of the same sex or gender.*
- **Affinity Bias.** *The unconscious tendency to get along with others who are like us.*
- **Anchoring Bias.** *Fixated on initial information and failing to adjust for subsequent information.*
- **Authority Bias.** *Attributing greater accuracy to the opinion of an authority figure.*

# Ways to Combat Bias

1. Question your thinking and challenge your own assumptions.
2. Identify your own biases. Consider online bias tests. (Example: Harvard Implicit Association Test.)
3. Recognize: where do my biases come from? How do they influence my actions and the actions of other groups I identify with?
4. Notice your reaction. Monitor your language and be mindful of what you say and how you say it.
5. Avoid generalizations and stereotypes.

***If there is a conflict of interest or bias that prevents you from acting fairly in a particular investigation, you should recuse yourself.***



# Part 4: Hypotheticals

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# **Scenario #1: A student verbally complains to you that they are a victim of sexual harassment.**

- Be professional, respectful, and non-judgmental.
- Ask the complainant enough questions to be able to evaluate the appropriate procedure (UCP vs. Title IX) and refer to the District Title IX Coordinator if appropriate.
  - Who is the complainant? Who is the respondent?
  - What occurred? Quid Pro Quo Harassment? Sexual Violence or Stalking? Hostile Environment?
  - Did the incident(s) occur in the context of an educational program or activity in the United States?
  - When did it occur?
  - If appropriate, gather information needed to conduct a threat assessment so that Title IX Coordinator may determine if emergency removal is appropriate.
- Within one day of receiving the complaint, (1) offer, implement, and document supportive measures to both parties; and (2) notify complainant of the right to file a formal, written complaint.
- Refer sexual harassment complaint to District Level Title IX Coordinator, who will send out acknowledgement letters that comply with Title IX and applicable policy.
- District Title IX Coordinator will communicate back to you regarding what procedure this will be processed under and further handling.
- Remember – you are a mandatory reporter. Consider whether the complaint triggers your obligation to report child abuse or neglect under the California Child Abuse and Neglect Reporting Act.



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## Scenario #2: A student submits a written sexual harassment complaint.

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- Within one day of receiving a written complaint, offer, implement, and document supportive measures to both parties.
- Refer the written sexual harassment complaint to District Level Title IX Coordinator, who will send out acknowledgement letters that comply with Title IX and applicable policy.
- District Title IX Coordinator will communicate back to you regarding what procedure this will be processed under and further handling.

**Scenario #3: You observed sexual harassment or sexual violence between students, but no one has complained.**

- District policy requires employees to immediately report sexual harassment by or against a student or another employee. (BP 5145.7.)
- Even if a student or his or her parent does not want to file a complaint or does not request that the school take any action on the student's behalf, if a school knows or reasonably should know about possible sexual harassment or sexual violence, it must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation.
- "An employee may bypass his/her supervisor in filing a complaint where the supervisor is the subject of the complaint." (BP 5145.7.)





# Scenario #4: Someone filed a Title IX Formal complaint against you.

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- Employees can file Title IX Complaints and be Respondents in Title IX Complaints.
- Title IX ensures a fair and equitable process for Respondents. No determination regarding responsibility will be made in advance of following the Title IX grievance process.
- You will be given an opportunity to tell your side of the story; respond to evidence; and ask questions in accordance with SDUHSD's Title IX policies and procedures.
- ***Never*** engage in any conduct that could be perceived as retaliatory towards anyone involved. Retaliation is against District policy and is against the law.



## **Scenario #5: You received an anonymous sexual harassment complaint.**

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- There is no waiver because the report is anonymous. You still have a duty to report complaints of sexual harassment.
- Because it is anonymous, it will likely not meet the criteria of a formal complaint, but SDUHSD will still need to process it in accordance with the appropriate policy and procedures. For students, an anonymous sexual harassment complaint would be processed under the Uniform Complaint Procedures.
- Refer anonymous sexual harassment complaint to District Level Title IX Coordinator for further evaluation.



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## Scenario #6: A female student verbally complains to you that another female student sexually harassed her.


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Remember: Sexual harassment can occur between students of the same gender and/or sex.

- **All the same rules apply! Re-Cap:**
  - Be professional, respectful, and non-judgmental.
  - Ask the complainant enough questions to be able to evaluate the appropriate procedure and refer to the District Title IX Coordinator if appropriate.
  - Within one day of receiving the complaint, (1) offer supportive measures to both parties; and (2) notify complainant of the right to file a formal complaint if they have not already done so.
  - Refer sexual harassment complaint to District Level Title IX Coordinator, who will send out acknowledgement letters that comply with Title IX and applicable policy.
  - District Title IX Coordinator will communicate back to you regarding what procedure this will be processed under and further handling.
  - Remember – you are a mandatory reporter. Consider whether the complaint triggers your obligation to report child abuse or neglect under the California Child Abuse and Neglect Reporting Act.

# Scenario #7: Several female students verbally complain that a male student has made sexually explicit comments to them verbally and via text.

- This is a Hostile Educational Environment type of sexual harassment. In these cases, the number of complainants does not necessarily increase the severity or pervasiveness for a Hostile Educational Environment Analysis. A hostile educational environment exists for purposes of Title IX when it is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.
- ***All the same rules apply! Re-Cap:***
  - Be professional, respectful, and non-judgmental.
  - Ask the complainant enough questions to be able to evaluate the appropriate procedure and refer to the District Title IX Coordinator if appropriate.
  - Within one day of receiving the complaint, (1) offer supportive measures to both parties; and (2) notify complainant of the right to file a formal complaint if they have not already done so.
  - Refer sexual harassment complaint to District Level Title IX Coordinator, who will send out acknowledgement letters that comply with Title IX and applicable policy.
  - District Title IX Coordinator will communicate back to you regarding what procedure this will be processed under and further handling.
  - Remember – you are a mandatory reporter. Consider whether the complaint triggers your obligation to report child abuse or neglect under the California Child Abuse and Neglect Reporting Act.



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**Part 5: A Look  
Ahead; Key Take  
Aways; And  
Q&A**

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# What is next for Title IX?



The “Final Rule” was imposed during the Trump Administration. The Biden Administration has already made some changes to Title IX:

- Effective June 2021, OCR is enforcing Title IX’s prohibition of discrimination on the basis of sex to include (1) discrimination based on sexual orientation; and (2) discrimination based on gender identity.
- OCR recently announced a comprehensive review of the Title IX regulations.
- Some believe that the definition of sexual harassment will be expanded and may include off-campus incidents.



## Key Take Aways

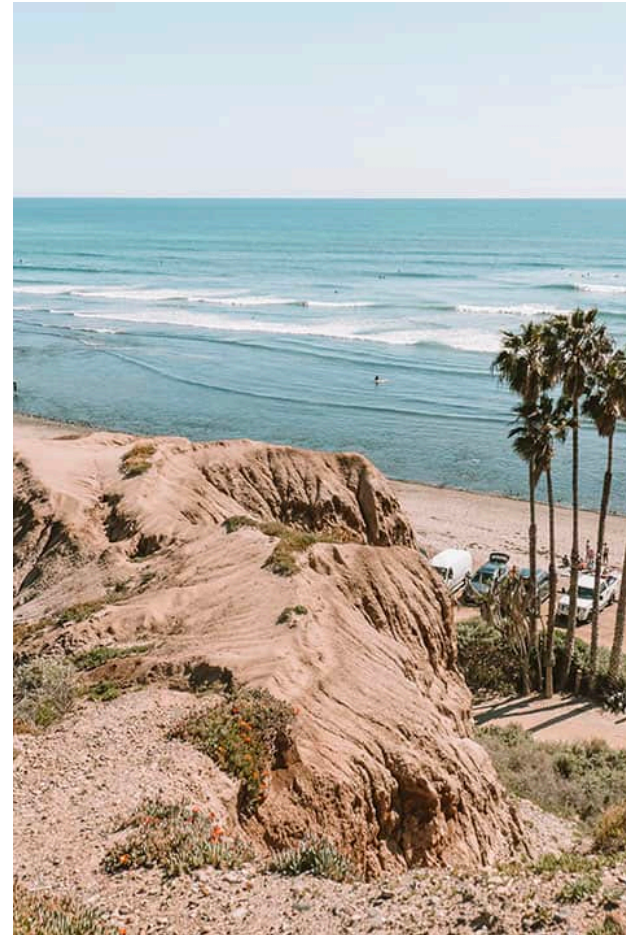
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- Effective August 2020, Title IX essentially created two different complaint procedures that address sexual harassment depending on the nature of conduct at issue.
- These procedures are set forth in the Board Policy 1312.3 “Uniform Complaint Procedures” and Administrative Regulation 5145.71 “Title IX Sexual Harassment Complaint Procedure.” Copies of these procedures have been provided to you.
- Sexual harassment is something that must be taken seriously and promptly reported regardless of whether it meets the definition of sexual harassment under Title IX.
- The District is on notice of sexual harassment when any employee learns of it.

## Key Take Aways

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- Students can verbally make reports of sexual harassment to any District employee, or they can use the complaint form on the District's website.
- Questions about Title IX should be directed to Laura Strachan, Director of Pupil Services.
- If you receive a sexual harassment complaint:
  - Within one day: offer supportive measures, notify the student of their right to file a written complaint (if applicable);
  - Forward the complaint to the District Level Title IX Coordinator and notify her of the supportive measures in place



# Handouts

- SDUHSD's Title IX Student Sexual Harassment Grievance Process Flow Chart
- SDUHSD's Checklist for Determining Whether A Student Sexual Harassment Complaint Meets The Definition of "Formal Complaint" Under Title IX
- SDUHSD Administrative Regulation 5145.71 "Title IX Sexual Harassment Complaint Procedures."
- SDUHSD Board Policy/Administrative Regulation 1312.3 "Uniform Complaint Procedures"
- SDUHSD Board Policy 5145.7 "Sexual Harassment"
- SDUHSD Board Policy/Administrative Regulation 5145.3 "Nondiscrimination"



# Questions And Answers

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