

Title IX Boot Camp for Higher Education (With Updates)

**Session 1: Title IX Procedural Requirements,
Defining Sexual Harassment, and
Obligations to Respond**

Presented by

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Overview



Introduction

Scope of Discussion
Impact of Regulations



Basics of Title IX

Legal Requirements, Enforcement



Impact of the 2016 Elections on Title IX



New Regulations Definitions, Procedural Requirements, and Obligations to Respond



Conclusion

Introduction



Introduction



Focus on harassment



Other laws

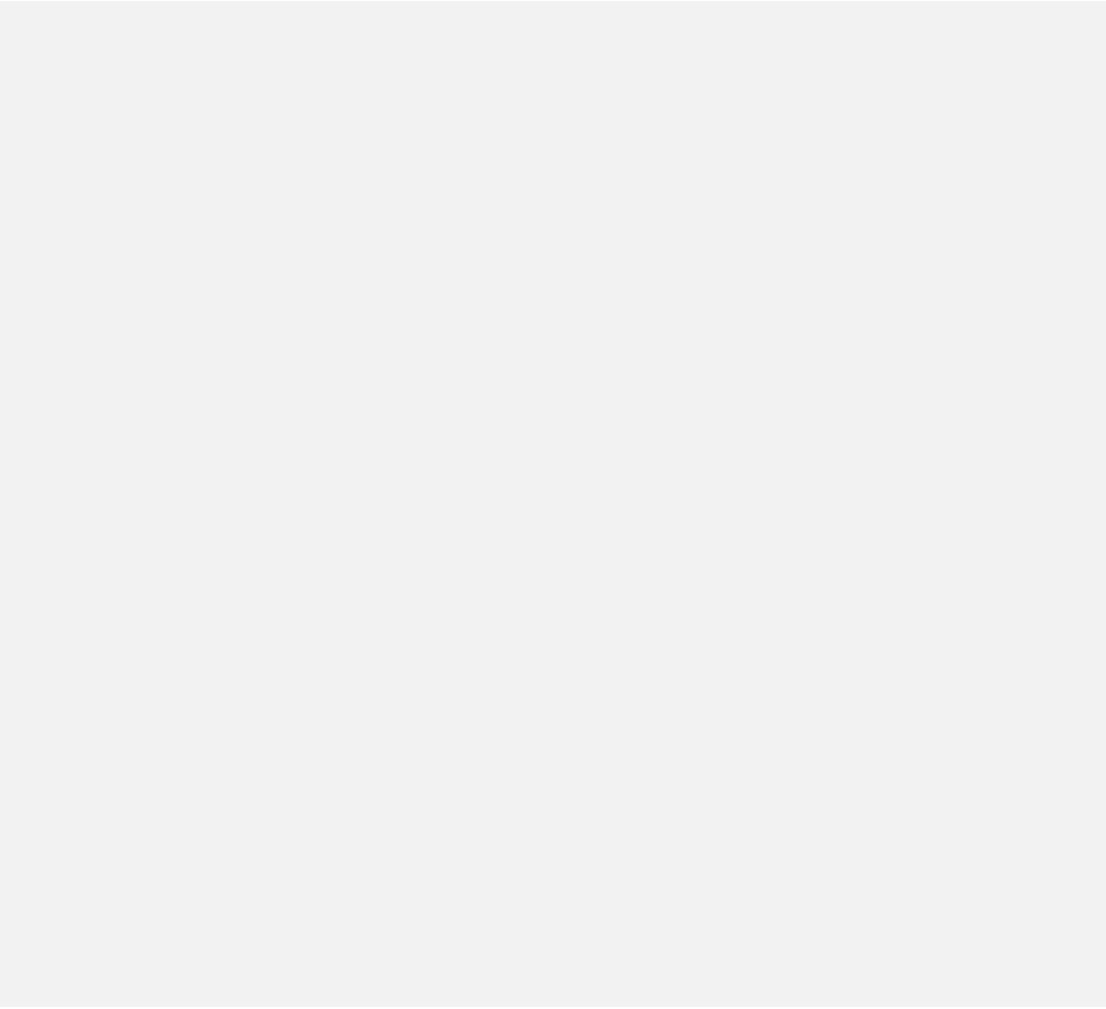
ADA, Section 504, Title VI, Title VII
State Laws



Impact of new regulations

Effective August 2020
Institutions must review and revise
policies on sexual harassment.

The Basics



Application of Title IX to Sexual Harassment



Sexual harassment prohibited.

Quid Pro Quo and Hostile Environment



OCR standards for harassment

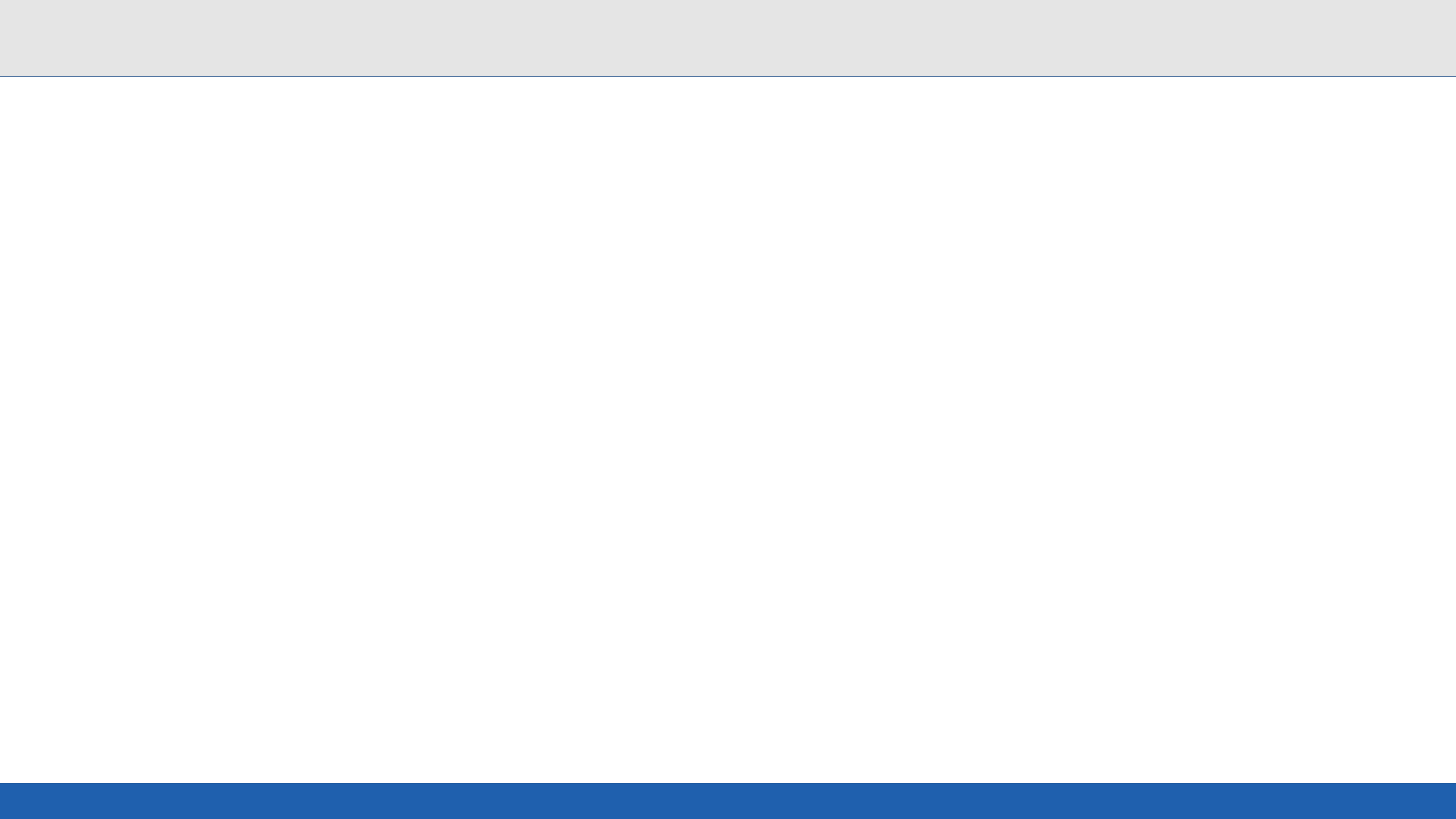
Knows or reasonably should know

Sufficiently severe, persistent or pervasive

Stop, eliminate, and prevent harassment



OCR guidance (2010 and 2015)



2016 Election and Office for Civil Rights

- ▶▶▶ Trump elected; DeVos confirmed
- ▶▶▶ Focus on regulations, not guidance.
- ▶▶▶ September 2017 guidance
- ▶▶▶ Proposed regulations
November 2018

Final Regulations

Changes to Introduction



Subpart A- Introduction

Changes to Section 106.6

Constitution

FERPA

Title VII

Preemptive Effect

Procedural Requirements



Subpart A- Introduction

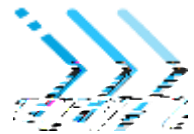
Changes to section 106.8 Procedural requirements

Must designate and authorize at least one employee to coordinate its efforts to comply with responsibilities under this part

Must notify certain persons of the name or title, office address, email address, and telephone number of the Title IX Coordinator

The persons include applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations, holding collective bargaining or professional agreements with the institution.

Procedural Requirements



Subpart A- Introduction

Changes to Section 106.8 Procedural Requirements

Must disseminate a policy of nondiscrimination.

Must notify same persons (1) that the institution does not discriminate on the basis of sex in the education program or activity that it is operates and (2) that it is required by Title IX and this part not to discriminate in such a manner.

Must state in notice that this requirement not to discriminate extends to admission and employment.

Must state in notice that inquires about the application of Title IX and this part may be referred to the Title IX Coordinator, the Assistant Secretary, or both.

Procedural Requirements



Subpart A - Introduction

Changes to Section 106.8 procedural requirements

Must adopt and publish **grievance procedures** that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part

Must adopt and publish a **grievance process** that complies with 34 CFR 106.45 for formal complaints of sexual harassment

Must provide persons (above) notice of the grievance procedure and grievance 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 recipient will respond

Applies only to sex discrimination occurring against a person in the U.S

Harassment Scenarios

Recognizing Sexual Harassment

»» Student-on-student harassment

Male student is accused of trying to kiss and grabbing the breast of a female student in a dormitory on campus. Friend of female student reports the conduct.

»» Employee-on-employee harassment

Director of Admissions is accused of sending an inappropriate email to an office administrative assistant and also making suggestive comments to her. Administrative assistant reports this conduct to Title IX Coordinator.

Obligation to Respond- Actual Knowledge



Obligations for Responding Within the Education Program or Activity



Reporting Sexual Harassment

Reports of harassment

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).

Any person may report in person, by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator



Reporting Sexual Harassment

Reports of harassment

A person may report sex discrimination, including sexual harassment, at any time (including during non-business hours) by using the telephone number or email address or by mail to the office address listed for the Title IX Coordinator.

Notice of sexual harassment (actual knowledge) includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.



Definitions Reporting Sexual Harassment

»» Complainant

An individual who is alleged to be the victim of conduct that could constitute sexual harassment

The complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed

»» Respondent

An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

Responding to Sexual Harassment Allegations



Absence of formal complaint, must still respond in manner that is not deliberately indifferent. No investigation is required, but the institution must do something.



Institutions must treat complainants and respondents equitably by offering supportive measures to a complainant and by following a grievance process under 106.45 before imposition of any disciplinary sanctions or other actions against a respondent.



Responding to Sexual Harassment Allegations



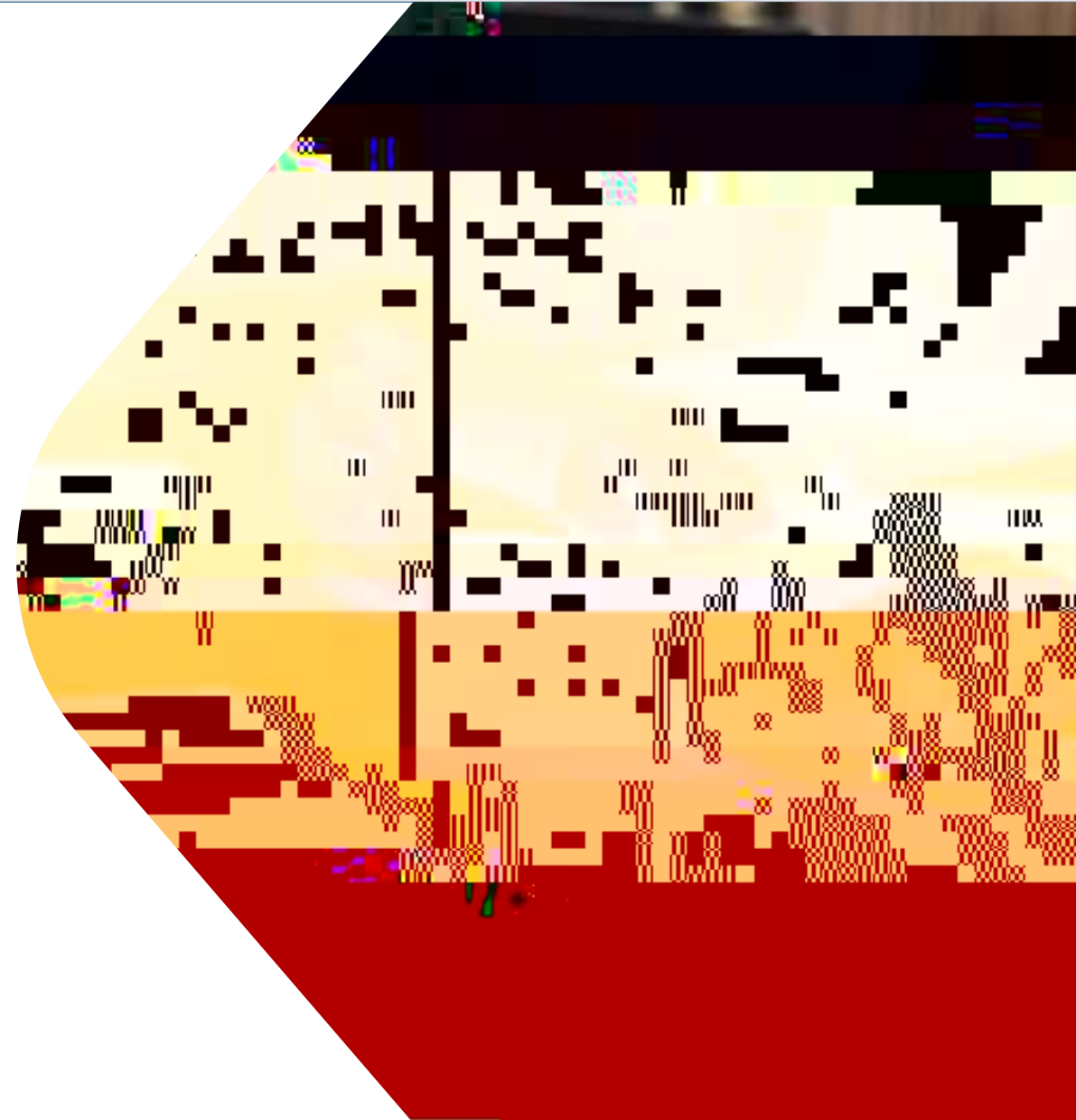
Title IX Coordinator must promptly:

Contact the complainant to discuss the availability of supportive measures,

respect to supportive measures,

Inform the complainant of the availability of support measures, **and**

Explain to the complainant the process for filing a formal complaint



Responding to Sexual Harassment Allegations



Supportive measures

Means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonable 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

Are designed to restore or preserve equal access

without unreasonably burdening the other party



Response to Sexual Harassment Allegations




Supportive measures

The institution 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 institution to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

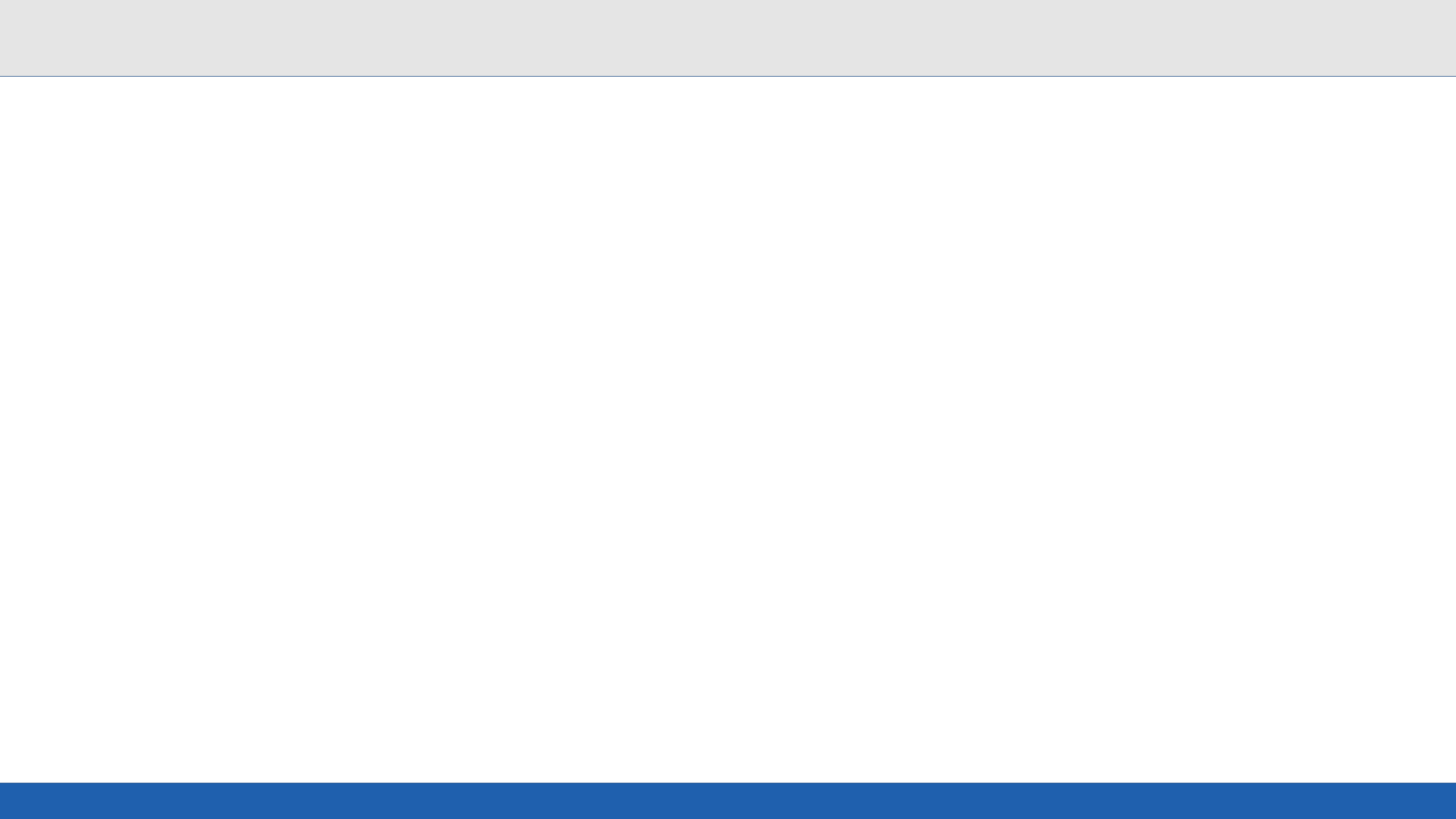


Retaliation/Confidentiality



»» No institution or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right 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.

»» An institution must generally keep confidential the identity of any individual who 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.



Recordkeeping Requirements



For each response for an allegation of sexual harassment, an institution must create, and maintain for a period of seven years, the following records:

If a recipient does not provide a complainant with supportive measures, then the recipient 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 recipient in the future from providing additional explanations or detailing additional measures taken.



Conclusion

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