
Note: This policy addresses the prohibition against discrimination, harassment, and retaliation with respect to compensation, terms, conditions, or privileges of employment. For legally referenced material relating to the prohibition against discrimination in hiring and discharging employees, see DAA(LEGAL).

For provisions related to harassment of students, including the ESC's response to sexual harassment as defined by Title IX, see FBA.

**Unlawful
Employment
Discrimination**

It is an unlawful employment practice for an ESC to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's:

1. Race, color, or national origin;
2. Religion;
3. Sex;
4. Age;
5. Disability; or
6. Genetic information. [See DAB]

Federal Law

Section 1981 of the Civil Rights Act of 1866 (Section 1981)—race. *42 U.S.C. 1981*

Title VII of the Civil Rights Act of 1964 (Title VII)—race, color, religion, sex, and national origin. *42 U.S.C. 2000e et seq.*

Age Discrimination in Employment Act of 1967 (ADEA)—age, over 40. *29 U.S.C. 621 et seq.*

Section 504 of the Rehabilitation Act of 1973 (Section 504)—disability in programs receiving federal funds. *29 U.S.C. 794*

Title I of the Americans with Disabilities Act of 1990 (ADA)—disability. *42 U.S.C. 12101 et seq.*

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)—genetic information. *42 U.S.C. 2000ff et seq.*

State Law

Texas Commission on Human Rights Act (TCHRA)—race, color, disability, religion, sex, national origin, age, and genetic information. *Labor Code 21.051, .402*

	State policy on employment of persons with disabilities. <i>Human Resources Code 121.003(f)</i>
Prohibition on Retaliation	An ESC may not discriminate against any employee or applicant for employment because the employee or applicant has opposed any unlawful, discriminatory employment practices or participated in the investigation of any complaint related to an unlawful, discriminatory employment practice. <i>29 U.S.C. 623(d) (ADEA); 42 U.S.C. 2000e-3(a) (Title VII); 42 U.S.C. 12203 (ADA); Labor Code 21.055</i>
Harassment-Free Workplace	Harassment on the basis of a protected characteristic is a violation of Title VII. An ESC has an affirmative duty, under Title VII, to maintain a working environment free of harassment on the basis of sex, race, color, religion, and national origin. <i>42 U.S.C. 2000e, et seq.; 29 C.F.R. 1604.11(a), 1606.8(a)</i>
Sexual Harassment	Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: <ol style="list-style-type: none">1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit. <i>29 C.F.R. 1604.11(a), (f), (g)</i>
<i>Same-Sex Harassment</i>	Same-sex sexual harassment constitutes sexual harassment. <u><i>Oncale v. Sundowner Offshore Services, Inc.</i></u> , <i>523 U.S. 75 (1998)</i>
Criminal Offense—Official Oppression	A public servant acting under color of the public servant's office or employment commits an offense if the public servant intentionally subjects another to sexual harassment. A public servant acts under color of the public servant's office or employment if the person acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

	<p>“Sexual harassment” means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person’s exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.</p> <p><i>Penal Code 39.03(a)(3), (b), (c)</i></p>
<p><i>Unpaid Interns</i></p>	<p>An ESC commits an unlawful employment practice if sexual harassment of an unpaid intern occurs and the ESC or its agents or supervisors know or should have known that the conduct constituting sexual harassment was occurring and fail to take immediate and appropriate corrective action. <i>Labor Code 21.1065</i></p>
<p>National Origin Harassment</p>	<p>Ethnic slurs and other verbal or physical conduct relating to an individual's national origin constitute harassment when this conduct:</p> <ol style="list-style-type: none">1. Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or3. Otherwise adversely affects an individual's employment opportunities. <p><i>29 C.F.R. 1606.08(b)</i></p>
<p>Severe and Pervasive</p>	<p>Harassment violates Title VII if it is sufficiently severe and pervasive to alter the conditions of employment. <u><i>Pennsylvania State Police v. Suders, 542 U.S. 129 (2004)</i></u></p> <p>Title VII does not prohibit all verbal and physical harassment in the workplace. For example, harassment between men and women is not automatically unlawful sexual harassment merely because the words used have sexual content or connotations. <u><i>Oncale v. Sun-downer Offshore Services, Inc., 523 U.S. 75 (1998)</i></u></p>
<p>Prevention</p>	<p>An ESC should take all steps necessary to prevent unlawful harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate penalties, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned. <i>29 C.F.R. 1604.11(f)</i></p>
<p>Responsibility for Harassment by Third Parties</p>	<p>An ESC is responsible for acts of unlawful harassment by fellow employees and by nonemployees if the ESC, its agents, or its supervisory employees knew or should have known of the conduct, unless the ESC takes immediate and appropriate corrective action. <i>29 C.F.R. 1604.11(d), (e), 1606.8(d), (e)</i></p>

When no tangible employment action is taken, an ESC may raise the following affirmative defense:

1. That the ESC exercised reasonable care to prevent and promptly correct any harassing behavior; and
2. That the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998)

**Religious
Discrimination**

The prohibition against discrimination on the basis of religion includes all aspects of religious observances and practice, as well as religious belief, unless an ESC demonstrates that it is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship to the ESC's business. "Undue hardship" means more than a *de minimus* (minimal) cost. *42 U.S.C. 2000e(j); 29 C.F.R. 1605.2; Labor Code 21.108*

Burden on Free
Exercise

An ESC may not substantially burden an employee's free exercise of religion, unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. *Civ. Prac. & Rem. Code 110.003*

Sex Discrimination
Pregnancy

The prohibition against discrimination because of sex includes discrimination on the basis of pregnancy, childbirth, or related medical conditions. An ESC shall treat women affected by pregnancy, childbirth, or related medical conditions the same as other employees for all employment-related purposes, including receipt of benefits under fringe benefit programs. *42 U.S.C. 2000e(k); 29 C.F.R. 1604.10; Labor Code 21.106*

Gay and
Transgender

The prohibition against discrimination because of sex includes discrimination on the basis of an individual being gay or transgender. *Bostock v. Clayton County, Georgia*, 17-1618, 2020 WL 3146686, (U.S. June 15, 2020)

Gender Stereotypes

An ESC may not evaluate employees by assuming or insisting that they match the stereotype associated with their group. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)

Age Discrimination

The prohibition against discrimination on the basis of age applies only to discrimination against an individual 40 years of age or older. *29 U.S.C. 631; Labor Code 21.101*

EMPLOYEE STANDARDS OF CONDUCT
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

DHA
(LEGAL)

Bona Fide Employee Benefit Plan	An ESC may take an employment action on the basis of age pursuant to a bona fide seniority system or a bona fide employee benefit plan. However, a bona fide employee benefit plan shall not excuse the failure to hire any individual, and no such benefit plan shall require or permit the involuntary retirement of any individual because of age. <i>29 U.S.C. 623(f); Labor Code 21.102</i>
Disability Discrimination	<p>An ESC may not discriminate against a qualified individual on the basis of disability in job application procedures, hiring, advancement, or discharge of employees, compensation, job training, and other terms, conditions, and privileges of employment. <i>42 U.S.C. 12112(a); 29 C.F.R. 1630.4(b); Labor Code 21.051</i></p> <p>In addition, each ESC that receives assistance under the Individuals with Disabilities Education Act (IDEA) must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted by the IDEA. <i>34 C.F.R. 300.177(b)</i></p>
Discrimination Based on Lack of Disability	The ADA and the TCHRA do not provide a basis for a claim that an individual was subject to discrimination because of the individual's lack of disability. <i>42 U.S.C. 12201(g); 29 C.F.R. 1630.4(b); Labor Code 21.005(c)</i>
Definition of Disability	<p>"Disability" means:</p> <ol style="list-style-type: none">1. An actual disability: a physical or mental impairment [see definition, below] that substantially limits one or more of an individual's major life activities;2. A record of having such an impairment; or3. Being regarded as having such an impairment. <p>An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.</p>
<i>Regarded as Having an Impairment</i>	An individual meets the requirement of being "regarded as" having an impairment if the individual establishes that he or she has been subjected to an action prohibited by the ADA because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.
Transitory and Minor	The "regarded as" prong of the definition does not apply to impairments that are transitory or minor. A transitory impairment is one with an actual or expected duration of six months or less. The "transitory" exception does not apply to the "actual disability" or "record of disability" prongs of the definition.

*Mitigating
Measures*

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, medical supplies, low-vision devices, prosthetics, hearing aids, mobility devices, oxygen therapy, assistive technology, or learned behavioral or adaptive neurological modifications.

The ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. Ordinary eyeglasses and contact lenses are lenses that are intended to fully correct visual acuity or to eliminate refractive error.

42 U.S.C. 12102(1), (3), (4); 29 C.F.R. 1630.2(g), (j)(1); Labor Code 21.002, .0021

Other Definitions

*Physical or
Mental
Impairment*

“Physical or mental impairment” means:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or
2. Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

29 C.F.R. 1630.2(h)

*Major Life
Activities*

“Major life activities” include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

“Major life activities” also include the operation of major bodily functions, including functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within the body system.

42 U.S.C. 12102(2); 29 C.F.R. 1630.2(i); Labor Code 21.002

*Qualified
Individual*

“Qualified individual” means an individual who:

1. Satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires; and
2. With or without reasonable accommodation, can perform the essential functions of such position. Consideration shall be given to an ESC's judgment as to what functions of a job are essential. A written job description prepared before advertising or interviewing applicants for the job is evidence of the job's essential functions.

42 U.S.C. 12111(8); 29 C.F.R. 1630.2(m)

Reasonable
Accommodations

An ESC is required, absent undue hardship, to make a reasonable accommodation to an otherwise qualified individual who meets the definition of disability under the "actual disability" or "record of disability" prongs. An ESC is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the "regarded as" prong. [See DBB regarding medical examinations and inquiries under the Americans with Disabilities Act] *42 U.S.C. 12112(b)(5); 29 C.F.R. 1630.2(o)(4), .9; 29 U.S.C. 794; 34 C.F.R. 104.11; Labor Code 21.128*

"Reasonable accommodation" includes:

1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

42 U.S.C. 12111(9); 29 C.F.R. 1630.2(o); 34 C.F.R. 104.12(b)

"Undue hardship" means an action requiring significant difficulty or expense when considered in light of the nature and cost of the accommodation needed, overall financial resources of the affected facility and the ESC, and other factors set out in law. *42 U.S.C. 12111(10); 29 C.F.R. 1630.2(p); 34 C.F.R. 104.12(c)*

Discrimination
Based on
Relationship

An ESC shall not exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social, or other relationship or association. *42 U.S.C. 12112(b)(4); 29 C.F.R. 1630.8; 34 C.F.R. 104.11*

EMPLOYEE STANDARDS OF CONDUCT
FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

DHA
(LEGAL)

Illegal Drugs and Alcohol	The term “qualified individual with a disability” does not include any employee or applicant who is currently engaging in the illegal use of drugs, when an ESC acts on the basis of such use.
<i>Drug Testing</i>	An ESC is not prohibited from conducting drug testing of employees and applicants for the illegal use of drugs or making employment decisions based on the results of such tests. <i>42 U.S.C. 12114(c), (d); Labor Code 21.002(6)(A) [See DHE]</i>
<i>Alcohol Use</i>	The term “qualified individual with a disability” does not include an individual who is an alcoholic and whose current use of alcohol prevents the employee from performing the duties of his or her job or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others. <i>42 U.S.C. 12114(a); 29 U.S.C. 705(20)(C); 29 C.F.R. 1630.3(a); 28 C.F.R. 35.104; Labor Code 21.002(6)(A)</i>
Qualification Standards	It is unlawful for an ESC to use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test, or other selection criteria, as used by the ESC, is shown to be job related for the position in question and is consistent with business necessity. <i>29 C.F.R. 1630.10(a)</i>
<i>Direct Threat to Health or Safety</i>	As a qualification standard, an ESC may require that an individual not pose a direct threat to the health or safety of other individuals in the workplace. “Direct threat” means a significant risk to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation. <i>42 U.S.C. 12111(3); 29 C.F.R. 1630.2(r); Labor Code 21.002(6)(B)</i>
<i>Vision Standards and Tests</i>	An ESC shall not use qualification standards, employment tests, or other selection criteria based on an individual’s uncorrected vision unless the standard, test, or other selection criteria, as used by the ESC, is shown to be job-related for the position in question and consistent with business necessity. <i>42 U.S.C. 12113(c); 29 C.F.R. 1630.10(b); Labor Code 21.115(b)</i>
<i>Communicable Diseases</i>	An ESC may refuse to assign or continue to assign an individual to a job involving food handling if the individual has an infectious or communicable disease that is transmitted to others through handling of food. <i>42 U.S.C. 12113(e); 29 U.S.C. 705(20)(D); 29 C.F.R. 1630.16(e); Labor Code 21.002(6)(B)</i>
Service Animals	An ESC that is subject to the jurisdiction of Title I of the ADA (employment discrimination) or to Section 504 of the Rehabilitation Act

(employment discrimination) shall comply with the reasonable accommodation requirements of those laws with respect to service animals. [See Reasonable Accommodations, above]

An ESC that is not subject to either Title I or Section 504 shall comply with Title II of the ADA (discrimination by public entity). An employer that is subject to Title II shall comply with 28 C.F.R. Part 35, including the requirements relating to service animals at 28 C.F.R. 35.136 [see FBA].

28 C.F.R. 35.140

Definition

“Service animal” means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition.

The work or tasks performed by a service animal must be directly related to the individual’s disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

28 C.F.R. 35.104

Miniature Horses

An ESC shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

28 C.F.R. 35.136(i)

Note: The following provisions are from state law.

Assistance Animals	<p>“Assistance animal” and “service animal” mean a canine that is specially trained or equipped to help a person with a disability and that is used by a person with a disability. <i>Human Resources Code 121.002(1)</i></p>
Assistance Animal Access	<p>No person with a disability may be denied admittance to any public facility in the state because of the person's disability or may be denied the use of an assistance animal.</p> <p>Regulations relating to the use of public facilities by any designated class of persons from the general public may not prohibit the use of particular public facilities by persons with disabilities who, except for their use of assistance animals, would fall within the designated class.</p> <p>A service animal in training shall not be denied admittance to any public facility when accompanied by an approved trainer.</p> <p><i>Human Resources Code 121.003(c), (e), (i)</i></p>
Harassment and Harm Prohibited	<p>A person may not assault, harass, interfere with, kill, or injure in any way, or attempt to assault, harass, interfere with, kill, or injure in any way, an assistance animal.</p> <p>“Harass” means any conduct that is directed at an assistance animal that impedes or interferes with, or is intended to impede or interfere with, the animal’s performance of its duties or places a person with a disability who is using an assistance animal, or a trainer who is training an assistance animal, in danger of injury.</p> <p>A person is not entitled to make demands or inquiries relating to the qualifications or certifications of a service animal for purposes of admittance to a public facility except to determine the basic type of assistance provided by the service animal to a person with a disability. If a person’s disability is not readily apparent, a staff member or manager of the facility may inquire about whether the service animal is required because the person has a disability and what type of work or task the service animal is trained to perform.</p> <p><i>Human Resources Code 121.002, .003(j)–(l)</i></p>
Title IX	<p>No person, on the basis of sex, shall be excluded from participation in, denied the benefits of, or be subjected to discrimination by an ESC receiving federal financial assistance. [See FB, FFH] 20 U.S.C. 1681</p>
Equal Pay	<p>An ESC may not pay an employee at a rate less than the rate the ESC pays employees of the opposite sex for equal work on jobs the performance of which require equal skill, effort, or responsibility and which are performed under similar working conditions. This</p>

rule does not apply if the payment is pursuant to a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a differential based on any other factor other than sex. *29 U.S.C. 206(d) (Equal Pay Act); 34 C.F.R. 106.54 (Title IX)*

**Grievance
Procedures**

Section 504

An ESC that receives federal financial assistance and that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act. *34 C.F.R. 104.7(b), .11*

ADA

An ESC that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the ADA. *28 C.F.R. 35.107, .140*

Title IX

An ESC that receives federal financial assistance shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action prohibited by Title IX. *34 C.F.R. 106.8(c); North Haven Board of Education v. Bell, 456 U.S. 512 (1982)* [For legally referenced material relating to Title IX grievance procedures, see FFH(LEGAL).]

**Compliance
Coordinators**

Section 504

An ESC that employs 15 or more persons shall designate at least one person to coordinate its efforts to comply with Section 504 of the Rehabilitation Act. The ESC's Section 504 notification [see DAA] shall also identify the responsible employee so designated. *34 C.F.R. 104.7(a), .8(a)*

ADA

An ESC that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the ADA, including any investigation of any complaint communicated to it alleging its noncompliance with the ADA or alleging any actions that would be prohibited by the ADA. The ESC shall make available to all interested individuals the name, office address, and telephone number of the employee or employees so designated. *28 C.F.R. 35.107(a)*

ADEA

An ESC shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the Age Discrimination in Employment Act (ADEA), including investigation of any complaints that the ESC receives alleging any actions that are prohibited by the ADEA. An ESC shall notify its employees of the identity of the responsible employee by name or title, address, and telephone number. *34 C.F.R. 110.25(a), (b)*

Title IX

An ESC must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under Title IX, which employee must be referred to as the “Title IX coordinator.” The ESC must notify applicants for admission and employment, students, parents or legal guardians, employees, and all professional organizations holding professional agreements with the ESC of the name or title, office address, electronic mail address, and telephone number of the employee(s) so designated. *34 C.F.R. 106.8(a)*

Note: References to Title IX, Part, or Subpart in the following legal provisions refer to Title IX and its corresponding regulations.

**Title IX
Nondiscrimination**

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, except as provided by law. *20 U.S.C. 1681*

Definitions

“Recipient” means any state or political subdivision thereof, or any instrumentality of a state or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.

“Program or activity” includes the operations of a department, agency, special purpose district, other instrumentality of a state or local government, or a local educational agency (LEA).

“Educational institution” means a local educational agency as defined by Section 1001(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (l), (m), (n), or (o) of Section 106.2 of Title 34, Code of Federal Regulations.

34 C.F.R. 106.2(h), (i), (k)

“Local educational agency” means a public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a state, or of or for a combination of school districts or counties that is recognized in a state as an administrative agency for its public

	<p>elementary schools or secondary schools. The term includes educational service agencies and consortia of those agencies.</p> <p><i>20 U.S.C. 7801(30)(A), (D)</i></p>
Designation of Title IX Coordinator	<p>An ESC must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under Title IX, which employee must be referred to as the "Title IX coordinator." [See DAA(EXHIBIT)]</p>
Parties Entitled to Notice	<p>An ESC must notify applicants for admission and employment, students, parents or legal guardians, employees, and all professional organizations holding professional agreements with the ESC ("Parties Entitled to Notice") of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX coordinator.</p> <p><i>34 C.F.R. 106.8(a)</i></p>
Reporting	<p>Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX coordinator, or by any other means that results in the Title IX coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during nonbusiness hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX coordinator.</p>
Notification of Policy	<p>An ESC must notify the Parties Entitled to Notice, above, that the ESC does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX not to discriminate in such a manner. The notification must state that the requirement not to discriminate in the education program or activity extends to admission and employment, and that inquiries about the application of Title IX to such ESC may be referred to the ESC's Title IX coordinator, to the assistant secretary for civil rights of the Department of Education, or both.</p> <p><i>34 C.F.R. 106.2(d), .8(b)(1)</i></p>
Publication Requirements	<p>An ESC must prominently display the contact information required to be listed for the Title IX coordinator and the nondiscrimination policy described at Notification of Policy, above, on its website, if any, and in each handbook that it makes available to the Parties Entitled to Notice, above.</p>

An ESC must not use or distribute a publication stating that the ESC treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by Title IX.

34 C.F.R. 106.8(b)(2)

An ESC must make all materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process publicly available on its website, if any.

34 C.F.R. 106.45(b)(10)(i)(D)

Note: To distinguish the process described below from the ESC's general grievance policies [see DGBA and FC], this policy refers to the grievance process required by Title IX regulations for responding to formal complaints of sexual harassment as the ESC's "Title IX formal complaint process."

Complaint
Procedures

An ESC must adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX and a Title IX formal complaint process that complies with 34 C.F.R. 106.45 for formal complaints as defined below.

An ESC must provide notice to the Parties Entitled to Notice, above, of the ESC's procedures and Title IX formal complaint process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the ESC will respond.

The requirements of this provision apply only to sex discrimination occurring against a person in the United States.

34 C.F.R. 106.8(c)–(d)

Response to Sexual
Harassment
Definitions

"Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to an ESC's Title IX coordinator or any official of the ESC who has authority to institute corrective measures on behalf of the ESC, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the ESC with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has au-

thority to institute corrective measures on behalf of the ESC. “Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX coordinator.

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

“Consent” is not defined by the Title IX regulations, nor do the regulations require ESCs to adopt a particular definition of consent with respect to sexual assault.

“Formal complaint” means a document filed by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the ESC investigate the allegation of sexual harassment. 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 ESC with which the formal complaint is filed. A formal complaint may be filed with the Title IX coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX coordinator, and by any additional method designated by the ESC. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the ESC) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX coordinator signs a formal complaint, the Title IX coordinator is not a complainant or otherwise a party to a Title IX formal complaint and must comply with the requirements of the Title IX formal complaint process, including the informal resolution process.

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the ESC conditioning the provision of an aid, benefit, or service of the ESC on an individual’s participation in unwelcome sexual conduct;
2. 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 ESC’s education program or activity; or
3. “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).

“Supportive measures” means nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or 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 are designed to restore or preserve equal access to the ESC’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the ESC’s educational environment, or deter sexual harassment. Supportive measures may include 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 or ESC-provided housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The ESC must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the ESC to provide the supportive measures. The Title IX coordinator is responsible for coordinating the effective implementation of supportive measures.

34 C.F.R. 106.2, .30(a)

*Deliberate
Indifference*

An ESC with actual knowledge of sexual harassment in an education program or activity of the ESC against a person in the United States must respond promptly in a manner that is not deliberately indifferent. An ESC is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

*Education
Program or
Activity*

For the purposes of 34 C.F.R. 106.30 [see Definitions, above] and 106.45 [see Process for Title IX Formal Complaint, below], “education program or activity” includes locations, events, or circumstances over which the ESC exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

34 C.F.R. 106.44(a)

Title IX Coordinator
Response

The Title IX coordinator must promptly contact the complainant to discuss the availability of supportive measures, 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. The Title IX coordinator

	must respond in this manner with or without a formal complaint. <i>34 C.F.R. 106.44(b)(1)</i>
<i>Supportive Measures Required</i>	An ESC's response must treat complainants and respondents equitably by offering supportive measures and by following a process that complies with 34 C.F.R. 106.45 [see Process for Title IX Formal Complaint, below] before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. [For Emergency Removal procedures, see below.]
<i>Constitutional Restrictions</i>	The Department of Education may not deem an ESC to have satisfied the ESC's duty to not be deliberately indifferent under Title IX based on the ESC's restriction of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment. <i>34 C.F.R. 106.44(a)</i>
<i>Response to a Formal Complaint</i>	In response to a formal complaint, an ESC must follow a process that complies with 34 C.F.R. 106.45 [see Process for Title IX Formal Complaint, below]. <i>34 C.F.R. 106.44(b)(1)</i>
<i>Emergency Removal</i>	The Title IX regulations do not preclude an ESC from removing a respondent from the ESC's education program or activity on an emergency basis, provided that the ESC: <ol style="list-style-type: none">1. Undertakes an individualized safety and risk analysis;2. Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and3. Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the IDEA, Section 504 of the Rehabilitation Act of 1973, or the ADA. <i>34 C.F.R. 106.44(c)</i>
<i>Administrative Leave</i>	The Title IX regulations do not preclude an ESC from placing a nonstudent employee respondent on administrative leave during the pendency of a Title IX formal complaint. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the ADA. <i>34 C.F.R. 106.44(d)</i>
Process for Title IX Formal Complaint <i>Definitions</i>	"Elementary and secondary school" means an LEA, as defined in the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, a preschool, or a private elementary or secondary school.

“Postsecondary institution” means an institution of graduate higher education as defined in 34 C.F.R. 106.2(l), an institution of undergraduate higher education as defined in 34 C.F.R. 106.2(m), an institution of professional education as defined in 34 C.F.R. 106.2(n), or an institution of vocational education as defined in 34 C.F.R. 106.2(o).

For the purpose of addressing formal complaints of sexual harassment, an ESC’s process must comply with the following requirements. Any provisions, rules, or practices other than those required by this provision that a ESC adopts as part of its process for handling formal complaints of sexual harassment must apply equally to both parties. *34 C.F.R. 106.45(b)*

An ESC’s Title IX formal complaint process must:

1. 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 process that complies with the Title IX regulations before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to the ESC’s education program or activity. Such remedies may include the same individualized services described as supportive measures; however, remedies need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent.
2. Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person’s status as a complainant, respondent, or witness.
3. Require that any individual designated by an ESC as a Title IX coordinator, investigator, decision-maker, or any person designated by an ESC to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. An ESC 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, the scope of the ESC’s education program or activity, how to conduct an investigation and Title IX formal complaint 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. An ESC must ensure that decision-makers receive training on any technology to be used at a live hearing, if any, and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. [See Hearings, below] An ESC also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. [See Investigation of a Formal Complaint, below] Any materials used to train Title IX coordinators, investigators, decision-makers, 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.

4. Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Title IX formal complaint process.
5. Include reasonably prompt time frames for conclusion of the Title IX formal complaint process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the ESC offers informal resolution processes, and a process that allows for the temporary delay of the Title IX formal complaint process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's adviser, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
6. Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the ESC may implement following any determination of responsibility.
7. State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment.
8. Include the procedures and permissible bases for the complainant and respondent to appeal.

9. Describe the range of supportive measures available to complainants and respondents.
10. 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.

34 C.F.R. 106.45(b)(1)

*Notice of
Allegations*

Upon receipt of a formal complaint, an ESC must provide the following written notice to the parties who are known:

1. Notice of the ESC's Title IX formal complaint process, including any informal resolution process.
2. Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
 - a. The identities of the parties involved in the incident, if known;
 - b. The conduct allegedly constituting sexual harassment; and
 - c. The date and location of the alleged incident, if known.

The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Title IX formal complaint process. The written notice must inform the parties that they may have an adviser of their choice, who may be, but is not required to be, an attorney and may inspect and review evidence [see Investigation of a Formal Complaint, below]. The written notice must inform the parties of any provision in the ESC's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the Title IX formal complaint process.

If, in the course of an investigation, the ESC decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations, above, the ESC must provide notice of the additional allegations to the parties whose identities are known.

34 C.F.R. 106.45(b)(2)

*Dismissal of a
Formal Complaint*

The ESC must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did not occur in the ESC's education program or activity, or did not occur against a person in the United States, then the ESC must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such a dismissal does not preclude action under another provision of the ESC's code of conduct.

The ESC may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

- A complainant notifies the Title IX coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- The respondent is no longer enrolled or employed by the ESC; or
- Specific circumstances prevent the ESC from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal required or permitted pursuant to 34 C.F.R. 106.45(b)(3), the ESC must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

*Consolidation of
Formal
Complaints*

An ESC may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a Title IX formal complaint process involves more than one complainant or more than one respondent, references in this provision to the singular "party," "complainant," or "respondent" include the plural, as applicable.

34 C.F.R. 106.45(b)(3)–(4)

*Investigation of a
Formal Complaint*

When investigating a formal complaint and throughout the Title IX formal complaint process, an ESC must:

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the ESC and not on the parties provided that the ESC cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are

made and maintained in connection with the provision of treatment to the party, unless the ESC obtains that party's voluntary, written consent to do so for a Title IX formal complaint (if a party is not an "eligible student," as defined in 34 C.F.R. 99.3, then the ESC must obtain the voluntary, written consent of a "parent," as defined in 34 C.F.R. 99.3) [see FL(LEGAL) at Education Records].

2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
4. Provide the parties with the same opportunities to have others present during any Title IX formal complaint proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the adviser of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of an adviser for either the complainant or respondent in any meeting or Title IX formal complaint proceeding; however, the ESC may establish restrictions regarding the extent to which the adviser may participate in the proceedings, as long as the restrictions apply equally to both parties.
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
6. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the ESC does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the ESC must send to each party and the party's adviser, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten days to submit a written response, which the investigator will consider prior to completion of the investigative report. The ESC must make all such evidence subject to the parties' inspection and

review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

7. Create an investigative report that fairly summarizes relevant evidence and, at least ten days prior to a hearing (if a hearing is required or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's adviser, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

34 C.F.R. 106.45(b)(5)

Hearings

For postsecondary institutions, the recipient's grievance process must provide for a live hearing. *34 C.F.R. 106.45(b)(6)(i)*.

For recipients that are elementary and secondary schools, and other recipients that are not postsecondary institutions, the recipient's grievance process may, but need not, provide for a hearing. With or without a hearing, after the ESC has sent the investigative report to the parties pursuant to 34 C.F.R. 106.45(b)(5)(vii) [see Investigation of a Formal Complaint, above] and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. With or without a hearing, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant. *34 C.F.R. 106.45(b)(6)(ii)*

*Determination
Regarding
Responsibility*

The decision-maker(s), who cannot be the same person(s) as the Title IX coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the ESC must apply the standard of evidence described at Process for Title IX Formal Complaint, above.

The written determination must include:

1. Identification of the allegations potentially constituting sexual harassment;

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

The ESC must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the ESC provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

34 C.F.R. 106.45(b)(7)(i)–(ii)

*Implementation
of Remedies*

The Title IX coordinator is responsible for effective implementation of any remedies. *34 C.F.R. 106.45(b)(7)(iv)*

Appeals

An ESC must offer both parties an appeal from a determination regarding responsibility, and from an ESC's dismissal of a formal complaint or any allegations therein, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

An ESC may offer an appeal equally to both parties on additional bases.

As to all appeals, the ESC must:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX coordinator;
3. Ensure that the decision-maker(s) for the appeal complies with the standards in the Title IX regulations regarding conflict of interest and bias [see Process for Formal Title IX Complaint, item 3, above];
4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
5. Issue a written decision describing the result of the appeal and the rationale for the result; and
6. Provide the written decision simultaneously to both parties.

34 C.F.R. 106.45(b)(8)

*Informal
Resolution*

An ESC may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with Title IX. Similarly, an ESC may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the ESC may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the ESC:

1. Provides to the parties a written notice disclosing:
 - a. The allegations;
 - b. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Title IX formal complaint process with respect to the formal complaint; and

- c. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
2. Obtains the parties' voluntary, written consent to the informal resolution process; and
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

34 C.F.R. 106.45(b)(9)

Recordkeeping

An ESC must maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the ESC's education program or activity;
2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom; and
4. All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. An ESC must make these training materials publicly available on its website or if the ESC does not maintain a website, the ESC must make these materials available upon request for inspection by members of the public.

For each response required under Title IX Coordinator Response, above, an ESC must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the ESC must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the ESC's education program or activity.

If an ESC does not provide a complainant with supportive measures, then the ESC must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the ESC in the future from providing additional explanations or detailing additional measures taken.

34 C.F.R. 106.45(b)(10)

Retaliation
Prohibited

No ESC 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, or 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 under Title IX.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Complaints alleging retaliation may be filed according to the Process for Title IX Formal Complaint, above.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by Title IX.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX formal complaint proceeding does not constitute retaliation prohibited by Title IX, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

34 C.F.R. 106.71(a)–(b)

Confidentiality

The ESC must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA) statute, 20 U.S.C. 1232g, or FERPA regulations, 34 C.F.R. Part 99, or as required by law, or to carry out the purposes of 34 C.F.R. Part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. *34 C.F.R. 106.71(a)*