

A close-up photograph of a person's hand holding a silver pen, writing on a white notebook. The background is blurred, showing a person in a dark suit. The image is overlaid with a dark blue semi-transparent rectangle on the left side, which contains white text.

Title IX Emergency Removal Training

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Mindset and Expectations

What one word intention or thought are you bringing to this training?

and

What goal(s) do you have for this training?

Community Norms

- What's Learned Here Leaves Here, What's Said Here Stays Here
- Listen to learn, speak to offer
- Make Space, Take Space

Disclaimer: Information given during this training is not legal advice

Emergency Removal Framework

Title IX - Emergency Removal

Emergency removal. Nothing in this part precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, 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, and 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 Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

34 CFR 106.44(c)

Title IX - Emergency Removal

“Sexual Harassment” as defined in Title IX Regulations

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient 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 recipient'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).

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- Individualized safety and risk analysis
- Determination that there is an immediate threat to the physical health and safety of any student or other individual arising from the sexual harassment allegations
- Respondent is given notice and opportunity to challenge the emergency removal
- Does not modify or infringe on student(s) IDEA/Section 504/ADA rights

Title IX - Emergency Removal

What does an “individualized safety and risk analysis” look like?

Consider:

- Severity and merit of alleged conduct
- A meeting with the Respondent in which violence risk assessment questions are asked
- Review of student’s record to determine if allegations are part of a pattern of conduct and/or if student has a history of engaging in violence when accused of doing something wrong

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Examples of “immediate threat to physical health and safety... arising from sexual harassment allegations”:

- Alleged sexual harassment that involve physical force or violence
- Respondent makes threats of physical harm to self or others in reaction to being accused of sexual harassment
- Respondent acts in such a manner that causes the Complainant or others to act in self-harm in reaction to being accused of sexual harassment

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Best Practice Recommendations:

1. Behavioral assessment team (BAT) for analyzing ER determinations is identified: Title IX Coordinator (or deputy); school Principal (or designee), school counselor/psychologist; school social worker (if applicable); school director of safety; IEP staff member (if applicable).
2. Title IX Coordinator (or deputy) initiates ER assessment - can be done at any time whether or not a grievance process is underway

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Best Practices, continued:

3. Title IX/deputy assigns appropriate administrator(s)/staff to conduct individualized safety and risk analysis
4. Title IX/deputy gathers all relevant information and works with BAT to determine whether there is an *immediate threat to the physical health and safety of any student or other individual arising from the sexual harassment allegations*
5. ER should last as long as the threat is immediate, can be reassessed at any time

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Best Practices, continued:

6. If it is determined that a student is to be removed, have an internal protocol in place to allow the student to challenge the ER determination. It can be as simple as including in the letter: "You have the right to challenge this determination. If you disagree with this determination, please provide a written response to [NAME] by [DATE]. Your response will be considered and a decision will be rendered [3-5] days from the date of receipt of your written response."
7. Try to preserve access to education as much as possible (i.e. remote) during ER time period

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Keep in mind...

- ER assessment cannot be based on sex stereotypes or generalizations about sexual perpetrators or gender
- ER is intended to be a last resort of administrative action when no other actions are able to stop an immediate threat
- “OCR will not second guess the decisions made under a recipient’s exercise of discretion so long as those decisions comply with the terms of § 106.44(c)”

Practice Scenarios

ER Scenarios

1. Assume the analysis has already been done by Title IX Coordinator/deputy that conduct is alleged Title IX sexual harassment.
2. Does the conduct justify emergency removal? Why or why not? What information would cause you to reconsider?

ER Scenarios

Student A is a 12-year old seventh grader. Student A's parent notified the school principal that Student B, a 13-year old eighth grader, sent Student A sexually explicit text and photo messages equivalent to pornographic material over Snapchat. Student A's parent has talked to other parents who said Student B has done the same to their kids. Student A's parent wants Student B to be expelled immediately.

ER Scenarios

Student A, a third grader, reported that Student B, a third grader in the same class who also has an IEP, follows Student A around the classroom, during lunch, and during recess, and will occasionally hug Student A unprompted, every day. Student A has told Student B to stop multiple times and the teacher has also attempted to address it and the behavior has not stopped. Student B only acts in this manner with Student A. Student A is upset and distressed by Student B's behavior and does not want to go to school anymore.

ER Scenarios

Student A, a 14-year old freshman, reported that Student B, a 15-year-old high school freshman, her ex, kissed and fondled her without her consent after class on school grounds. Student C witnessed the conduct and has corroborated Student A's version. Student A is conflicted about what happened because she still has feelings for Student B and doesn't want him to get in trouble. Student B is a charismatic and popular student and Student A is worried about social pushback if other people found out.

Thank you!

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