



# Formal Complaints of Title IX Sexual Harassment

**EASTERN OKLAHOMA STATE COLLEGE**



# Session Points

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10 Core Requirements

Dismissal of Formal Complaints

Consolidation of Formal Complaints

# The Formal Complaint Framework



# Formal Complaint

- ❖ A **formal complaint** of Title IX sexual harassment means a document filed by a complainant **or** signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.
- ❖ For the purpose of addressing formal complaints of sexual harassment, a school's formal Title IX complaint policy and process must comply with **specific requirements** set out in the new rule.

# Formal Complaint Process

Core Requirements	• Details 10 core requirements of formal complaint process
Complaint Dismissal	• Grounds for dismissal and procedural requirements
Consolidation	• Complaint consolidation in specific circumstances
Notice of Allegations	• Requirements for initial and ongoing notice to parties
Investigations	• 7 required elements of formal investigation
Informal Resolutions	• Permits informal resolution where appropriate
Hearings	• Hearing requirements, including cross-x and advisors
Determinations	• Requirements for adjudicators and determinations
Appeals	• Grounds and procedures for appeals
Recordkeeping	• Record maintenance requirements for specified periods

# 10 Core Requirements



# 1. Equitable Treatment

A formal complaint process must treat complainants and respondents **equitably** by:

- providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent; **and**
- by following a complaint process that complies with the new Title IX rule.

Remedies must be designed to restore or preserve equal access to the school's education program or activity.

## 2. Objective Evaluation

A school's formal complaint process must require an objective evaluation of all evidence and provide that **credibility determinations** may not be based on a person's status as a complainant, respondent, or witness.

An **objective evaluation** is one that involves:

- Impartial consideration of available evidence.
- No prejudgment of parties, witnesses, facts at issue, or how facts at issue are presented.
- No deference to recommendations of an investigator.

## 2. Objective Evaluation

A **credibility** determination involves determining what statements to believe and what statements not to believe, based on the “credibility” of the individual making the statement.

- Adjudicators may believe everything a party or witness says, part of it, or none of it.

In some situations, there may be little to no evidence other than the statements of the parties themselves.

### 3. Training of Key Participants

A school's process must include training for coordinators, investigators, and adjudicators and require that they be free of conflict of interest.

- Materials used to train Title IX Coordinators, investigators, adjudicators, and any person who facilitates an informal resolution process, **must not rely on sex stereotypes** and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

# 3. Training of Key Participants

Title IX  
Coordinators,  
investigators,  
adjudicators, and  
any person who  
facilitates informal  
resolutions

- Definition of sexual harassment and scope of the school's education program or activity.
- Conducting an investigation and grievance process including hearings, appeals, and informal resolutions.
- Serving impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Investigators

- Issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Adjudicators

- Using technology at live hearings.
- Relevance of questions and evidence, including when questions and evidence about complainant's sexual history are not relevant.

# 3. Training of Key Participants

## What are best training practices?

- Develop a training plan and consider combining different types of training (live, remote, asynchronous).
- Encourage and ensure time for questions when possible.
- Consider simulations, which can introduce participants to policies and procedures, force them to grapple with difficult aspects of the process, provide an opportunity for questions to be answered in real-time, and allow for suggestions or corrections.

## 4. Presumption of Innocence

A school's formal complaint process must include a presumption of innocence for the respondent.

- “The presumption does not imply that the alleged harassment did not occur; **the presumption ensures that recipients do not take action against a respondent as though the harassment occurred prior to the allegations being proved**, and the final regulations require a recipient's Title IX personnel to interact with both the complainant and respondent in an impartial manner throughout the grievance process without prejudgment of the facts at issue, and without drawing inferences about credibility based on a party's status as a complainant or respondent.”

## 5. Prompt Timeframes

A school's process must include reasonably prompt timeframes for resolution and allow for temporary delay or limited extension for good cause.

- “Any time frame included by the recipient must be “reasonably prompt,” where the reasonableness of the time frame is evaluated in the context of the recipient’s operation of an education program or activity.”
- “The Department believes that each recipient is in the best position to balance promptness with fairness and accuracy based on the recipient’s unique attributes and the recipient’s experience with its own student disciplinary proceedings...”

## 6. Sanctions and Remedies

A school's formal complaint process must describe the range of possible sanctions and remedies.

- “Whether and what type of sanctions are imposed is a decision left to the sound discretion of recipients.”
- The new regulations “permit recipients to evaluate such considerations and make disciplinary decisions that each recipient believes are in the best interest of the recipient’s educational environment.”

## 7. Standard of Evidence

A school's process must detail the standard of evidence that will be used and provide for consistent use in all formal complaints.

- Schools may use either preponderance of the evidence or clear and convincing.
- **Preponderance of the evidence** means a particular fact or event was more likely than not to have occurred.
- **Clear and convincing** means a particular fact or event was highly and substantially more likely than not to have occurred.

## 8. Appeal processes & Standards

A school's formal complaint process must describe the appeal process and standards.

- Appeals may be granted on the following bases:
  - a procedural irregularity that affected the outcome;
  - new evidence that was not reasonably available at the time the determination or dismissal was made and could affect the outcome; **and**
  - the Title IX Coordinator, investigator, or adjudicator had a conflict of interest or bias that affected the outcome of the matter.
- A school also may offer an appeal equally to both parties on additional bases.

## 9. Supportive Measures

A school's process must describe the range of available supportive measures.

Counseling	Extensions of deadlines or other course-related adjustments	Modifications of work or class schedules
Campus escort services	Mutual restrictions on contact between the parties	Changes in work locations
Changes in housing locations	Leaves of absence	Increased security and monitoring of certain areas of the campus

## 10. Legal Privilege

A school's formal complaint process must **not** require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

- Legal privileges protect communications and documents from disclosure. Examples include: Attorney – Client; Priest – Penitent; Doctor – Patient; Spousal.

# Dismissal of Formal Complaints



# Required Dismissal

Schools **must** dismiss a formal complaint of sexual harassment “for purposes of sexual harassment under title IX” if the alleged conduct:

- would not constitute sexual harassment even if proved;
- did not occur in the school’s education program or activity; or
- did not occur against a person in the United States.

Such a dismissal does not preclude action under another provision of the school’s code of conduct.

# Optional Dismissal

Schools **may** dismiss a formal complaint of sexual harassment if, at any time:

- a complainant notifies the Title IX Coordinator in writing that he or she would like to withdraw;
- the respondent is no longer enrolled or employed by the school; or
- specific circumstances prevent the school from gathering sufficient evidence to reach a determination.

Upon a required or optional dismissal, schools must promptly and simultaneously send written notice to the parties.

# Dismissal of Complaints

“The § 106.45 grievance process obligates recipients to investigate and adjudicate allegations of sexual harassment for Title IX purposes; the Department does not have authority to require recipients to investigate and adjudicate misconduct that is not covered under Title IX, nor to preclude a recipient from handling misconduct that does not implicate Title IX in the manner the recipient deems fit. In response to commenters’ concerns, the final regulations clarify that dismissal is mandatory where the allegations, if true, would not meet the Title IX jurisdictional conditions...”

# Dismissal of Complaints

**Must schools always investigate a formal complaint of sexual harassment?**

- Yes.

**Under what circumstances is a mandatory dismissal applied?**

- A formal complaint of sexual harassment “for purposes of sexual harassment under Title IX” must be dismissed if the alleged conduct:
  - would not constitute sexual harassment even if proved;
  - did not occur in the school’s education program or activity; or
  - did not occur against a person in the United States.

# Dismissal of Complaints

**If a school is required to dismiss a complaint, can it still investigate and adjudicate the complaint under alternative procedures?**

- Yes. Such a dismissal does not preclude action under another provision of the school's code of conduct.

# Consolidation of Formal Complaints



# Consolidation of Formal Complaints

Provided the allegations of sexual harassment arise out of the same facts or circumstances, schools are permitted to consolidate formal complaints that are:

Against  
more than  
one  
respondent

By more  
than one  
complainant  
against one  
or more  
respondents

By one party  
against the  
other party



**THANK YOU!**