

Sexual Harassment Online and Through the Use of Artificial Intelligence (AI)

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Per Title IX of the Education Amendments of 1972, all Colorado districts, schools, and charter schools that have accepted **any** Federal funds have obligations to respond to allegations of sexual harassment that occur within the schools' educational programs or activities. Educational programs or activities are defined as "all of the operations" of the recipient (district, school, or charter school), including "locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution." ([Preamble to the 2020 Title IX Regulations](#)). This includes incidents that occur on campus and may also include incidents that occur off campus, as well as sexual harassment that occurs online.

Sexual harassment through the use of Artificial Intelligence (AI), or through other online means, could be considered part of a school's educational program or activity when the sexual harassment occurs in "locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs." ([Preamble to the 2020 Title IX Regulations](#)). Some examples include, but are not limited to sexual harassment that:

- Occurs at school OR
- Over a school platform or website OR
- Over school software OR
- Using a school issued device OR
- Using school wi-fi OR
- Through a school social media platform such as a school Facebook page, online chat, etc. OR
- Using a school issued email address OR
- While students are completing an assignment

Obligations to Respond

When a school/district has actual knowledge of sexual harassment in an education program or activity, the Title IX Coordinator must promptly contact the complainant to discuss 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. Upon receipt of a formal complaint, a school/district must provide written notice to the parties who are known, which includes: notice of the school/district grievance process, including any informal resolution process, notice of the allegations of sexual harassment, including sufficient details and with sufficient time to prepare a response before any initial interview, 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 grievance process, the parties' right to an advisor of their choice, and any provision in the code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

([Sections 106.44 and 106.45 of the 2020 Title IX Regulations](#))

District, School, and Charter Schools' Obligation to Investigate

In situations involving some allegations of conduct that occurred in an education program or activity, and some allegations of conduct that did not, the school or district must investigate the allegations of conduct that occurred in the education program or activity. **NOTE:** Even if a school/district is not required to address certain misconduct under Title IX, the [2020 Title IX Regulations](#) permit a school/district to address such misconduct under its own code of conduct.

Investigations When Law Enforcement is Involved

In situations when law enforcement is involved, it is important to remember that a law enforcement investigation cannot and does not replace a Title IX investigation. The purpose of a law enforcement investigation differs from the purpose of a district, school, or charter school offering education programs or activities free from sex discrimination, and a district, school, or charter school's "obligation to investigate and adjudicate promptly and fairly under § 106.45 exists separate and apart from any concurrent law enforcement proceeding." ([Preamble to the 2020 Title IX Regulations](#)).

Prior to the release of the 2020 regulations, the United States Department of Education, Office for Civil Rights (OCR), has enforced this position, through its investigations and compliance checks. Additionally, the OCR has repeatedly determined that schools and districts should not wait for the conclusion of a criminal investigation or criminal proceeding to conduct their own Title IX investigation.

"Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any charges), the school must promptly resume and complete the fact-finding for the Title IX investigation. Moreover, the criminal investigation should not prevent a school from notifying complainants of their Title IX rights and the school's grievance procedures, or from taking interim steps to ensure the safety and well-being of the complaint and the school community while the law enforcement agency's fact-gathering is in progress." ([Nov 6, 2013 Compliance Review, West Contra Costa Unified School District](#)). This includes implementing supportive measures while grievance procedures are pending.

Finally, even if a crime is not found by law enforcement's investigation, this should not impact the outcome of a school's Title IX investigation. As noted earlier, a law enforcement investigation cannot replace a Title IX investigation because the purpose of law enforcement differs from the purpose of a school/district offering education programs or activities free from sex discrimination, and "a recipient's obligation to investigate and adjudicate promptly and fairly under § 106.45 exists separate and apart from any concurrent law enforcement proceeding." ([Preamble to the 2020 Title IX Regulations](#)).

WHERE CAN I LEARN MORE?

For more information on Sexual Harassment under Title IX, please visit: [Colorado Department of Education/Title IX/Sex Based Harassment](#)

For more information on the 2020 Title IX regulations, please visit: [2020 Title IX Regulations](#)

For more information on conducting concurrent investigations, please read:

- [January 6, 2016 Investigation of Complaint, Central Bucks School District](#)
- [March 18, 2015 Investigation of Complaint, Greenup County School District](#)
- [May 27, 2014 Investigation of Complaint, Public Schools of Robeson County](#)
- [Nov 6, 2013 Compliance Review, West Contra Costa Unified School District](#)