



# **Training for Title IX Personnel - 2024**

**(Coordinators, Investigators, Advisors,  
Decision Makers, and Informal Resolution  
Facilitators)**

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**presented by:**

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# Status of 2024 Title IX Rules

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- Texas – injunction is in place currently
- Ruling – DOE did not have authority to interpret Title IX to include sexual orientation and gender identity
- Injunction applies to 2024 Rules as a whole and prohibits DOE's enforcement of 2024 Rules in Texas
- 2020 Rules still apply – continue to implement existing law and policies for now
- TASB has not updated policies
- All on “pause” right now
- This training is related to 2020 Rules as a result of the injunction currently in place.

# Title IX

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Prohibits sex discrimination in any education program or activity receiving federal financial assistance.

“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 Higher Education Amendments of 1972  
20 U.S.C. § 1681 & 34 C.F.R. Part 106



# Title IX Prohibits

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## **Sex discrimination includes:**

- Sexual harassment
- Sexual assault (including domestic/dating violence and stalking)
- Sex based discrimination in athletics, courses, or programs
- Pregnancy discrimination
  - KC must treat same way as similarly situated students (with temporary medical conditions)
  - Must excuse absences (as long as doctor deems them medically necessary)
  - Must be allowed to return to same academic status as before leave
  - Must be allowed to make up course work missed

# Texas State Law

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## Texas Education Code Chapter 51

- Reporting
  - Employee required to report if they receive information in course and scope of employment
  - Failure to report: Employee shall be terminated if “knowingly” fail to report
- Definitions
- Policy Requirements
- Victim’s Rights

# Title IX and Texas State Laws

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- **Applies to:**

- Students
- Employees
- Applicants



# KC Policies

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- KC has policies for both:
  - Student Nondiscrimination & Student Grievance (FFDA Local) and
  - Employee Nondiscrimination & Grievance (DIAA Local)
- Largely the same grievance process is available for students and employees
- Prohibited behavior/types of behavior is the same (only sexual harassment is slightly different)
- Which policy you use is determined by whether the Complainant (alleged victim) is an employee or student



# Sexual Harassment - Student = Complainant

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## **By an Employee:**

Sexual harassment of a student by a College District employee includes unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

1. A College District employee causes the student to believe that the student must submit to the conduct to participate in a college program or activity, or that the employee will make an educational decision based on whether or not the student submits to the conduct; or
2. The conduct is so severe, persistent or pervasive that it limits or denies the student's ability to participate in or benefit from the College District's educational program or activities.



# Sexual Harassment - Student = Complainant

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## **By Others/Other Students:**

Any unwelcome sexual advances; requests for sexual favors; or sexually motivated physical, verbal, or nonverbal conduct when the conduct is so severe, persistent or pervasive that it limits or denies a student's ability to participate in or benefit from the College District's educational program or activities.

# Sexual Harassment - Employee = Complainant

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Sexual harassment is a form of sex discrimination defined as unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

1. Submission to the conduct is either explicitly or implicitly a condition of an employee's employment, or when submission to or rejection of the conduct is the basis for an employment action affecting the employee; or
2. The conduct is so severe, persistent or pervasive that it has the purpose or effect of unreasonably interfering with the employee's work performance or creates an intimidating, threatening, hostile, or offensive work environment.

# Sexual Harassment – 2 Types

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- **Quid Pro Quo** – Condition some type of aid/benefit on person's participation
- **Hostile Environment** – Fact specific inquiry. Consider factors like:
  - Type
  - Frequency
  - Duration
  - Roles
  - Ages
  - Context

# Sexual Harassment - (Complainant = Student or Employee)

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- Sexual harassment also includes any instance of:
  - Sexual Assault
  - Dating Violence/Domestic Violence
  - Stalking

# Sexual Assault

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Sexual assault refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the person's age or use of drugs or alcohol, or because an intellectual or other disability prevents the person from having the capacity to give consent).

# Domestic and Dating Violence

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Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

# Stalking

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Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

For the purposes of this definition:

1. “Course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
2. “Reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim.



# Title IX Definitions

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**Complainant** – Alleged victim of prohibited conduct. Complainant must be participating in or attempting to participate in a college program or activity at time of alleged conduct and when Formal Complaint is filed.

**Respondent** – Alleged to have committed prohibited conduct. Respondent is presumed not responsible.

# When KC Must Respond

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**KC must respond to allegations of sexual harassment when all of the following are met:**

1. It has actual knowledge of sexual harassment (as defined by applicable law),
2. That occurred within KC's educational program or activity, and
3. Against a person in the United States.

# Actual Knowledge

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KC is deemed to have actual knowledge if reported to Title IX Coordinator or any employee.

Per policies, all employees of KC are designated as responsible employees under Title IX.

Employees must report sexual harassment to Title IX Coordinator per Texas law if witness or receive any information in course and scope of employment that constitutes incident of sexual harassment, sexual assault, dating/domestic violence or stalking committed by or against an employee or student. Failure to do so requires termination.

Exception: Confidential employees (nurses, counselors) – communications that are privileged under state or federal law.

# Educational Program or Activity

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Includes locations and events over which KC exercises substantial control over both the Respondent and the context where the sexual harassment occurred whether on or off campus. It also includes any building owned or controlled by a student organization that is officially recognized by KC.

# Response Obligation

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- KC must respond promptly
- “Reasonably prompt” timeframe is required
- KC policy – 90 days from date of report to conclusion of investigation is the general rule (can be extended for good cause)

# Support Measures

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- KC must offer supportive measures to alleged victim (called “Complainant”)
- Required if report made, even if alleged victim does not file a Formal Complaint
- Must be free, individualized, Complainant generally gets to choose
- Title IX Coordinator must contact Complainant immediately regarding support measures
- Example: counseling, extensions of deadlines, course-related adjustments, modification of class/work schedules, campus escort services, mutual restrictions on contact, and other similar measures
- Designed to restore access to educational program/activity and protect safety of all parties without unreasonably burdening other party
- Should remain confidential to extent possible to provide same
- Emergency removal of Respondent if immediate threat to health and safety of students/employees (must have immediate right to challenge). This can be removal of student or placing employee on administrative leave.

# Report vs. Formal Complaint

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- **Report**

- From anyone (including Complainant)
- Can be anonymous
- Requires supportive measures
- Does not initiate formal grievance process

- **Formal Complaint**

- Can only be signed by Complainant (or Title IX Coordinator)
- Requires initiation of formal grievance process
- Cannot be anonymous

# Requirements of Grievance Process

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- **Focus:**

- Non-biased; no conflicts of interest
- Impartial
- Avoid prejudgment of facts/witnesses
- Treat all parties equitably

- **Title IX Personnel**

- Objective evaluation of all evidence (both exculpatory & inculpatory)
- Must avoid conflicts of interest/bias

- **Presumption Respondent is not responsible** – until final determination at end of grievance process

- **Must designate Title IX Coordinator**



# Additional Requirements of Grievance Process

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- Reasonably prompt timeframe
- KC must take reasonable steps to protect privacy of parties and keep identity of Complainant, Respondent (accused), and witnesses confidential except as necessary to conduct Title IX investigation
- This requirement cannot restrict ability of parties or KC to obtain and present evidence.
- Identities are not subject to disclosure under Texas Open Records Act

# Overview of Grievance Process

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- Only the Complainant can file a Formal Complaint (or Title IX Coordinator).
- Formal Complaint → triggers Investigation/triggers KC Grievance Process
- Written Notice to Parties of Allegations
- Investigation
- Advisors
- Informal Resolution
- Investigative Report
- Dismissal
- Live Hearing
- Written Determination
- Appeal

# Formal Complaint

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- **Complainant** – employee/student who is alleged to be the victim of sexually harassing conduct
- **Respondent** – individual who is reported to be the perpetrator of conduct that could constitute sexual harassment
- **Formal Complaint** – document filed by Complainant (or signed by Title IX Coordinator) alleging sexual harassment against a Respondent, and requesting KC investigate.
- Title IX Coordinator can initiate Formal Complaint even if Complainant did not wish to pursue a Formal Complaint if he/she determines that the alleged conduct presents an imminent and serious threat to the health or safety of Complainant or others, or prevents KC from ensuring equal access (on basis of sex) to its programs/activities. Coordinator must notify Complainant prior to doing so.

# Formal Complaint (continued)

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- Up to Complainant whether to file Formal Complaint (wishes should usually be respected)
- Complainant must be participating in/attempting to participate in educational program or activity of KC (or an employee of KC) at time of filing of the Formal Complaint
- Educational Program/Activity: on/off campus; locations/events over which KC exercises substantial control over parties/context
- Includes applicants

# Written Notice

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- Upon receipt of Formal Complaint, Title IX Coordinator must send to both parties written notice of allegations
- Notice must include: identity of parties, allegations, date, location, statement regarding right to advisor, statement regarding right to review evidence, information regarding informal resolution, copy of grievance procedures, statement that Respondent is presumed not responsible, and inform parties regarding consequences of making false statements
- Must also send prior notice of any meetings/interviews with sufficient time to prepare for same

# Investigation

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- KC must investigate every Formal Complaint
- Single investigator not allowed
- Prior written notice of any investigative meeting/interview required
- Investigator must give both sides all evidence gathered and give 10 days to review/respond
- Advisors allowed by investigators can limit role
- Written Notice required to be sent to both parties before investigation starts
- Investigative Report required to be sent to both parties and must give them 10 days to review/respond before holding hearing
- Can consolidate formal complaints (if arise from same facts/circumstances)
- Burden of gathering evidence is on KC/Investigator, not parties

# Advisor

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- Both parties have right to be accompanied by advisor to any meeting/interview/hearing
- May be, but not required to be, an attorney
- Cannot limit choice or presence of advisor
- Can limit extent of advisor's participation, as long as applies equally to both parties
- KC must provide advisor for cross-exam at hearing if a party does not have one (KC gets to choose advisor in this instance)
- Get copies of evidence/report

# Informal Resolution

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- KC may facilitate informal resolution between Complainant and Respondent
- Facilitator cannot be investigator or anyone on hearing panel/decision maker (including appeal)
- Cannot be used to resolve allegations that employee sexually harassed a student
- Not allowed unless Formal Complaint is filed
- Must obtain voluntary, informed, written consent of both parties
- Any party can withdraw consent and resume grievance process at anytime prior to agreeing to a resolution / written agreement
- Agreement terms could include for example: restrictions on contact, restrictions on participation in program/activity, or restrictions on attending events, etc.



# Evidence and Investigative Report

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- Must provide both sides with all evidence gathered and give 10 days to review and respond and investigator must consider these responses prior to completing investigative report
- Investigator must send written investigative report to both parties that fairly summarizes relevant evidence
- Must have at least 10 days to review before hearing
- Send to both parties and advisors
- Must not disclose evidence (even if relevant) that:
  - 1) Is protected by privilege,
  - 2) Maintained by medical provider (without consent),
  - 3) Prior sexual history (with a few exceptions).
- Must take reasonable steps to prevent parties' unauthorized disclosure of information and evidence that they obtained through grievance process.

# Dismissal

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## **Mandatory Dismissal**

- If it did not occur within educational program/activity
- If it did not occur in the U.S.
- If it does not meet definition of sexual harassment even if proved

## **Discretionary Dismissal**

- If Complainant wishes to withdraw complaint
- If Respondent is no longer enrolled/employed (but under Texas law if student graduates or withdraws – must complete the process)
- Specific circumstances prevent evidence gathering

# Dismissal

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## Notice

- Must give both parties written notice of dismissal and reasons for dismissal

## Appeal

- Both parties have right to appeal dismissal

## Other Policies

- May still address allegations under the other policies if deemed appropriate

# Live Hearing

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- Presumption of innocence / no responsibility
- Must provide live hearing as part of grievance process
- Decision Makers = panel (majority vote)
- Each side must have advisor
- KC must provide advisor for cross-exam if one side does not have one
- Impartiality required
- Decision Maker determines responsibility and sanction (if necessary)
- Must send written notice of hearing to both sides (hearing must be held at least 10 days from the date of the final investigative report)

# Live Hearing (continued)

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## Cross-exam

- By advisor only; not by parties
- Only relevant questions allowed/panel makes relevance determinations
- Relevant evidence – related to the allegations under investigation. Questions are relevant if they seek evidence that may aid in showing whether allegations occurred.
- Repetitive questions are irrelevant
- Party can refuse to be cross-examined
- Panel cannot infer guilt

# Live Hearing (continued)

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- Sexual history – sexual history of party generally off limits (exceptions: if offered to show someone other than Respondent committed alleged conduct or if Complainant's prior sexual acts with Respondent offered to prove consent)
- Expert witnesses are allowed
- Not open to the public
- Separate rooms – upon either party's request, entire hearing must be conducted in separate rooms. Each room must have technology to hear and see other room simultaneously
- In KC's discretion, a party or witness, or all parties/witnesses may appear virtually as long as technology to see/hear simultaneously is available

# Live Hearing (continued)

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- Must be recorded by panel/KC audio or audiovisual
- Preponderance of evidence standard of proof
- Burden of proof not on either party
- 2021 updated guidance: if party or witness does not submit to cross-examination, Decision Maker can still rely on their statements in making determination
- Can have Hearing Procedures (KC does have written Hearing Procedures)

# Hearing Procedures

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The following rules/procedures shall apply to the Title IX live hearing. Strict compliance with same shall be enforced. You are responsible for complying with all time deadlines and other requirements/rules set forth herein. The time deadlines set forth herein are college business days.

1. The live hearing will be conducted by a Hearing Panel, which is the sole decision maker as to the determination of responsibility.
2. The hearing is not public. Only the persons listed in the Hearing Notice are allowed to attend.



# Hearing Procedures (continued)

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3. The hearing will be taped either audio or audio-visually by the college. No other recording devices are allowed at the hearing.
4. Each party must have an advisor at the hearing in order to conduct cross-examination. If a party does not have an advisor, the college will provide one. However, they must notify the Hearing Panel and/or Title IX Coordinator at least five (5) days prior to the hearing date if they need an advisor. The name of each party's advisor must be given to the Hearing Panel at least three (3) days before the hearing.

# Hearing Procedures (continued)

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5. Each party represents themselves. The advisor's role is strictly limited to the following:
  - a. conducting cross-examination; and
  - b. privately advising the party.

The advisor may not participate in the hearing in any other way. The advisor may not stand, object, speak to questions, or address the Hearing Panel, argue, conduct direct examinations, or speak to anyone other than his/her party (other than conducting cross-examinations). With respect to cross-examinations, only advisors may conduct same. Advisors must conduct cross-examination in a respectful, non-abusive and non-combative manner that is not unduly time consuming or repetitive. An advisor who fails to follow these rules will be removed from the hearing.

# Hearing Procedures

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6. The Documentary Evidence (as defined in the Hearing Notice) will be admitted as part of the hearing. If either party has any additional evidence that is not included in the Documentary Evidence, it must provide same immediately to the Hearing Panel, and in no case less than five (5) days before the hearing, or it will be excluded, absent a showing of good cause. Good cause shall generally only exist if the evidence is newly discovered.
7. Witnesses to be called by a party must be identified in writing to the Hearing Panel at least five (5) days before the hearing. The college cannot compel the attendance of any witness. It is the parties' responsibility to secure a witness' attendance. Generally, only a witness identified in the investigation/final investigative report may be called absent specific approval by the Hearing Panel. Witnesses must sit outside the hearing room until allowed inside by the Hearing Panel. The party calling the witness is responsible for ensuring a witnesses' compliance with these rules. An advisor may not be a witness. Additionally, the investigators and Title IX Coordinator shall not be witnesses.

# Hearing Procedures

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8. If a party believes that any evidence identified in the Documentary Evidence is not relevant, then that party must notify the Hearing Panel in writing at least three (3) days before the hearing of what evidence it believes is not relevant and state the arguments related to same.
9. The Hearing Panel will make determinations as to relevance as to each cross-examination question and will exclude irrelevant questions. Parties and/or their advisors are not allowed to object to relevance (or make any other objection) or to argue with the Hearing Panel regarding its determination. Questions regarding the Complainant's sexual predisposition or history, that seek to elicit privileged or confidential information, or that are repetitive are not relevant (with few limited exceptions).

# Hearing Procedures

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10. Both parties must remain seated at all times. The parties may not yell, cuss, be disruptive, or argumentative. If either party wishes to be in a separate room from the other party, then the party must advise the Hearing Panel at least five (5) days before the hearing of same request.
11. Each party will have a maximum of forty-five (45) minutes to present any witnesses or evidence. Any direct examination of the party or a witness will be in narrative form. That is, the Complainant and/or Respondent may talk in narrative fashion and are subject to cross-examination by the other party's advisor. Witnesses called by a party may be direct examined by the party (if a friendly witness) or cross-examined by the advisor (if hostile). Advisors may not conduct a direct examination of any kind.

# Hearing Procedures

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12. The Hearing Panel has wide discretion to determine the hearing format and to enforce these procedures. The Hearing Panel may ask questions of any party or witness.
13. The Documentary Evidence, any other evidence presented at the hearing, including testimony, and the recording of the hearing shall be kept confidential at all times.

# Written Determination of Responsibility

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- Decision Maker/panel must make written determination that explains rationale for decision
- Must be sent to both sides at same time/simultaneously
- Must include:
  - Identification of allegations potentially constituting sexual harassment
  - Description of all procedural steps taken (from receipt of Formal Complaint through determination)
  - Findings of fact supporting determination
  - Conclusions regarding whether alleged conduct occurred/application of code of conduct/policies to facts
  - Rationale for results as to each allegation
  - Determination of responsibility
  - Any disciplinary sanctions imposed on Respondent
  - Whether remedies will be provided to Complainant
  - How to file an appeal/permissible bases for appeal

# Appeal

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Either party can file appeal from determination of responsibility or from a dismissal of a Formal Complaint but only 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.



# Appeal (continued)

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- KC must notify other party in writing if appeal is filed
- Decision Maker for appeal (Vice President) must be free from bias/conflict of interest, and cannot be from same panel, Title IX Coordinator, Informal Resolution Facilitator or investigator
- Both parties must have reasonable and equal opportunity to submit written statement supporting/challenging outcome
- Appeal decision maker must issue written decision that includes result and rationale for same result
- Must provide written decision at same time/simultaneously to both parties

# Possible Sanctions (Against Respondent)

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- Any disciplinary measure allowed/described in Board policies as to students
  - warning, censure, disciplinary probation, restitution, suspension, expulsion, criminal trespass warning, revocation of admission, etc.
- Any disciplinary measure allowed/described in Board policies as to employees
  - Termination, discipline/write up, leave, training, reassignment, criminal trespass warning, etc.

# Possible Sanctions (Against Respondent)

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- Training/education program
- Any other action allowed by law/college policy
- Emergency removal of Respondent also available at any point during grievance process if KC determines there is an immediate threat – must give Respondent an immediate opportunity to challenge

# Possible Remedies (for Complainant)

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- Title IX Coordinator is responsible for implementing remedies
- Drop course without penalty (if Respondent is in the course/teaches the course)
- Counseling
- Increase in monitoring
- Any other action allowed by law/college policy

# Retaliation

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- Retaliation for reporting sexual harassment in good faith prohibited
- Prohibition also applies to anyone assisting in or refusing to assist in investigation of a report
- May not intimidate, threaten, coerce or discriminate against anyone with purpose of interfering with right secured by Title IX/ State law

# Record Keeping

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- Must retain all records for 7 years
- Including all records documenting every Title IX sexual harassment investigation, hearing, appeal, informal resolution and dismissal
- Must keep training materials for Title IX personnel
- Even if no Formal Complaint, must retain records regarding response and supportive measures offered and implemented (and if none offered, why none offered)

# Questions?

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Q&A