



ONE SIZE DOES NOT FIT ALL: RETHINKING HOW WE RESPOND TO WORKPLACE COMPLAINTS



...you've opened a full investigation into something that turned out to be a personality conflict.



...you've had an "informal" matter that quietly stayed open for six months.



...you've been asked, "Can't they just sit down and talk it out?" about a matter that absolutely should not be talked out.



...you just finished your first SB 1166 annual report and thought, "Wait, how do I count THAT?"



The Legal Landscape

The Response Spectrum

Right-Size It: A Decision Framework

Let's Practice

Closing the Loop



THE FISHERMEN

Cast a wide net, hoping something bites. "While we're in there..."

Every complaint becomes a 40-witness expedition.



THE OSTRICH

"They never used the word harassment." "It wasn't in writing."

Head in the sand until it is a CRD complaint.



HUG IT OUT

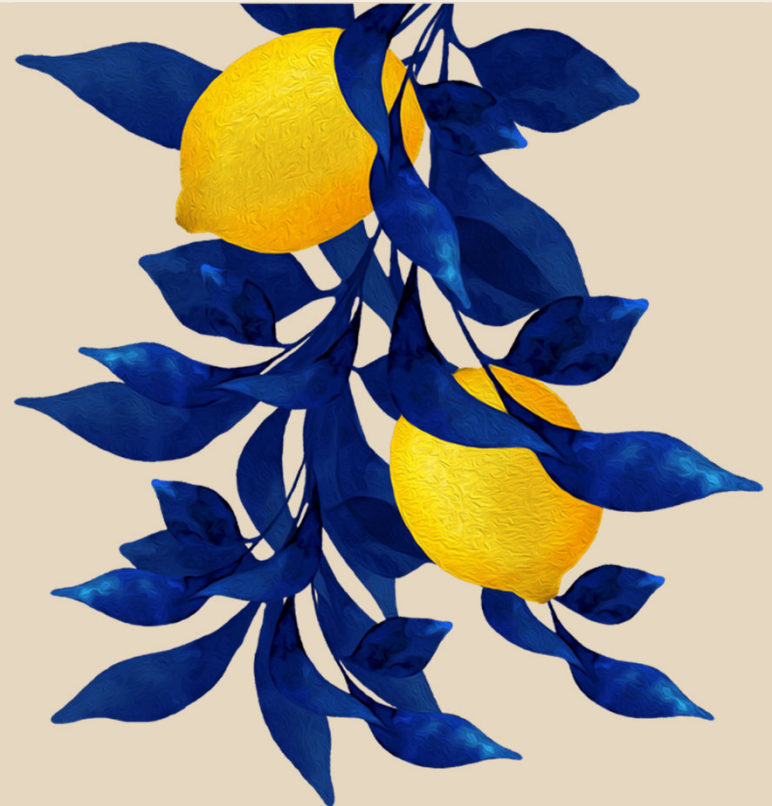
"Can't they just talk?" Pushes parties into mediation that is unsafe, coerced, or legally prohibited.



THE RIGHT-SIZER

Matches the response to the concern: lawful, trauma-informed, proportionate, documented.

That's you after today!



Framework	Covers	Employees	Students	Informal resolution?
Title 5 DHR 5 CCR §59300 et seq.	Discrimination & harassment on any protected basis	✓	✓	Yes, with complainant consent; 90-day limit (§59327)
Title IX 34 CFR Part 106 (2020 regs)	Sexual harassment in the education program or activity	✓	✓	Yes, after a formal complaint; not with employee→student
Ed Code §66281.8 (SB 493)	Sexual harassment involving students at postsecondary institutions	—	✓	Yes, but mediation can't be mandated & never for sexual violence
FEHA / Title VII Gov. Code §12940	Employment discrimination, harassment & retaliation; duty to prevent	✓	—	Allowed; the duty to prevent & correct still applies
Whistleblower Ed Code §§87160–87164; Lab. Code §1102.5	Improper governmental activity & retaliation for reporting it	✓	—	Underlying report → review/audit; retaliation → investigate



"The investigation must be completed unless the matter is informally resolved and the complainant dismisses the complaint."

5 CCR §59327(c)



DAYS

Employment complaint filing window (+90 if facts learned later), §59328

YEAR

Non-employment complaint filing window, §59328

DAYS

To complete informal efforts once a complaint is made, §59327(d)

DAYS

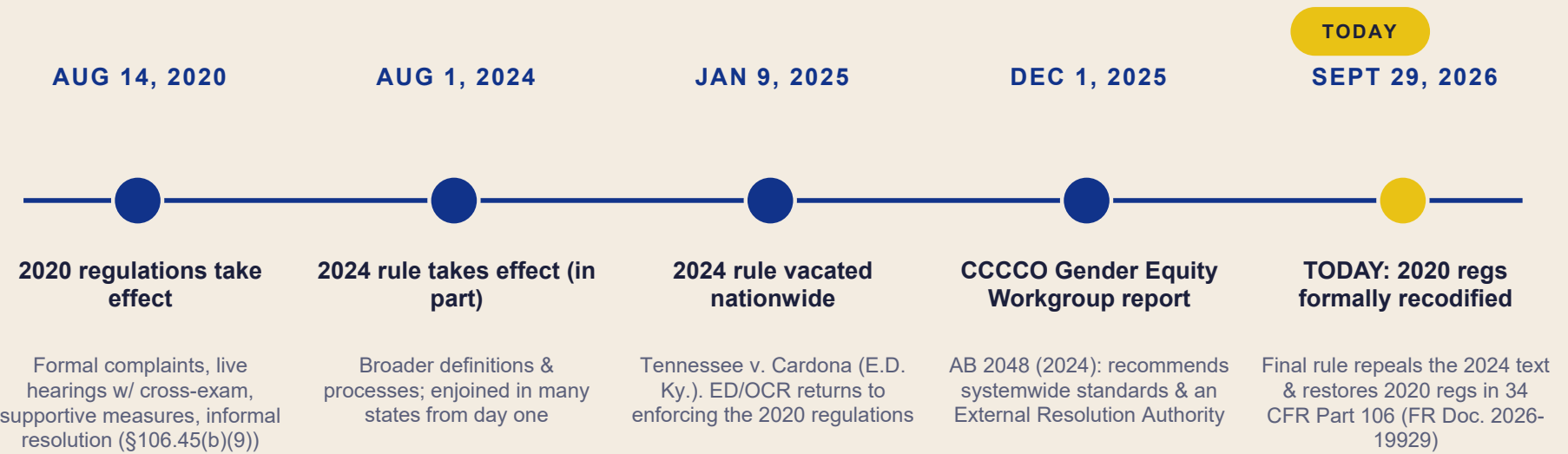
To issue the administrative determination (limited extensions), §59336

YEARS

Minimum record retention for informal charges AND formal complaints, §59340(c)

YEARS

To file with the CA Civil Rights Dept. (FEHA), Gov. Code §12960(e)



California note: State law did not change. Ed Code §66281.8, Ed Code §66270 et seq., Title 5 and FEHA still apply, and in several areas they are broader than federal Title IX.



Doors that don't lead to a Title IX investigation

- **Supportive measures, §106.30 & §106.44(a):** offered with or without a formal complaint; "non-disciplinary, non-punitive individualized services."
- **Complainant declines a formal complaint:** supportive measures continue; the Coordinator may still sign one (pattern, safety).
- **Mandatory dismissal, §106.45(b)(3)(i):** conduct outside the Title IX definition, program or U.S. jurisdiction. It can still go to Title 5 or the code of conduct.
- **Discretionary dismissal, §106.45(b)(3)(ii):** complainant withdraws, respondent has left, or evidence can't be gathered.



Informal resolution, §106.45(b)(9)

- Only after a formal complaint is filed
- Written notice of allegations, requirements & consequences
- Voluntary, written consent from BOTH parties
- Either party may withdraw any time before agreement
- Can never be a condition of enrollment or employment
- **Not available** when an employee is alleged to have sexually harassed a student



Mediation guardrails

"An institution shall not mandate mediation to resolve allegations of sexual harassment, and shall not allow mediation, even on a voluntary basis, to resolve allegations of sexual violence."
§66281.8(b)(4)(A)(xxi)(I)



Supportive & interim measures

Procedures must outline interim measures during an investigation AND supportive measures available in the absence of one.



Preponderance standard

Explained in policy and applied to adjudications.



Trauma-informed

Trauma-informed training for those who investigate and adjudicate, plus coordinated responsible-employee reporting.



Gov. Code §12940(j)

Harassment on a protected basis; employer liable for supervisors, and for coworkers if it knew or should have known and didn't act.

Gov. Code §12940(k)

Failure to take all reasonable steps to prevent discrimination and harassment.

Gov. Code §12923

A single incident can be enough; "stray remarks" can be relevant; hostile environment is rarely a summary-judgment win.

Gov. Code §12950.1

Harassment-prevention training for supervisors (2 hrs) and employees (1 hr) every 2 years.

CCP §1001 & Gov. Code §12964.5

Limits on NDAs: agreements can't gag disclosure of facts about harassment or discrimination claims.



PROTECTED DISCLOSURE

A good-faith report of "improper governmental activity": violation of law, gross misconduct, incompetency or inefficiency, economically wasteful conduct, or a threat to health or safety.

Ed Code §§87160–87164 · Lab. Code §1102.5 · BP/AP 7700

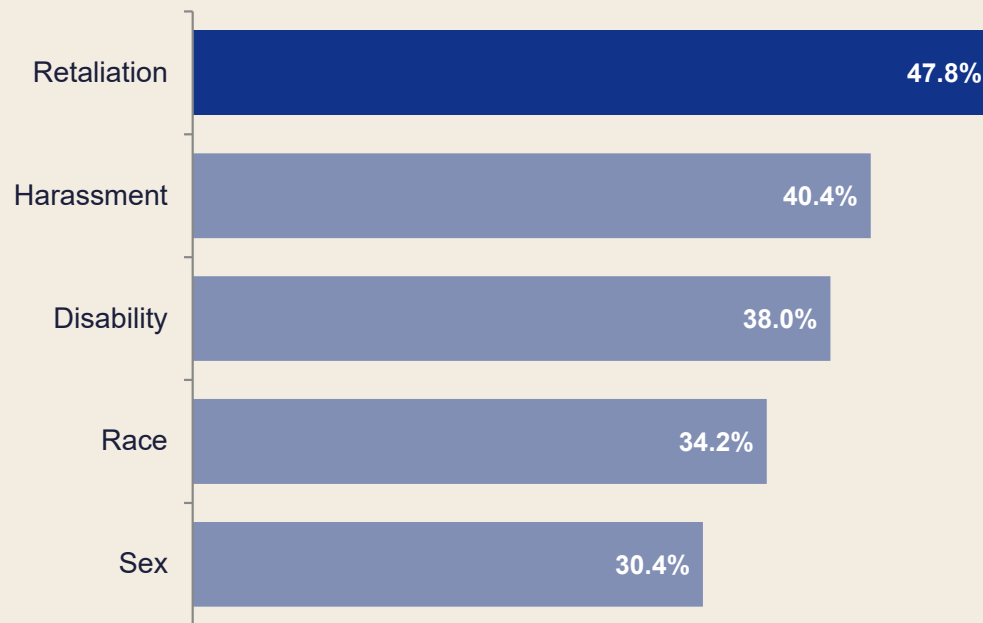
TRACK A · THE UNDERLYING CONCERN

- Usually NOT an EEO/DHR investigation: route to internal audit, fiscal services, compliance, or the appropriate administrator
- Chain of reporting per AP 7700 (around the implicated person)
- May also involve the State Auditor's hotline or outside agencies

TRACK B · ANY RETALIATION THAT FOLLOWS

- Written reprisal complaint within 12 months of the most recent act (Ed Code §87164)
- Prompt, independent investigation; separate the decision-maker from the accused
- Not a mediation candidate. Consider interim protections (reporting line, schedule)

Share of FY 2024 EEOC charges alleging each basis (%)



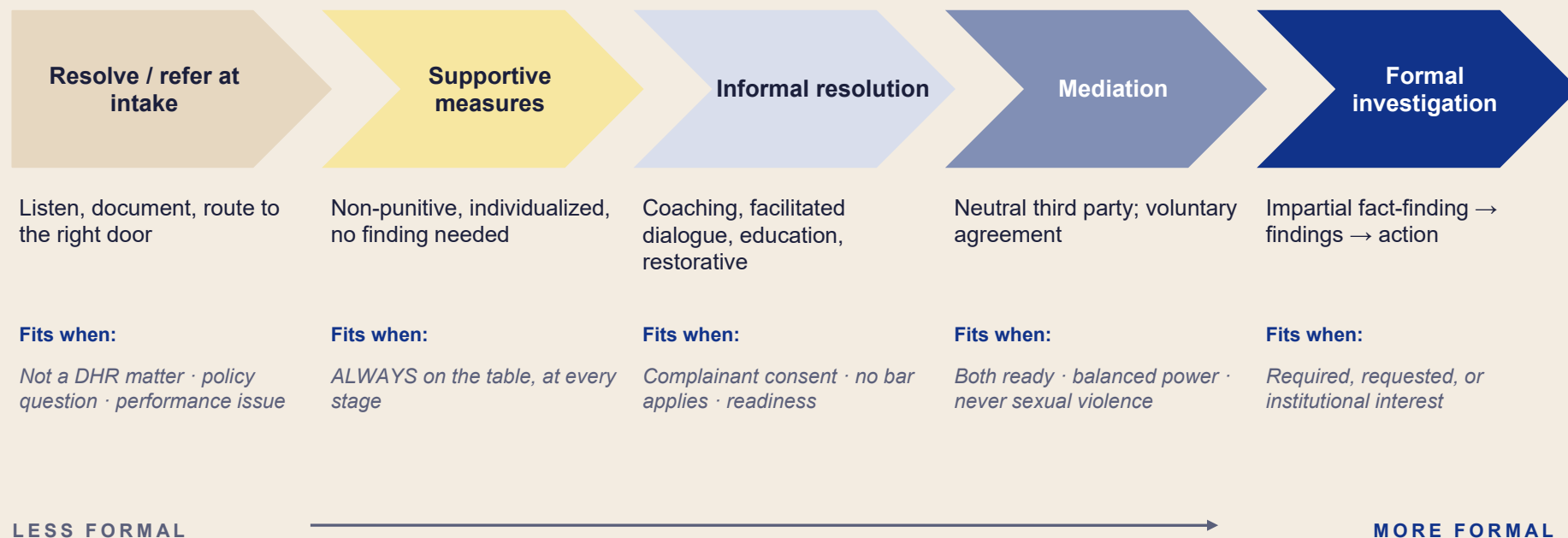
of 88,531 charges alleged retaliation (FY 2024)

How we respond, and how the parties experience our response, drives retaliation risk. Clunky, slow, or leaky processes create the second complaint.

Charges may allege more than one basis, so totals exceed 100%.

Policy	Title	Use it when...
BP/AP 3410	Nondiscrimination	The umbrella: protected categories & commitment
BP/AP 3420	Equal Employment Opportunity	Your EEO Plan hook (Title 5 §53000 et seq.)
BP/AP 3430	Prohibition of Harassment	Harassment on any protected basis; retaliation
AP 3433 / 3434	Sexual Harassment under Title IX / Responding to Harassment Based on Sex under Title IX	Title IX jurisdiction: formal complaints, supportive measures, informal resolution
AP 3435	Discrimination & Harassment Complaints and Investigations	Title 5 DHR process: intake, informal resolution, investigation, appeals
AP 3540	Sexual and Other Assaults on Campus	Sexual assault response & resources (Ed Code §67385 et seq.; Clery)
AP 5500 / 5520 / 5530	Student Conduct · Discipline · Rights & Grievances	Student conduct outside DHR; non-DHR student grievances
AP 7360 / 7365	Discipline & Dismissals: Academic / Classified	Where findings go when discipline is on the table (plus your CBA)
BP/AP 7700	Whistleblower Protection	Improper governmental activity & reprisal





"Non-disciplinary, non-punitive individualized services... without unreasonably burdening the other party." 34 CFR §106.30



STUDENTS

- No-contact directives (typically mutual)
- Section, seating or schedule changes
- Academic extensions, incompletes, withdrawals w/o penalty
- Counseling, advocacy & basic-needs referrals
- Campus safety escorts; increased monitoring of locations
- Help navigating financial aid impacts



EMPLOYEES

- No-contact directives; adjusted meeting structures
- Temporary schedule, shift or workspace changes
- Temporary alternate reporting line for specific decisions
- EAP referral; leave options (check CBA)
- Remote/hybrid options where the job allows
- Regular check-ins by HR (and documenting them!)



Supportive ≠ interim discipline. Don't move the complainant "for their own good" without their input. Emergency removal (§106.44(c)) and employee administrative leave (§106.44(d)) are separate tools with their own rules and CBA implications.



Educational conversation

Supervisor or HR meets the respondent: here's the concern, here's the policy, here's the expectation.

Best for: *Low-level, first-time, respondent may not know the impact*



Facilitated dialogue

A trained facilitator structures a conversation so each person is heard and they agree on next steps.

Best for: *Relationship matters going forward; both willing*



Mediation

A neutral helps the parties negotiate their own written agreement.

Best for: *Concrete issues to resolve; balanced power; voluntary*



Shuttle / indirect

The facilitator carries messages; the parties never share a room.

Best for: *Readiness concerns; complainant wants resolution without contact*



Restorative practices

Harm-focused conference or circle: what happened, who was affected, how to repair.

Best for: *Respondent accepts responsibility; community-level harm*



Team / climate intervention

Unit training, climate assessment, norms-setting, leadership coaching.

Best for: *Diffuse culture issue; no single respondent*

	FACILITATED DIALOGUE	MEDIATION
Goal	Mutual understanding; repair the working relationship	A negotiated, written agreement on specific issues
Neutral's role	Structures conversation, keeps it safe & balanced	Guides negotiation, reality-tests options, drafts terms
Typical outcome	Shared expectations, communication norms, check-in plan	Signed agreement (e.g., duties, schedule, no-contact, training)
Best when	Interpersonal friction; ongoing relationship; low severity	Concrete, negotiable issues; balanced power
Red flags	Safety concerns; one party unwilling or coached	Supervisor ↔ subordinate w/o safeguards; ANY sexual violence
Who facilitates	Trained HR/EEO staff or ombuds (not the investigator)	Trained neutral: internal program or outside mediator



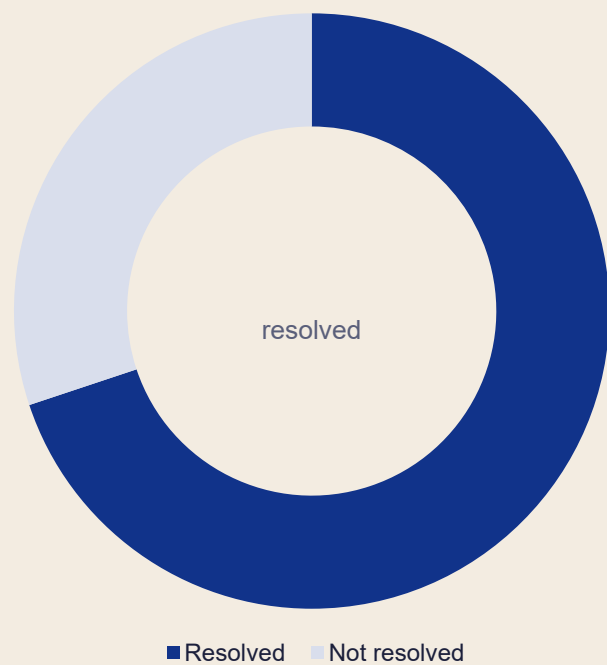
LEGALLY REQUIRED (OR BARRED FROM INFORMAL)

- Title 5 complaint alleging unlawful discrimination, not informally resolved + dismissed (§59327(c), §59334)
- Title IX formal complaint where informal isn't chosen by both, or isn't permitted
- Employee → student sexual harassment (informal barred, §106.45(b)(9)(iii))
- Sexual violence allegations: no mediation (Ed Code §66281.8)
- Retaliation / whistleblower reprisal complaints (Ed Code §87164)



STRONGLY INDICATED: THE 5 P's

- **Pattern:** multiple complainants or prior similar conduct
- **Power:** supervisor, faculty or senior leader as respondent
- **Peril:** threats, violence, weapons, ongoing safety risk
- **Punishment:** discipline is likely, so you need findings (Skelly, Ed Code §87732, CBA)
- **Public:** litigation, agency charge, or media is foreseeable

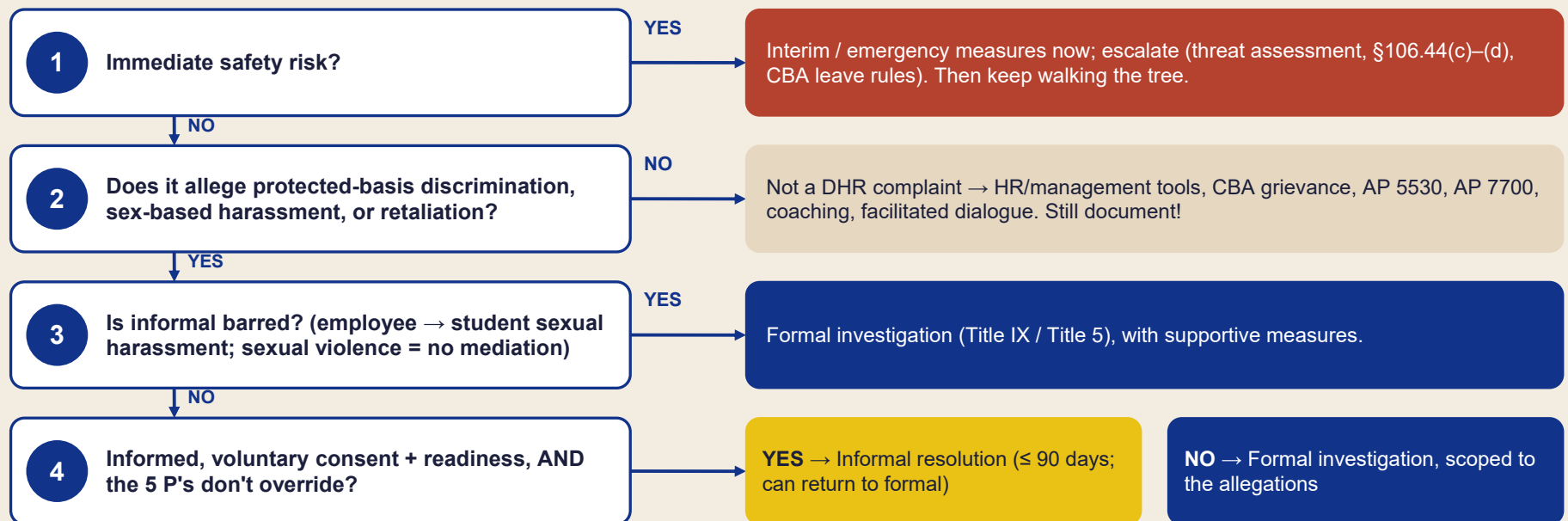


mediations conducted

resolved by agreement

in benefits to charging parties





SUPPORTIVE MEASURES AT EVERY STEP · NO FINDING REQUIRED · DOCUMENT EACH DECISION POINT



Voluntary

Informed, written consent; no pressure, no "it'll be faster," no condition of employment or enrollment



Balance of power

Supervisor ↔ subordinate or faculty ↔ student? Add safeguards, or choose another path



Permitted

No legal bar (employee → student Title IX; sexual violence → no mediation)



Right neutral

Trained facilitator who is NOT the would-be investigator or decision-maker



Capacity

Each party can participate emotionally and practically (trauma, language access, disability accommodations)



Safety

No threats, stalking or violence; indirect/shuttle formats available



Clear goals

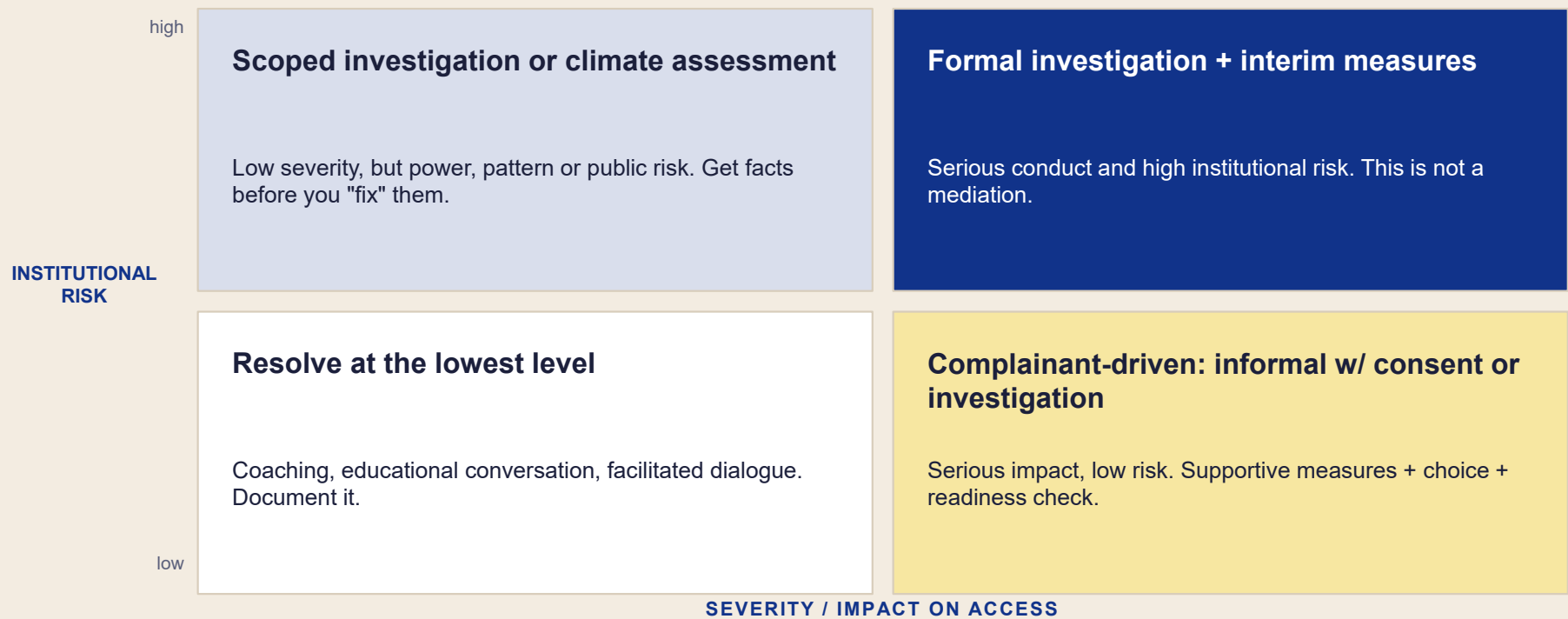
Complainant can name what "resolved" looks like, and it's achievable



Exit ramp

Everyone knows they can stop and return to the formal process

ANY "NO" = PAUSE, ADJUST, OR CHOOSE ANOTHER PATH





Costs: respondent due-process & notice problems, witness fatigue, department polarization, retaliation perception, blown §59336 timelines.

YOU MIGHT BE ONE IF...

- A single-remark complaint has 30+ witnesses
- "While we're in there..." adds new allegations without notice
- You're investigating the person, not the allegations
- Personality conflict → 6-month investigation
- Witness interviews open with "anything else we should know about her?"

THE FIX

- Write a scope memo: allegations, policy, relevant witnesses
- New allegations = new notice (and a new decision point)
- Relevance test for every witness & document
- Re-walk the decision tree mid-stream: is informal now appropriate?



Costs: FEHA §12940(k) failure-to-prevent liability, "knew or should have known," CRD/OCR complaints, and a workforce that stops reporting.

YOU MIGHT BE ONE IF...

- "They never used the word harassment"
- "Come back when it's in writing"
- Anonymous or third-party reports go nowhere
- "That's just how he is; he's been here 25 years"
- Informal agreement signed... and never checked again
- Untimely under Title 5 = "nothing we can do"

THE FIX

- Title 5 accepts verbal complaints: write them down (§59328)
- Outreach to every identifiable complainant; offer supportive measures
- FEHA duty to prevent applies even when Title 5 is untimely
- Calendar 30/60/90-day follow-ups on every informal agreement



*Costs: re-traumatized complainants,
coerced agreements that unravel,
repeat offenders, and a process
nobody trusts.*

YOU MIGHT BE ONE IF...

- Mediating sexual violence allegations (prohibited, even if voluntary)
- Supervisor & subordinate in a room with no safeguards
- "Mediation will be faster" as a sales pitch
- Mediator = investigator = decision-maker
- Serial respondents get their third "conversation"
- Agreements with broad gag clauses

THE FIX

- Readiness check + written consent every time
- Separate the neutral from the investigator
- Offer shuttle / indirect formats
- Track respondents across informal matters (pattern!)
- Have counsel review agreement templates (CCP §1001, Gov. Code §12964.5)



The Pretend Informal

"Informal" that's really secret discipline. No consent form, no notice, no record, and it won't count in your §59340 or SB 1166 data.



The Clock Watcher (who isn't)

Informal efforts drift past 90 days (§59327(d)), and tolling only applies to good-faith efforts.



The Double Agent

The HR partner who coached the supervisor on Monday and facilitates the dialogue on Tuesday. Neutrality matters.



The Minimalist Scribe

Resolved it beautifully... and wrote nothing down. If it isn't documented, it didn't happen (for the CRD, for the Board, for SB 1166).



TRAUMA-INFORMED

Choice & voice

Offer real options: format, pace, support person, indirect contact

Safety first

Physical and psychological. Separate waiting areas, breaks, no surprise confrontations

Transparency

Explain what happens next, who will know, and the limits of confidentiality

Tell it once

Coordinate intake so people don't repeat their story to five offices



ETHICAL

Neutrality

Same respect, notice and information for respondents

Consistency

Similar facts → similar paths. Audit who gets offered informal

Equity lens

Watch for bias in whose complaints get "informal" and whose get "formal"

Honesty

Don't promise confidentiality or outcomes you can't deliver



Hold up your answer on the count of three

**FORMAL
INVESTIGATION**

Title 5 / Title IX / retaliation
investigation

**INFORMAL
RESOLUTION**

Educational conversation,
facilitated dialogue, restorative,
climate

MEDIATION

Neutral third party; negotiated
agreement

**SUPPORTIVE
MEASURES / REFER**

Support + route to a different
door (HR, AP 5530, AP
7700...)

Bonus: *a closed fist means "I'm calling counsel." Always a respectable answer.*

Maria, an admissions specialist, tells you her coworker Dev "slams doors, sighs loudly when I talk, and ignores me in team meetings." She's exhausted and wants it to stop.

When you ask open-ended questions, nothing she describes connects to a protected characteristic. Their supervisor has "stayed out of it."

VOTE

1 Investigate

2 Informal

3 Mediate

4 Support / refer

4 → 2 · REFER & SUPPORT, THEN FACILITATED DIALOGUE OR COACHING

WHY

- As described, not a Title 5 / FEHA complaint: no protected basis alleged
- Still a real workplace problem, and the supervisor's absence is part of it
- Route to the supervisor / employee relations with HR support
- Offer a facilitated dialogue if both are willing; coach the supervisor
- Document the intake, the questions you asked & the routing
- Leave the door open: if a protected basis emerges, re-walk the tree

LAW & POLICY HOOKS

- 5 CCR §59328: a complaint must allege facts that would be unlawful discrimination
- Classified CBA / district civility or conduct standards
- AP 3435 intake documentation
- FEHA §12940(k): prevention mindset

Glen, a part-time faculty member (age 61), reports that his department chair has said in two meetings that the department "needs fresh blood." This semester the prime-time sections went to three newly hired, much younger adjuncts.

Glen wants "a fair shot at the schedule." He's worried about retaliation and asks whether he and the chair could "just talk it out with someone."

VOTE

1 Investigate

2 Informal

3 Mediate

4 Support / refer

1 · FORMAL INVESTIGATION (SCOPED), WITH SUPPORTIVE MEASURES

WHY

- Alleges age discrimination affecting a term of employment → Title 5 & FEHA complaint (verbal counts)
- Power: the chair controls Glen's assignments. Retaliation fear is a readiness red flag for mediation
- Pattern risk: the assignment practice affects others → institutional interest in findings
- Honor Glen's voice: explain options, the scope, the pace, and anti-retaliation protections
- Supportive: independent review of next term's assignments; retaliation reminder to the chair
- If Glen insists on informal: shuttle format with safeguards, and the 5 P's may still override

LAW & POLICY HOOKS

- Gov. Code §12940(a), (h), (k)
- 5 CCR §§59327, 59328, 59334
- AP 3435; BP/AP 3430 (retaliation)
- Part-time faculty CBA: assignment provisions

Aaliyah, a student, reports that a classmate keeps sending her sexual memes and comments about her body over Instagram after she told him to stop. They share a biology lab twice a week.

She says: "I don't want him to get in trouble. I just want it to stop and I don't want to sit next to him."

VOTE

1 Investigate

2 Informal

3 Mediate

4 Support / refer

4 → 2 · SUPPORTIVE MEASURES NOW; INFORMAL IF SHE CHOOSES

WHY

- Supportive measures regardless of what she decides: lab seat or section change (hers or his, with her input), no-contact directive, counseling & advocacy referrals
- Explain ALL options, including a formal complaint and informal resolution
- Informal is permitted here (student ↔ student, not sexual violence), e.g., an educational conversation plus agreed no-contact
- Mediation only if truly voluntary; it can never be mandated
- Jurisdiction check: Title IX definition vs. Title 5 / AP 3435 / student conduct
- Pattern check: other reports about this student?

LAW & POLICY HOOKS

- 34 CFR §§106.30, 106.44(a), 106.45(b)(9)
- Ed Code §66281.8 (no mandated mediation)
- AP 3433 / 3434; AP 3435; AP 5500
- Online conduct can affect access to the program

Priya, a grant coordinator, emails her director that a program manager appears to be charging personal travel to a federal grant.

Two weeks later, the program manager removes Priya from the grant leadership meeting and revokes her telework day "for coverage reasons." Priya comes to HR, upset, asking what her rights are.

VOTE

- 1 Investigate
- 2 Informal
- 3 Mediate
- 4 Support / refer

4 + 1 · REFER THE FUNDS CONCERN · INVESTIGATE THE RETALIATION

WHY

- Track A: the grant-spending concern → internal audit / fiscal / grants compliance per AP 7700. Not an EEO investigation
- Track B: exclusion + telework revocation two weeks after a protected disclosure → retaliation investigation
- Interim protection: someone other than the program manager decides Priya's schedule and assignments pending review
- Explain the §87164 written-complaint process & 12-month window
- Mediation? No, not for the funds concern, and not for the reprisal

LAW & POLICY HOOKS

- Ed Code §§87160–87164
- Labor Code §1102.5
- Gov. Code §53296 et seq.
- BP/AP 7700
- Federal grant rules (e.g., 2 CFR Part 200) & sponsor reporting

An anonymous online report says a chemistry instructor "constantly comments on female students' bodies during lab" and that "everyone in the 9 a.m. section knows."

No names are given. The instructor is popular and has been teaching for 18 years. A dean asks whether HR "could just have a quiet word with him."

VOTE

1 Investigate

2 Informal

3 Mediate

4 Support / refer

1 · FORMAL PROCESS (NOT A "QUIET WORD"), WITH OUTREACH & SUPPORT

WHY

- Employee → student sexual harassment: Title IX informal resolution is NOT available
- Anonymous ≠ ignorable: Coordinator outreach to the section (without tipping or tainting), supportive measures offered
- Pattern + power: the Title IX Coordinator may sign a formal complaint
- If outside the Title IX definition → Title 5 / AP 3435 + employee conduct process
- Discipline is plausible → you need findings (Ed Code §87732; CBA)
- A "quiet word" first can tip off the respondent & chill witnesses

LAW & POLICY HOOKS

- 34 CFR §106.45(b)(9)(iii)
- 34 CFR §106.30 (Coordinator-signed complaint)
- Ed Code §66281.8
- AP 3433 / 3434 / 3435; AP 7360
- 5 CCR §59334



THE SITUATION

On an 8-person night custodial crew, the lead regularly imitates Tomas's accent and calls him "our international guy." Tomas finally tells HR. He doesn't want anyone fired. He wants it to stop and wants an apology.

The lead says he "had no idea it bothered anyone. It's just how we joke." Two crew members say "everyone does it to everyone."

DISCUSS

1. Is this a Title 5 / FEHA complaint? What protected basis?
2. Walk the decision tree. Is informal available, and is Tomas ready?
3. Is the crew culture a separate issue from Tomas's complaint?
4. What supportive measures fit a night crew?
5. What gets documented, and how does it show up in §59340 data and your EEO Plan?





Reports & complaints of sexual harassment filed



Time to START an investigation, and time to COMPLETE it



Outcomes: informal resolution, final decision, or pending



Appeals filed and their outcomes



Employees exempt from responsible-employee reporting

THE CALENDAR

SEPT 1

Each district → Chancellor's Office
(annually, starting 2026)

ALSO

Post on district website & present at a
public Board meeting

DEC 1

Chancellor's Office summary to the
Legislature (2026, then every 3 years)



INTAKE LOG

Door(s) · basis · parties' roles · decision-tree answers · path chosen · dates



\$59340 ANNUAL DATA

Complaints AND informal charges · resolutions · sustained findings



SB 1166 REPORT

Sexual harassment reports · timing · informal vs. final outcomes · appeals



BOARD & PUBLIC

Posted & presented publicly: transparency builds trust



EEO PLAN

Hot spots → targeted strategies → annual review

Track informal matters by respondent, unit and path chosen. That's how you catch patterns (the 5 P's) and audit equity (who gets offered informal?).

§53003(c) complaint procedures

Describe the full response spectrum, not just "file a complaint": supportive measures, informal options, mediation, investigation

Post-hiring EEO strategies

Retention: a trained facilitator/mediator bench, supervisor coaching, conflict-resolution training, stay interviews

Employee notification

Tell people informal options exist, and that choosing one doesn't waive formal rights

Data analysis & annual review

Use §59340 / SB 1166 / intake data to spot hot-spot units and turnover links; adjust strategies yearly

EEO Advisory Committee

Share de-identified trends; involve the committee in designing informal pathways



Title IX, recodified earlier this week

2020 regs formally restored in 34 CFR Part 106 (effective 9/29/26). Update AP 3433/3434 citations; expect continued litigation & guidance.



Systemwide Title IX reform

CCCCO Gender Equity Workgroup (AB 2048) recommends systemwide standards & a statewide External Resolution Authority.



AB 1730 (2026)

Would create a contracted, centralized civil-rights/Title IX services entity with formal AND informal resolution. Held in Appropriations.



Year 2 of SB 1166

Build your intake log now for the Sept 1, 2027 report; watch for the Chancellor's Office Dec 2026 summary.

