



# Understanding Title IX: The Fundamentals of Compliance for Career Colleges



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# Title IX Training Series



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On August 14, 2020, the U.S. Department of Education's new and controversial Title IX Rule concerning alle...[more](#)

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# Training Outline

- 1 The ~~New Old~~ NEW Rule & Title IX Sexual Harassment
- 2 Title IX Sexual Harassment
- 3 Responding to Title IX Sexual Harassment
- 4 Title IX Sexual Harassment Policy and Grievance Procedure
- 5 Pregnancy & Related Conditions
- 6 Roadmap to Compliance

# The ~~New~~ ~~Old~~ NEW Rule & Title IX Sexual Harassment



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# The Title IX Statute

- Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs and activities and employment.
  - Covers not only equity in athletic programming, but all forms of discrimination based on sex.
  - Protects students and employees.
  - Applies to all institutions that receive federal financial assistance, either directly or indirectly.
  - Enforced by the Office of Civil Rights (for now).

# The Title IX “Regs”

- Amplify the statute considerably, requiring institutions to:
  - Disseminate a policy that includes a non-discrimination statement.
  - Designate a Title IX Coordinator.
  - Adopt and publish grievance procedures that are prompt and equitable and allow for adequate, reliable, and impartial investigation of complaints.
  - Take action to address and prevent sex-based discrimination.

# The Title IX Regulations

- With regard to students, prohibit sex discrimination in:

Admissions  
and  
recruitment

Education  
programs or  
activities

Housing &  
Facilities

Athletics

Counseling

Financial and  
employment  
assistance

Health  
insurance and  
benefits

Marital or  
parental  
status

# The Title IX Regulations

- With regard to employees, prohibit sex discrimination in:

Employment

Recruitment

Compensation  
& Benefits

Job  
classification

Marital or  
parental status

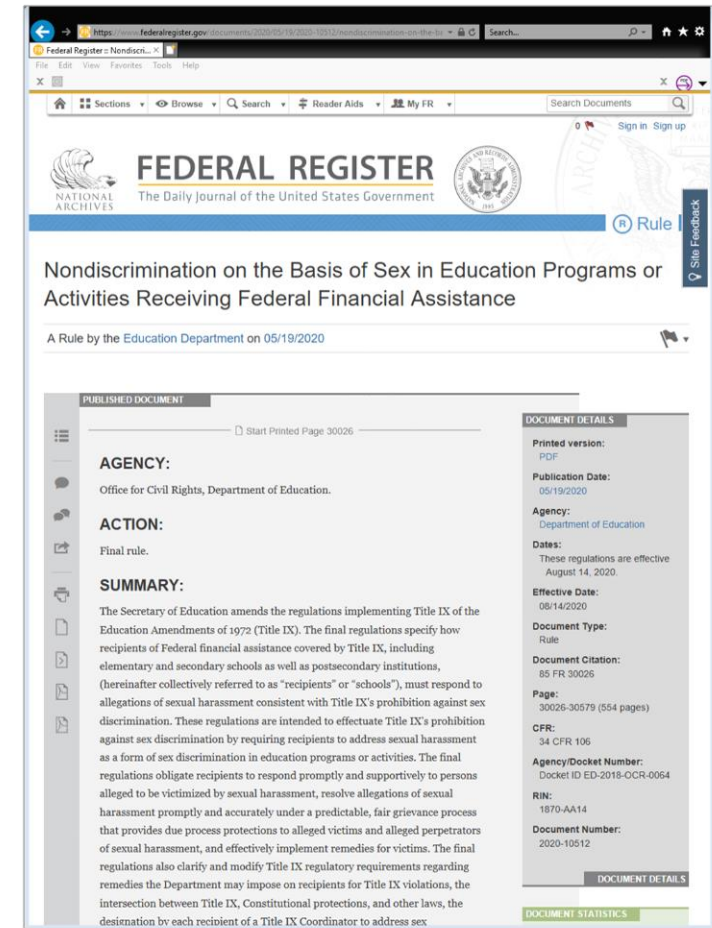
Advertising

Pre-  
employment  
inquiries

Employment  
criteria

# The 2020 Title IX Rule

- In 2020, the U.S. Department of Education published the first significant regulations addressing allegations of sexual misconduct since 1975.
- The 2020 Title IX rule put into place a complex framework for managing sexual misconduct allegations on campus.



# The 2024 Title IX Rule

- On April 6, 2021, the Biden administration announced that it would revise the 2020 Title IX regulations.
- On July 12, 2022, ED published its proposed rule and received over 235,000 comments.
- On April 29, 2024, the final 2024 Title IX rule was released (clocking in at 423 pages). It took effect August 1, 2024.

The screenshot shows the official Federal Register entry for the 2024 Title IX Rule. At the top, it features the National Archives and Records Administration logo and the text "FEDERAL REGISTER The Daily Journal of the United States Government". The title of the rule is "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance", published on 04/29/2024. The document is categorized as a "Rule" and was issued by the Education Department. The main content area is divided into sections: "AGENCY:" (Office for Civil Rights, Department of Education), "ACTION:" (Final rule), and "SUMMARY:" (The U.S. Department of Education amends the regulations implementing Title IX of the Education Amendments of 1972 to better align with the Title IX regulatory requirements with Title IX's nondiscrimination mandate. These amendments clarify the scope and application of Title IX and the obligations of recipients of Federal financial assistance from the Department, including elementary schools, secondary schools, postsecondary institutions, and other recipients (referred to below as "recipients" or "schools") to provide an educational environment free from discrimination on the basis of sex, including through responding to incidents of sex discrimination. These final regulations will enable all recipients to meet their obligations to comply with Title IX while providing them with appropriate discretion and flexibility to account for variations in school size, student populations, and administrative structures). "DATES:" (These final regulations are effective August 1, 2024), and "FOR FURTHER INFORMATION CONTACT:" (Randolph Wills, U.S. Department of Education, 400 Maryland Avenue SW, Fifth Floor, Washington, DC 20202. Telephone: (917) 284-1982. Email: randolph.wills@ed.gov. If you are deaf, hard of hearing, or have a speech disability, please contact Randolph Wills at (917) 284-1982, TDD: (917) 284-1982, or email: randolph.wills@ed.gov). On the right side, there is a "DOCUMENT DETAILS" sidebar with information such as "Printed version: PDF", "Publication Date: 04/29/2024", "Agency: Department of Education", "Effective Date: 08/01/2024", "Document Type: Rule", "Document Citation: 89 FR 33474", "Page: 33474-33896 (423 pages)", "CFR: 34 CFR 106", "Agency/Docket Number: Docket ID ED-2021-OCR-0166", "RIN: 1870-AA16", and "Document Number: 2024-07915". At the bottom right, there is a "DOCUMENT STATISTICS" section showing "Page views: 5,115 as of 06/07/2024 at 6:15 pm EDT".

# The ~~New~~ ~~Old~~ New Title IX Rule

- On January 9, 2025, a federal district court in Kentucky issued a decision vacating the 2024 Final Rule.
- Consistent with the court's order, the 2024 Title IX regulations are not effective in any jurisdiction.
- **Institutions are once again subject to the 2020 Title IX rule.**

# Title IX Sexual Harassment



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# Sexual Harassment

**Sexual harassment** means conduct on the basis of sex that is:

**Quid Pro Quo  
Harassment**

**Hostile Environment  
Harassment**

**One of Several Specific  
Offenses**

(Sexual Assault, Dating Violence, Domestic  
Violence, or Stalking)

# Quid Pro Quo

- An employee of the institution conditioning the provision of an aid, benefit, or service of the initiation on an individual's participation in unwelcome sexual conduct.

# Hostile Environment

- 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 institution's education program or activity.

# Unwelcome

- Conduct is unwelcome where a person did not request it or invite it and regarded the conduct as undesirable or offensive.
  - Acquiescence to the conduct or the failure to complain, resist, or object when the conduct was taking place does not mean that the conduct was welcome.
  - The fact that a person may have accepted the conduct or willingly participated in the conduct on a previous occasion does not mean that they welcomed it on this occasion.
- Consent – Institutions are not required to adopt a particular definition of consent with respect to sexual assault, but they may want to.
  - Some schools are under state law requirements to apply a particular definition of consent for purposes of campus sexual misconduct policies.

# Offensive + Severe + Pervasive

- **Objectively Offensive** – a reasonable person, standing in the complainant's shoes, would be offended by the conduct.
- **Severe** – causing discomfort or hardship of a great degree.
- **Pervasive** – existing in or spreading through every part of something.

# Denial of Access

- Institutions should evaluate “whether a reasonable person in the complainant’s position would be effectively denied equal access to education compared to a similarly situated person who is not suffering the alleged sexual harassment.”
- Examples include skipping class to avoid a harasser, decline in GPA, difficulty concentrating in class. Complainants do not need to have “dropped out of school, failed a class, had a panic attack, or otherwise reached a ‘breaking point’” or exhibited specific trauma symptoms to be effectively denied equal access.

# Specific Offenses

- **Sexual assault** – a forcible or nonforcible sex offense, including:
  - Rape;
  - Sodomy;
  - Sexual Assault w/ an Object;
  - Fondling;
  - Incest; and
  - Statutory Rape
- **Dating violence** – violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the other person.
- **Domestic violence** – violence committed against a youth or protected adult or by a current or former spouse, intimate partner, or co-parent.
- **Sex-based stalking** – a course of conduct directed at a specific person that causes fear for personal safety or substantial emotional distress.

# Title IX Sexual Harassment

- **Does hostile environment harassment prohibit all harassing or offensive remarks?**
  - No. Unwelcome conduct must be severe, pervasive, and objectively offensive. But institutions can still address such remarks in a variety of ways.
- **Does quid pro quo harassment need to be severe, pervasive, and objectively offensive? How about Clery/VAWA offenses?**
  - No. Only the “unwelcome conduct” prong of the sexual harassment definition must be severe, pervasive, and objectively offensive. A victim of quid pro quo sexual harassment or Clery/VAWA sex offenses, has been effectively denied equal access to education.

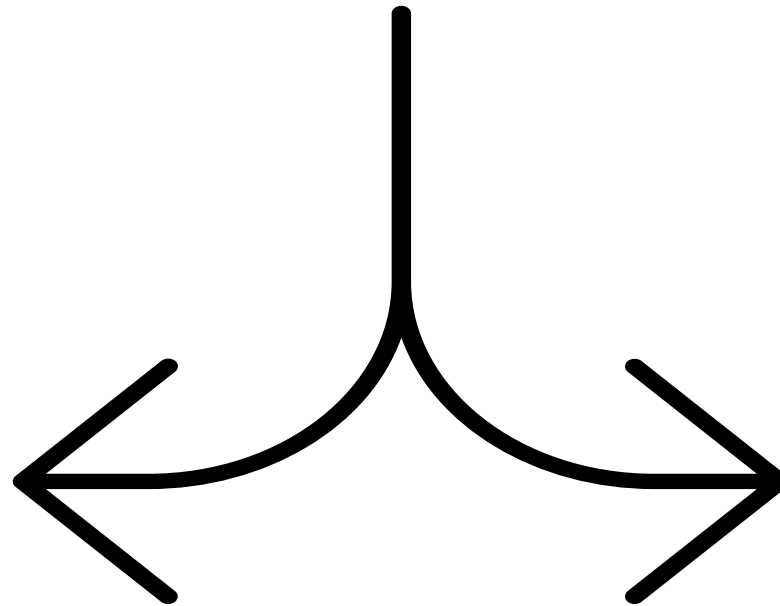
# Retaliation

- Retaliation is “[i]ntimidation, 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 purposes of interfering with any right or privilege secured by [the] Title IX [statute or regulations].”
- Retaliation against any individual who brings a **good faith** complaint under Title IX or participates in any portion of an investigation is strictly prohibited.

# Remember

Even if the conduct does not fall within Title IX, it may be impermissible under other institution policies.

**Title IX  
Sexual Harassment**



**Other  
Prohibited Conduct**

# Responding to Title IX Sexual Harassment



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# Responding to Title IX Sexual Harassment

- An institution must respond to Title IX sexual harassment when:
  - the institution has actual knowledge of the alleged sexual harassment;
  - the alleged sexual harassment occurred in an education program or activity of the institution; **and**
  - the alleged sexual harassment was against a person physically located in the United States.

# Actual Knowledge

- **Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to the institution's Title IX Coordinator or any official of the institution who has authority to institute corrective measures on behalf of the institution.
  - 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 authority to institute corrective measures on behalf of the institution.

# Education Program or Activity

- An **education program or activity** of the institution include:
  - Locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs.
  - Any building owned or controlled by a student organization that is officially recognized by a postsecondary institution

# Online Programs or Activities

- The definition of “education program or activity” “does not create a distinction between sexual harassment occurring in person versus online.”
- The operations of an institution “may certainly include computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of, the [school].”
- Analysis of specific factual circumstances will determine if Title IX would apply.

# Off-Campus Locations

- Institutions are not required to respond to over off-campus incidents unless:
  - The incident occurs as part of the institutions “operations” (e.g., the location is owned or controlled by the institution);
  - The institution exercised substantial control over the respondent and context (e.g., the location is being used for a program or event sponsored by the institution); or
  - The location is owned or controlled by an organization recognized by the institution.

# In the United States

- The complainant must be a person physically located **in the United States**.
  - The Department acknowledges that individuals experiencing sexual harassment while outside of the country (i.e., studying abroad) would not be covered.
  - However, it would appear that sexual harassment perpetrated online against an individual physically located in the United States could be covered, even if the perpetrator were located outside of the country.

# Elements of a Sufficient Response Under Title IX



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# Elements of a Sufficient Response

- Institutions must respond “promptly” and “in a manner that is not deliberately indifferent.”
- An institution is deliberately indifferent “only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.”

# Elements of a Sufficient 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.
- A failure to satisfy these specific requirements could be characterized as deliberate indifference.

# Supportive Measures

- **Supportive measures** means non-disciplinary, non-punitive 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 institution's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the institution's educational environment, or deter sexual harassment.

# Examples of Supportive Measures

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/class  
locations

Leaves of absence

Increased security  
and monitoring of  
certain areas of the  
campus

# Elements of a Sufficient Response

- The institution's response must treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a compliant grievance process before the imposition of any disciplinary sanctions against a respondent.
- Once again, a failure to satisfy these requirements could be deemed deliberate indifference.

# Elements of a Sufficient Response

- **Does the deliberate indifference standard relieve institutions of their obligation to respond to every known allegation of sexual harassment?**
  - No.
- **In the absence of a formal complaint, are there circumstances where an institution would initiate a grievance process against the respondent to avoid being deliberately indifferent?**
  - Yes. The Title IX Coordinator may sign a formal complaint to initiate a grievance process. Examples include threats, serial predation, violence, or weapons.

# Formal Complaints of Title IX Sexual Harassment



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# The Big Picture

**Discrimination Based on Sex:** Institutions are obligated to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any form of prohibited sex discrimination occurring against a person in the United States. 34 CFR 106.8(c)-(d).

**Title IX Sexual Harassment:** With or without a formal complaint, institutions with actual knowledge of Title IX sexual harassment occurring in an education program or activity of the school against a person in the United States must respond promptly in a manner that is not deliberately indifferent and complies with 34 CFR 106.44(a).

**Formal Complaint of Title IX Sexual Harassment:** In response to a formal complaint of sexual harassment, institutions must follow a Title IX formal complaint process that complies with the new standards set forth in 34 CFR 106.45.

# Formal Complaint

- A formal complaint of Title IX sexual harassment means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the institution investigate the allegation of sexual harassment.
- The phrase “document filed by a complainant” means a document or electronic submission that contains the complainant’s physical or digital signature or otherwise indicates that the complainant is the person filing the formal complaint.

# Formal Complaint

- A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail... and by any additional method designated by the institution.
- 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 institution with which the formal complaint is filed.

# Formal Complaint Process

- Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party and must comply with applicable Title IX requirements.
- For the purpose of addressing formal complaints of sexual harassment, an institution's formal complaint policy and process must comply with a wide range of specific requirements set out in the 2020 rule, including those on the following slide.

# General Formal Complaint Process

Formal  
Complaint

Investigation

Hearing

Decision

Appeal

# Formal Complaint Process

Core Requirements	• Details 10 core requirements of formal complaint process
Complaint Dismissal	• Grounds for dismissal and procedural requirements
Consolidation	• Complaint consolidation in specific circumstances
Notice of Allegations	• Requirements for initial and ongoing notice to parties
Investigations	• 7 required elements of formal investigation
Informal Resolutions	• Permits informal resolution where appropriate
Hearings	• Hearing requirements, including cross-x and advisors
Determinations	• Requirements for adjudicators and determinations
Appeals	• Grounds and procedures for appeals
Recordkeeping	• Record maintenance requirements for specified periods

# Formal Complaint Determinations

- At the conclusion of the formal complaint process, the institution will impose sanctions and/or remedies, as applicable.
- Remedies are measures designed to restore or preserve equal access to the institution's education program or activity.
  - May include the same services provided as supportive measures; however, remedies do not have to be non-disciplinary or non-punitive and need not avoid burdening the respondent.

# Pregnancy & Related Conditions



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# Nondiscrimination

- Institutions must not discriminate activity against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom
  - Note: An institution does not engage in discrimination when it allows a student, based on pregnancy or related conditions, to voluntarily participate in a separate program or activity (provided a comparable program or activity).

# Temporary Disability

- Pregnancy or related conditions must be treated in the same manner and under the same policies as any other temporary disability.
  - This requirement is with respect to any medical or hospital benefit, service, plan, or policy the institution administers, operates, offers, or participates in with respect to students admitted to the institution's education program or activity.

# Voluntary Leave of Absence

- A school must allow the student to take a voluntary leave of absence to cover at a minimum what is medically necessary (as determined by the student's doctor).
- Must allow the longest leave available.
- When a student returns, the student must be reinstated to the status that the student held when the voluntary leave began.

# Roadmap to Compliance



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# Roadmap to Compliance

## Step 1 – Assemble Your Team

Institutions must be prepared to respond to a Title IX Formal Complaint at any time. Your Title IX team should consist of:

- the Title IX Coordinator,
- investigator(s),
- decision-maker(s),\*
- appeal decision-maker(s),\*\* and
- informal resolution facilitator(s) (if applicable)

\*cannot be the investigator or Title IX Coordinator

\*\*cannot be the decision-maker, investigator, or Title IX Coordinator

# Roadmap to Compliance

## Step 2 – Review Relevant Laws and Gather Documents

Institutions should gather state laws, current policies and procedures, and any collective bargaining or similar agreements. Review for any specific elements that must be included in a Title IX or sexual harassment policy or special discipline processes. Look for required definitions of consent, standards of evidence, reporting requirements, etc.

## Step 3 – Make Initial Threshold Decisions

- **Standard of Evidence:** Absent state law requirements, an institution may choose either the preponderance of the evidence standard or the clear and convincing standard for **all** formal complaints against students and employees.
- **Definition of Consent:** Absent state law requirements, the Rule offers institutions flexibility to craft their own definition of consent, including what constitutes the absence or negation of consent.

# Roadmap to Compliance

## Step 3 – Make Initial Threshold Decisions

- **Informal Resolution:** While the Rule permits informal resolution of a formal complaint, institutions are not required to utilize it. Institutions must decide whether to create and offer such a process and which options for informal resolution will be offered.
- **Officials With Authority:** Which employees are officials with authority is fact-specific, but generally an employee's supervisor and a Dean are likely officials with authority. Institutions also have the ability "to publicize a list of officials with authority, in a location easily accessible and known to the student body, so that those who wish to file complaints know how to do so," and have wide discretion to craft and implement their own policies about when an employee must report sexual harassment to the Title IX Coordinator.
- **Non-Title IX Offenses:** For purposes of this Rule, an institution must dismiss formal complaints of sexual harassment that do not meet the required elements. But an institution has the discretion to address any of these complaints in its Code of Conduct. Institutions should consider: (1) which non-Title IX offenses it will prohibit in its Code of Conduct and (2) the process it will use to adjudicate those offenses.

# Roadmap to Compliance

## Step 4 – Begin Drafting (or Revising)

- **Title IX Policy:** At minimum, a Title IX policy should set forth the institution's general policy prohibiting sexual harassment in an institution's education or program or activity against a person in the United States and reference the institution's grievance procedures. The policy should include basic definitions; inform potential complainants about reporting options; identify support for alleged victims; and prohibit retaliation.
- **Title IX Grievance Procedure:** An institution's Title IX grievance procedure must provide for the prompt and equitable resolution of complaints of sexual harassment and comply with the requirements found in 34 CFR 106.45.
- **Investigative Process:** Institutions should consider creating a written policy or process that standardizes how allegations of sexual harassment are investigated, addresses coordination with law enforcement, and explains that all investigators will be trained and free of bias and conflicts of interest. Additionally, institutions should also consider drafting template documents.

# Roadmap to Compliance

## Step 4 – Begin Drafting (or Revising)

- **Emergency Removal:** Under the Rule, institutions are permitted to remove a respondent from campus on an emergency basis, provided that the school:
  - 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.

An institution also would be permitted to place a “non-student employee respondent” on administrative leave during the “pendency of [its] grievance process.” Institutions should consider drafting policies and processes surrounding emergency removal and addressing at least: (1) which members of the campus community are included in any emergency removal decisions, (2) the process for conducting an individualized safety and risk analysis, and (3) the procedure for a respondent to challenge the emergency removal decision.



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