



Formal Complaints of Title IX Sexual Harassment

Thompson Coburn LLP
Title IX Training Series | July 2020

Thompson Coburn LLP

- Full-service law firm with over 380 attorneys.
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Use of Training Series

Institutions of higher education are **welcome** to use this foundational training series at their discretion, and to post the series to their websites as part of their Title IX training materials (a requirement under the new rule).

TC also is available to prepare **custom Title IX training** sessions, hearing simulations, and other assistance with Title IX matters (contact [Aaron Lacey](#) or [Scott Goldschmidt](#)).

Curriculum for Training Series

The foundational training series includes the following six sessions:

Introduction to



Syllabus for this Session

The Formal Complaint Framework

10 Core Requirements

Dismissal of Formal Complaints

Consolidation of Formal Complaints

Session Presenters



Scott Goldschmidt

Counsel, Higher Education
Practice



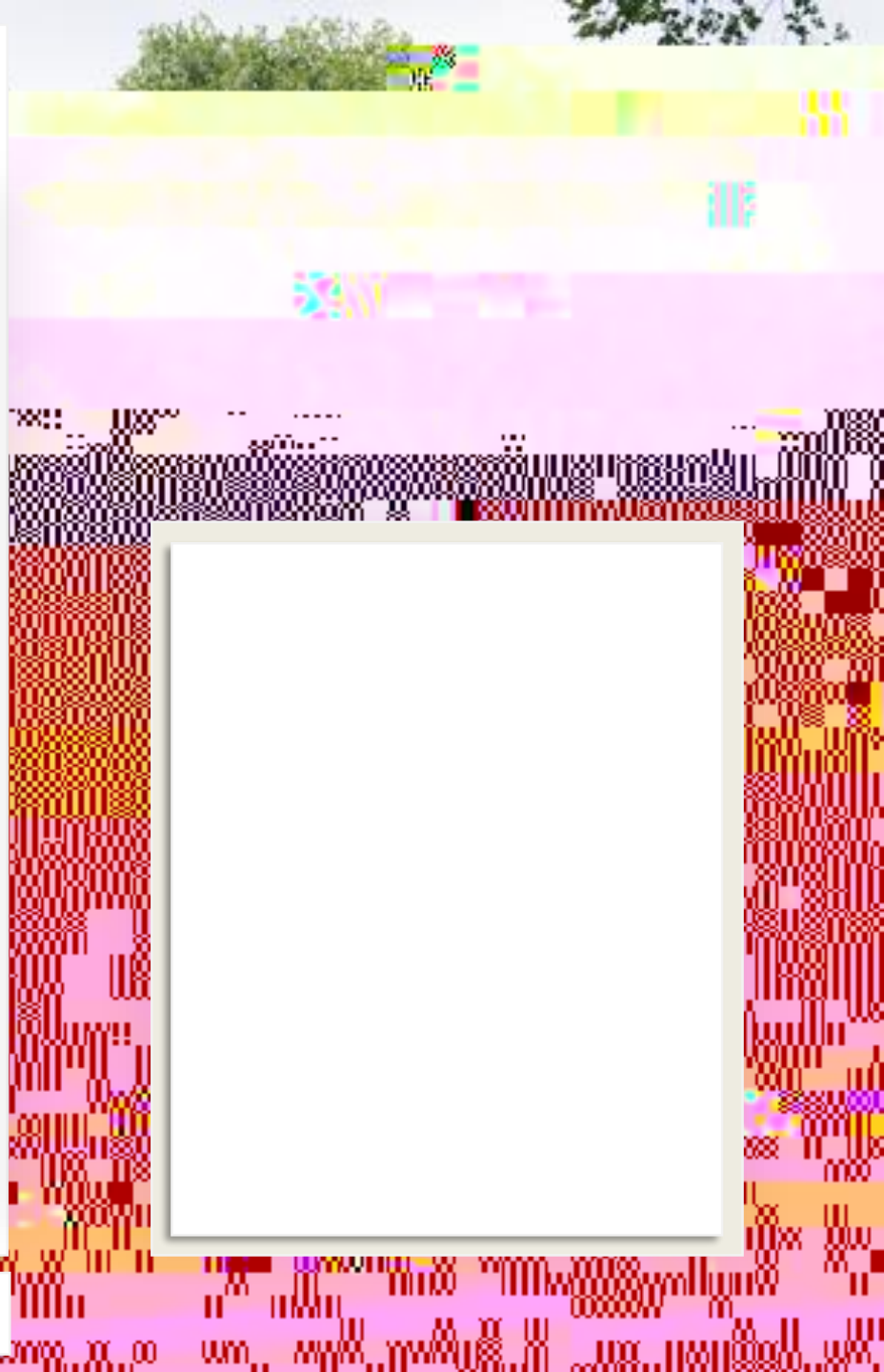
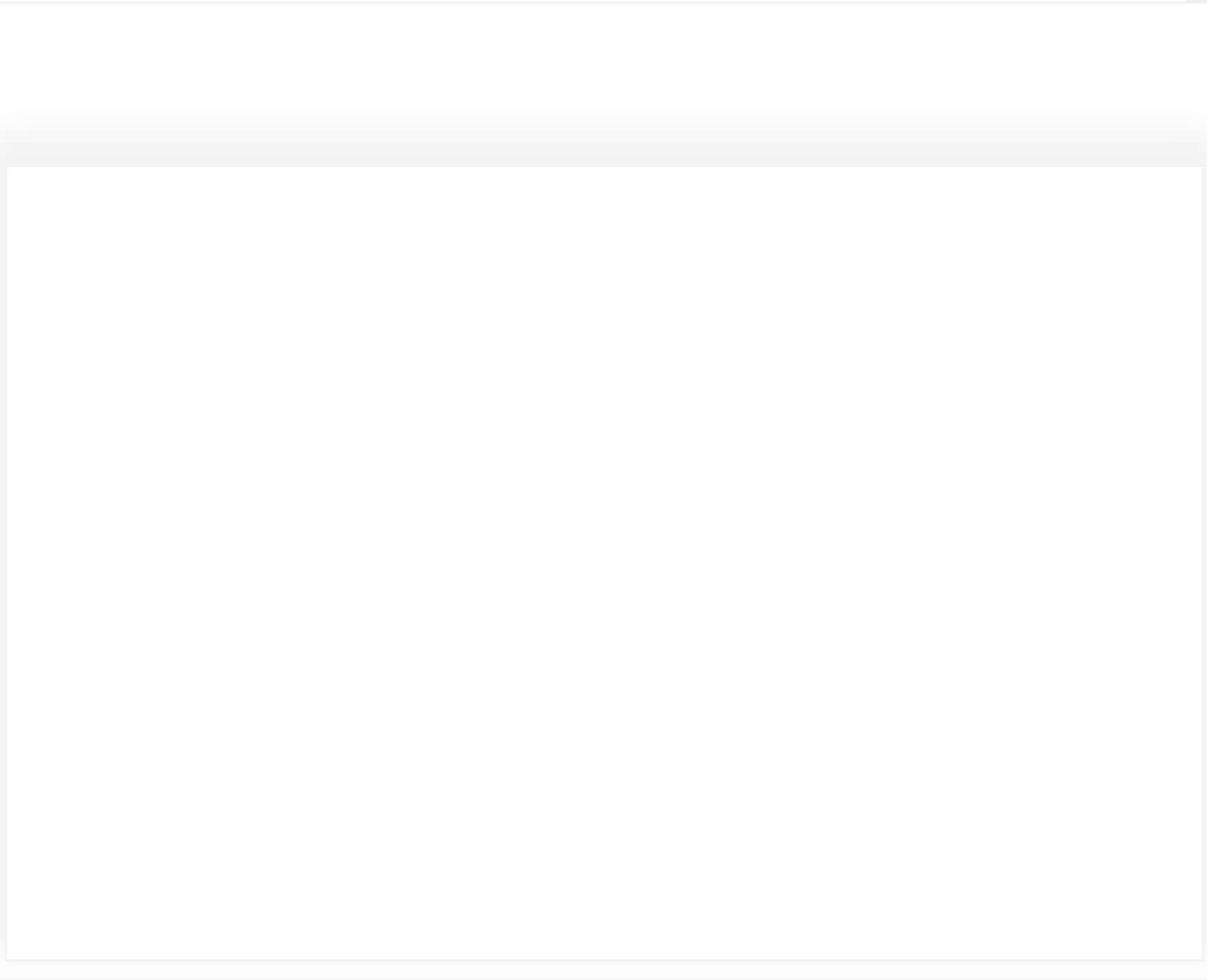
Aaron Lacey

Partner & Chair, Higher
Education Practice

The Formal Complaint Framework

The Title IX Statute

Title IX of the Education Amendments of 1972 prohibits discrimination



The New Title IX Rule

Controversial, and already challenged, ED's new rule is its first regulation addressing **sexual harassment** since 1975.

The new rule articulates a complex framework for managing allegations of sexual harassment on campus.

The Formal Complaint Framework

10 Core Requirements

Dismissal of Formal Complaints

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Formal Complaints

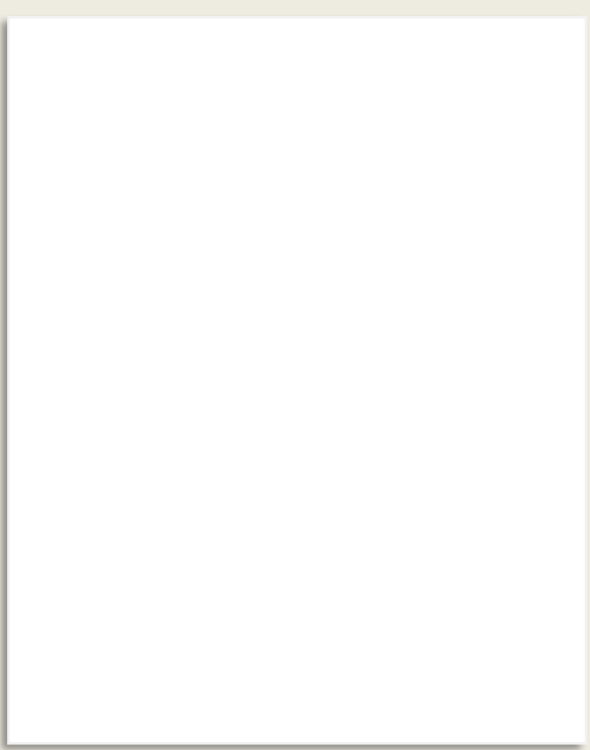
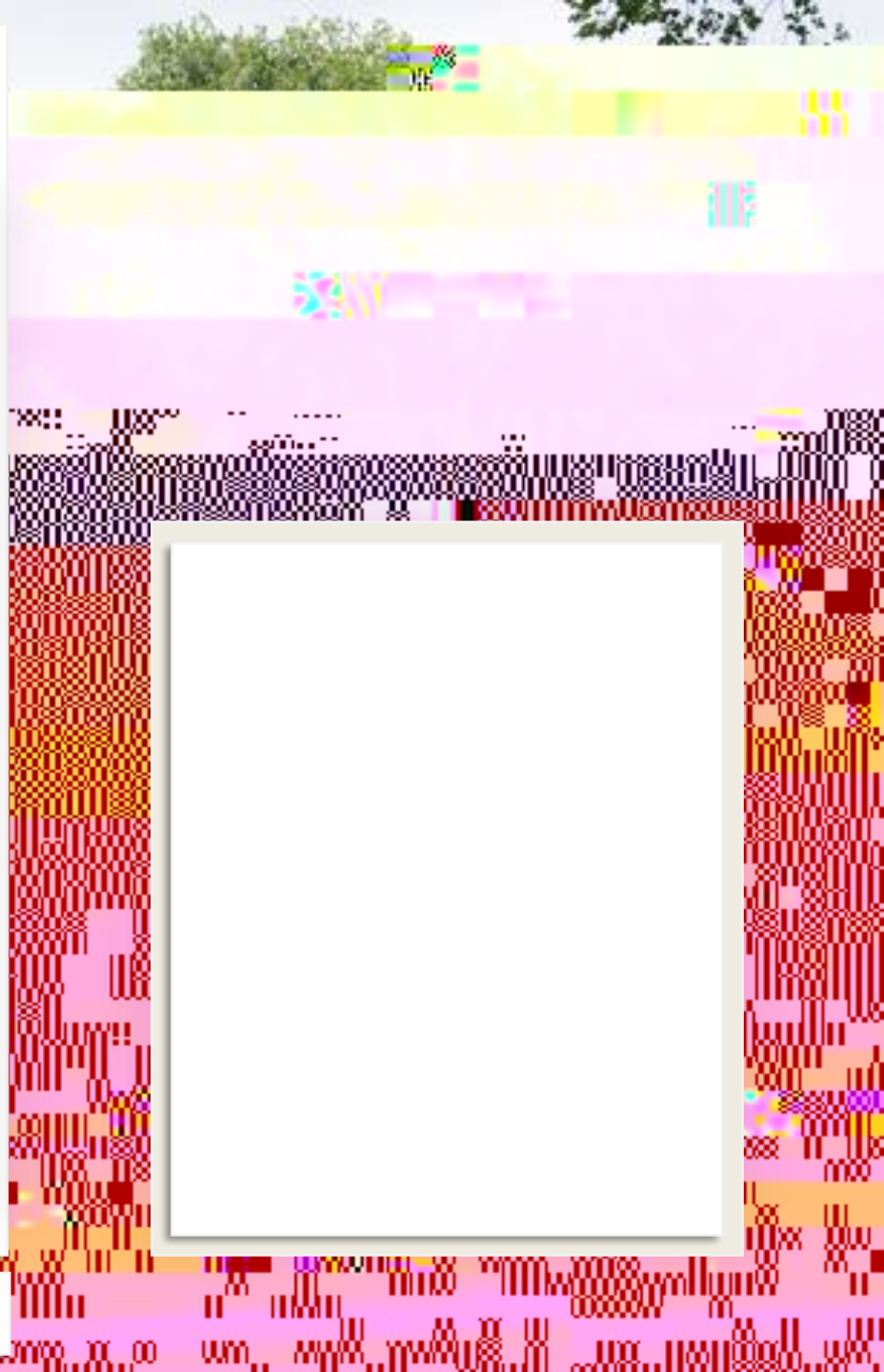
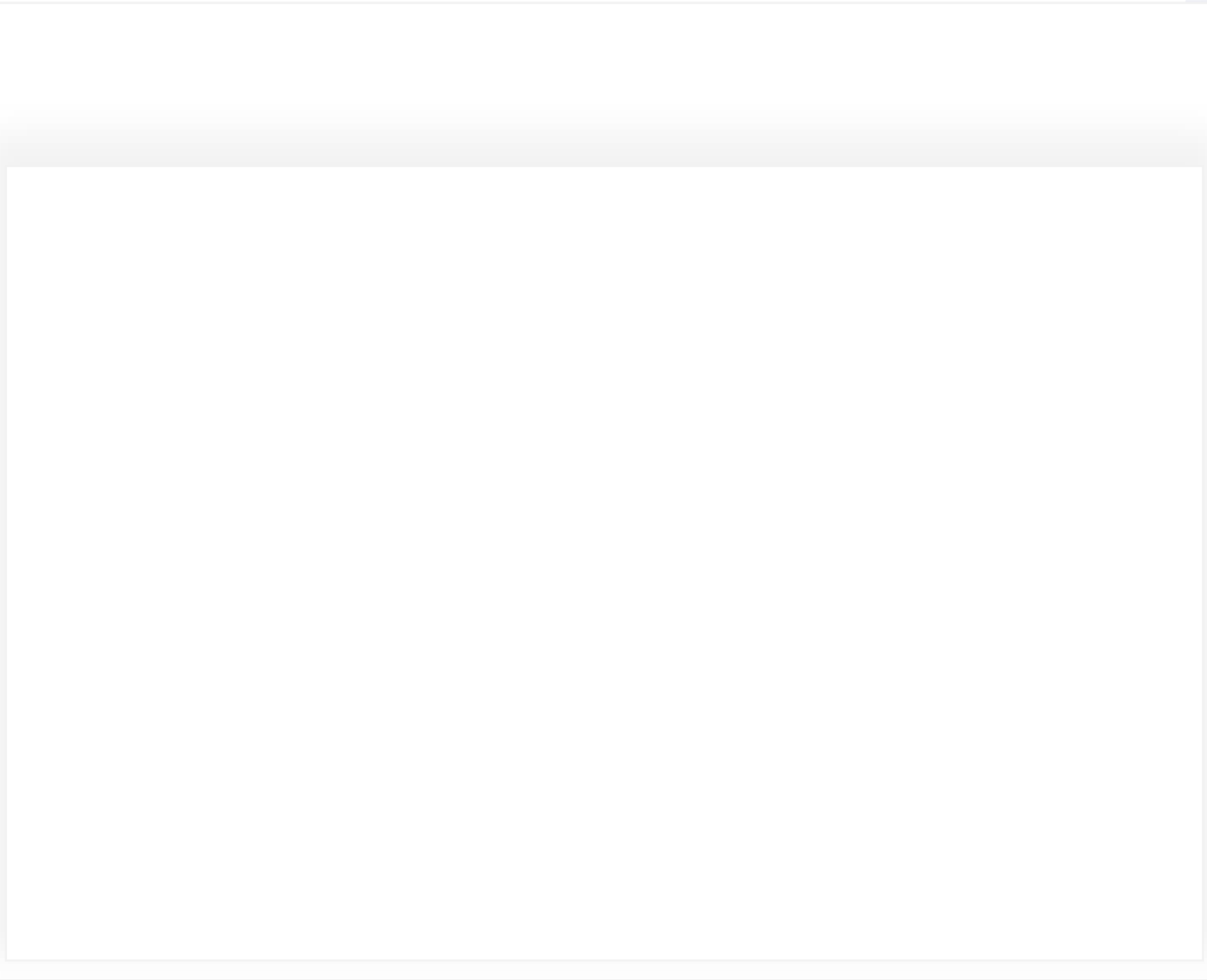
TM A **formal complaint** of Title IX sexual harassment means a document filed by a complainant **or** signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.

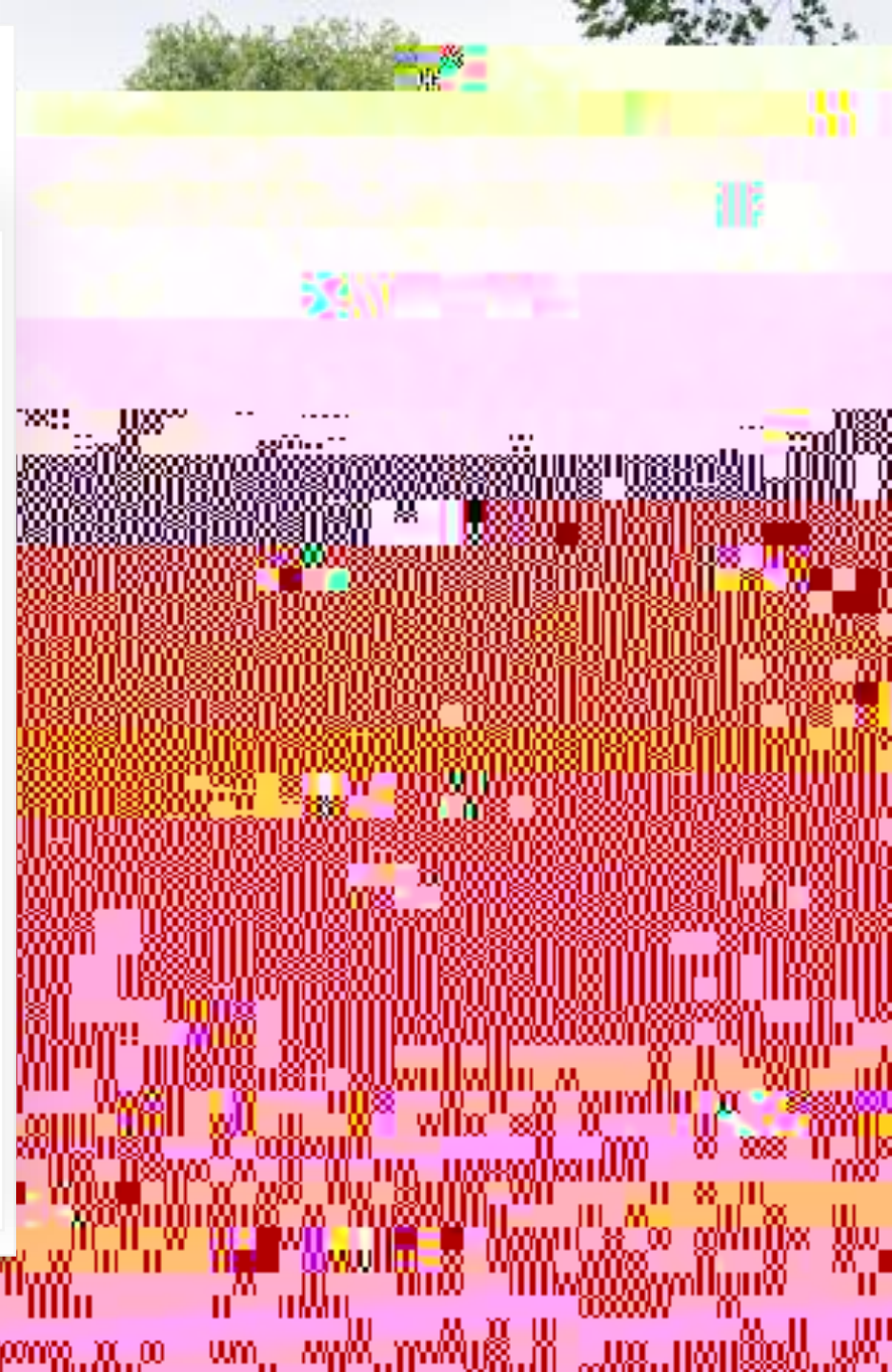
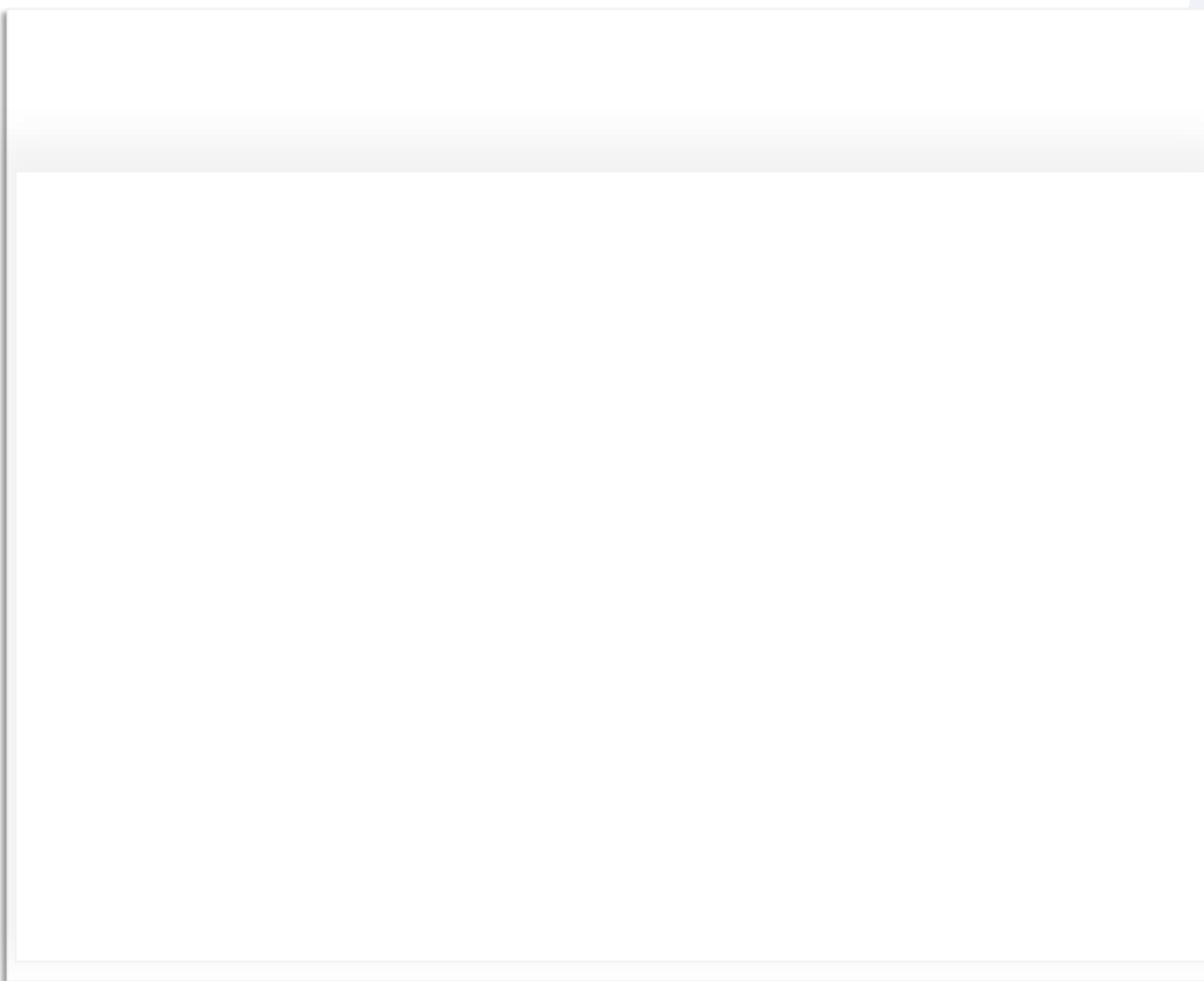
TM For the purpose of addressing formal complaints of sexual harassment, a school's formal Title IX complaint policy and process must comply with **specific requirements** set out in the new rule.

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	

10 Core Requirements





3. Training of Key Participants

Title IX
Coordinators,
investigators,
adjudicators, and
any person who
facilitates informal
resolutions

- Definition of sexual harassment and scope of the school's education program or activity.
 - Conducting an investigation and grievance process including hearings, appeals, and informal resolutions.
 - Serving impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias.
-
- Issues of relevance to create an investigative report that fairly summarizes relevant evidence.

5. Prompt Timeframes

A school's process must include reasonably prompt timeframes for resolution and allow for temporary delay or limited extension for good cause.

- “Any time frame included by the recipient must be “reasonably prompt,” where the reasonableness of the time frame is evaluated in the context of the recipient’s operation of an education program or activity.”
- “The Department believes that each recipient is in the best position to balance promptness with fairness and accuracy based on the recipient’s unique attributes and the recipient’s experience with its own student disciplinary proceedings...”

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6. Sanctions and Remedies

A school's formal complaint process must describe the range of possible sanctions and remedies.

- “Whether and what type of sanctions are imposed is a decision left to the sound discretion of recipients.”
- The new regulations “permit recipients to evaluate such considerations and make disciplinary decisions that each recipient believes are in the best interest of the recipient’s educational environment.”

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7. Standard of Evidence

A school's process must detail the standard of evidence that will be used and provide for consistent use in all formal complaints.

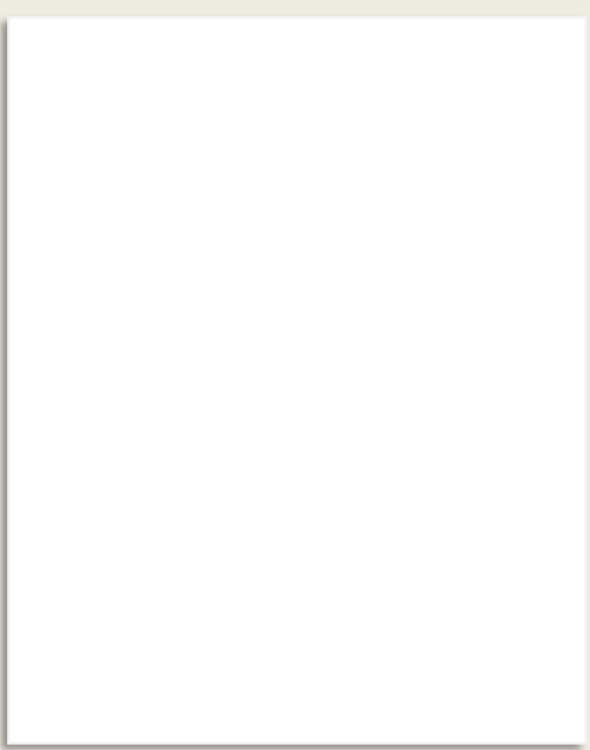
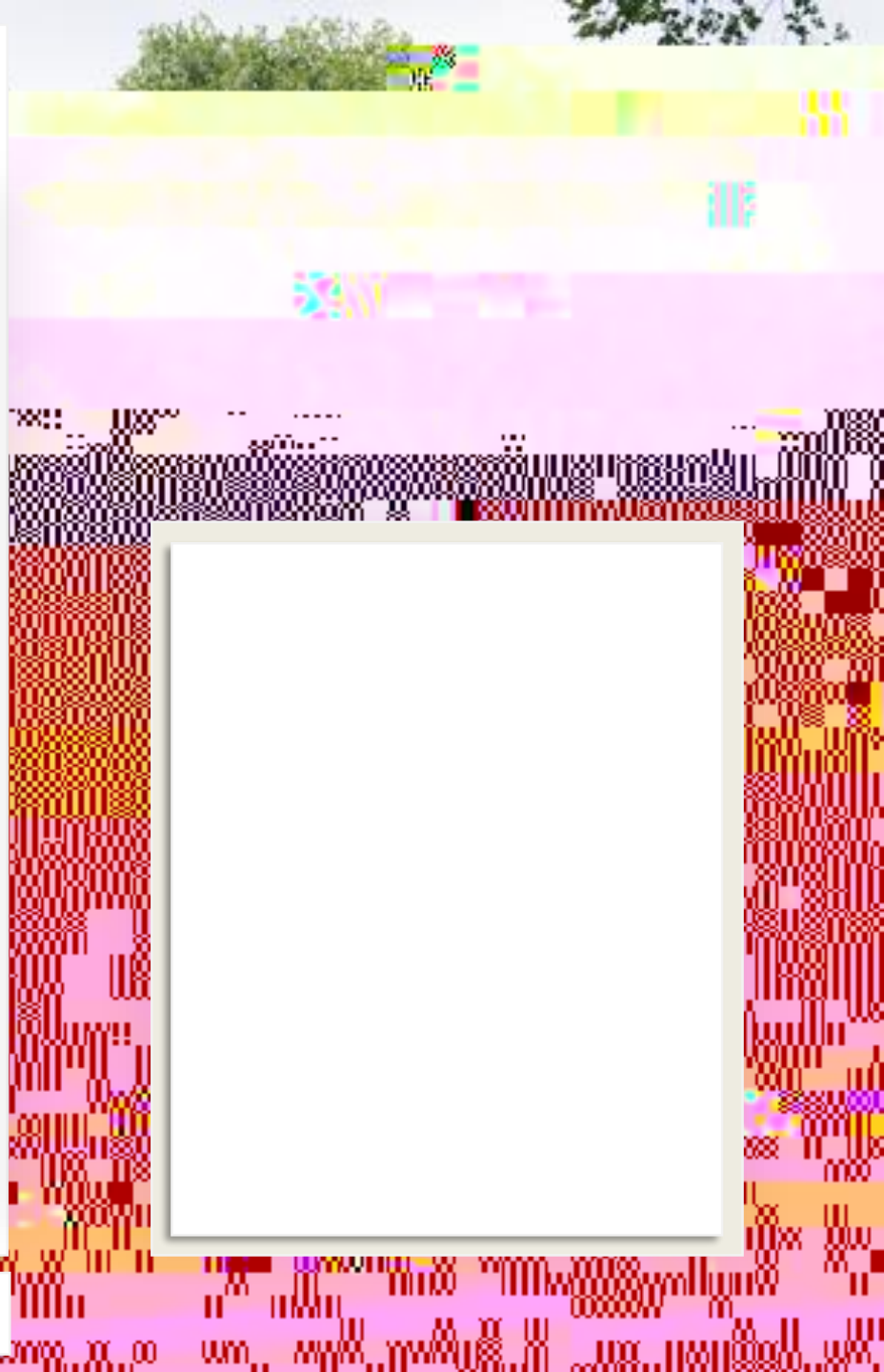
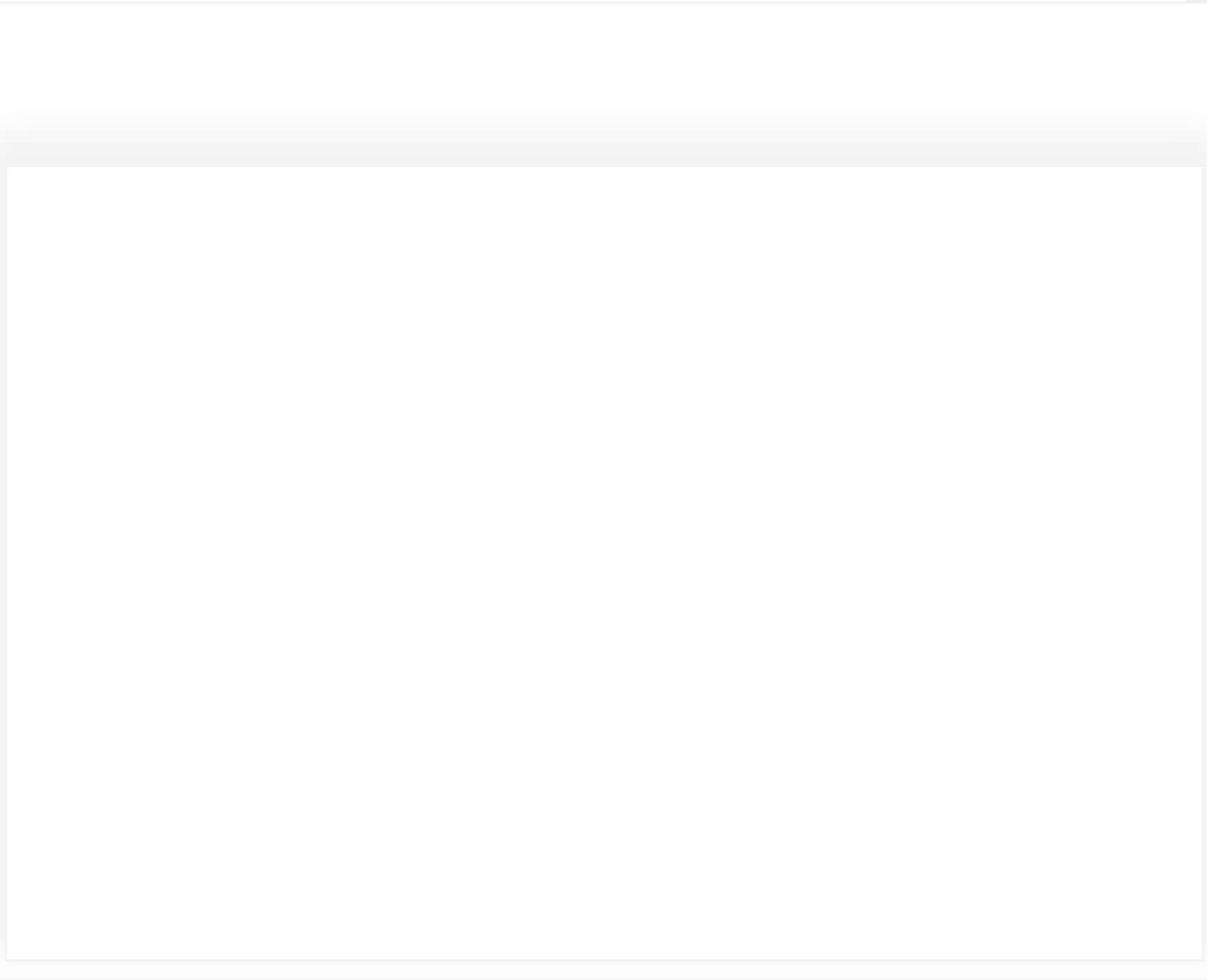
- Schools may use either preponderance of the evidence or clear and convincing.
- **Preponderance of the evidence** means a particular fact or event was more likely than not to have occurred.
- **Clear and convincing** means a particular fact or event was highly and substantially more likely than not to have occurred.

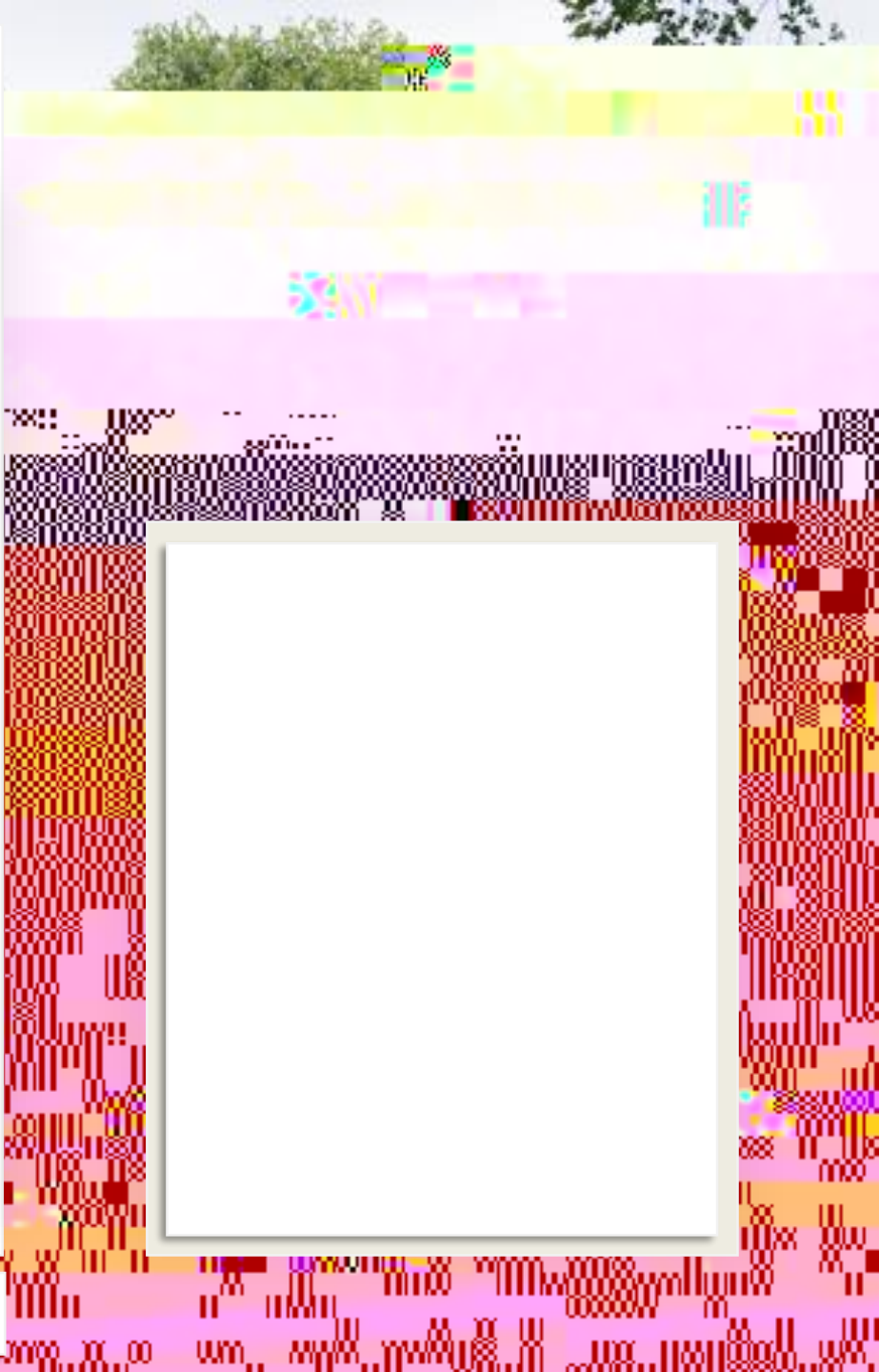
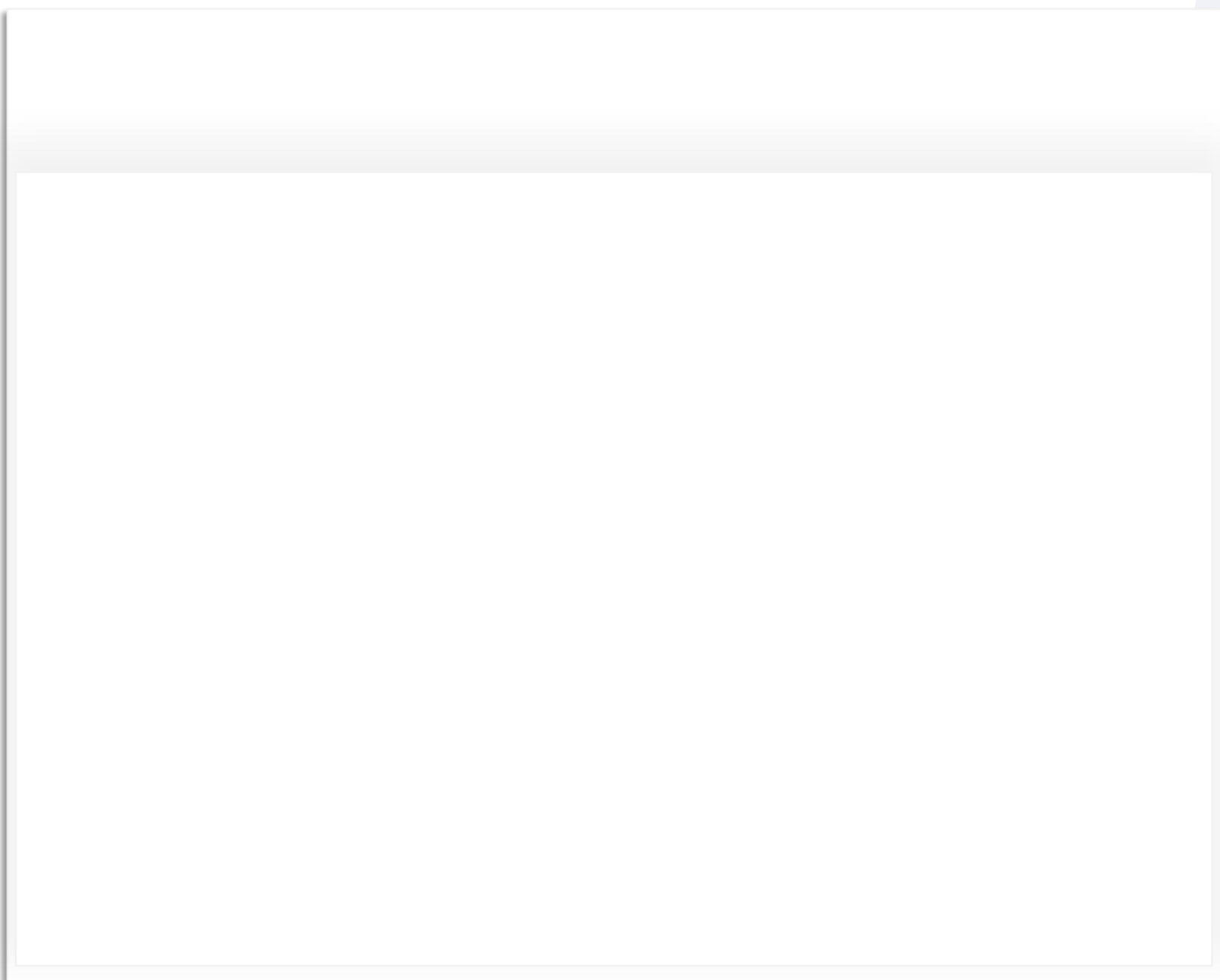
The Formal Complaint Framework

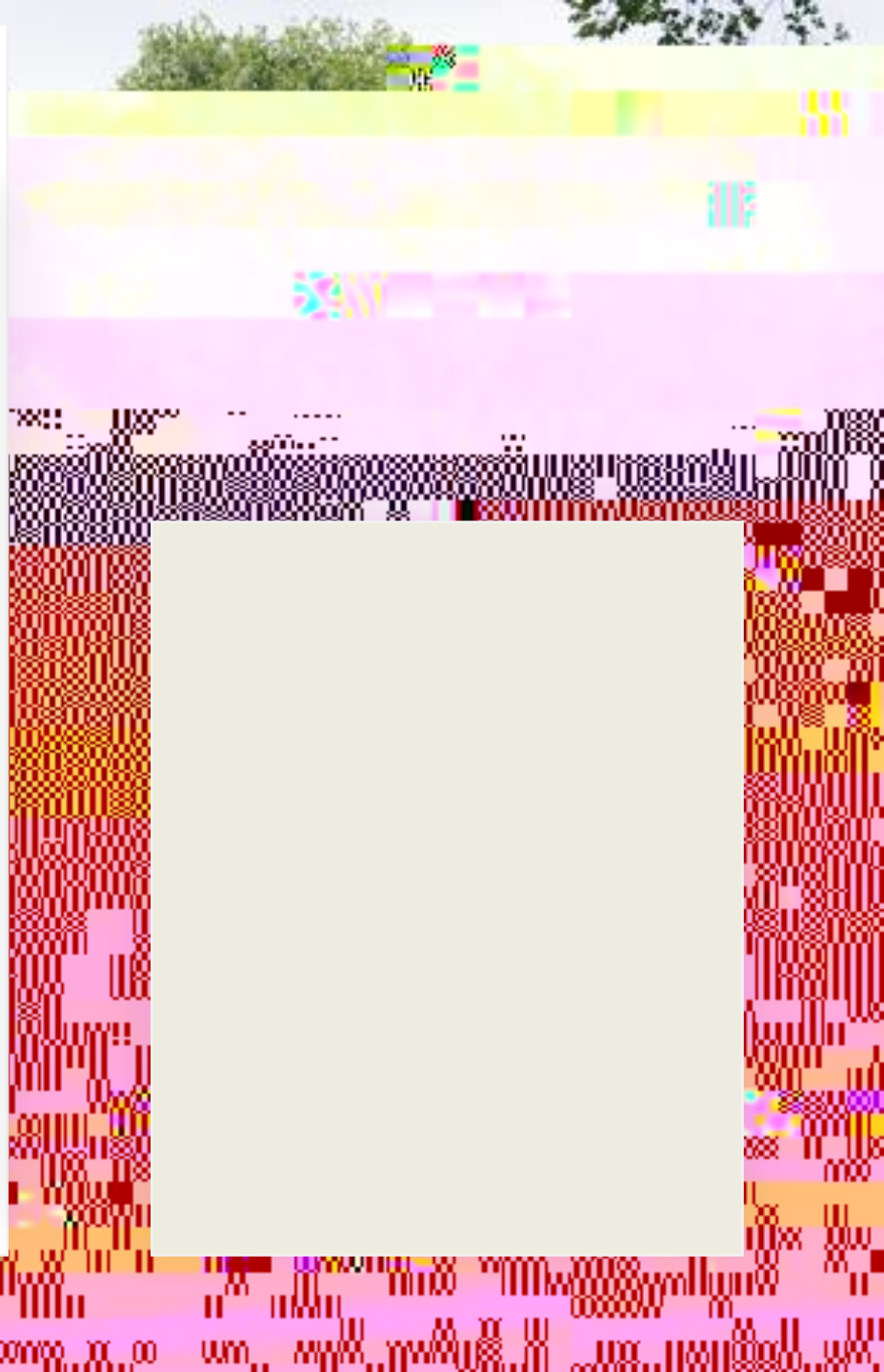
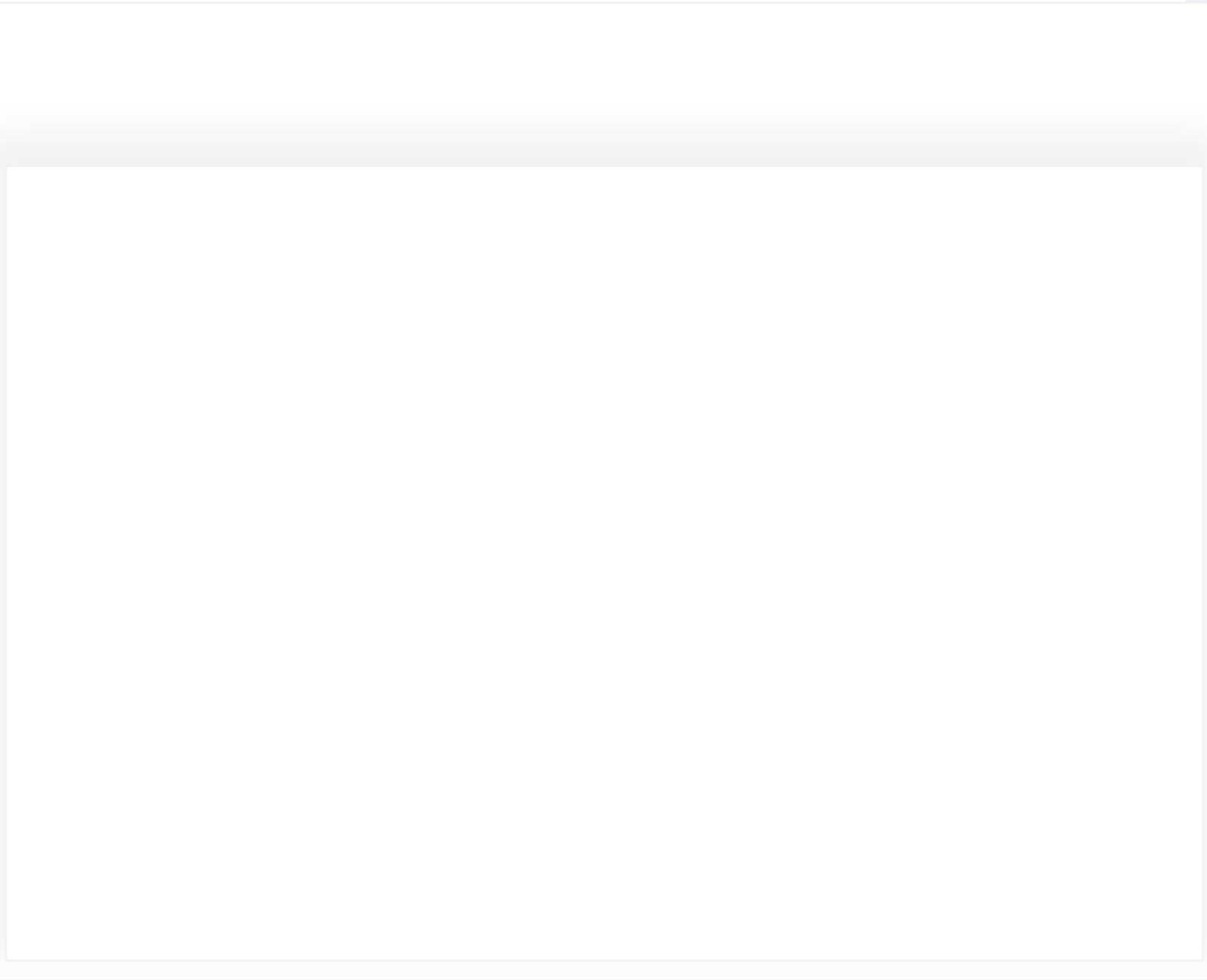
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Dismissal of Formal Complaints

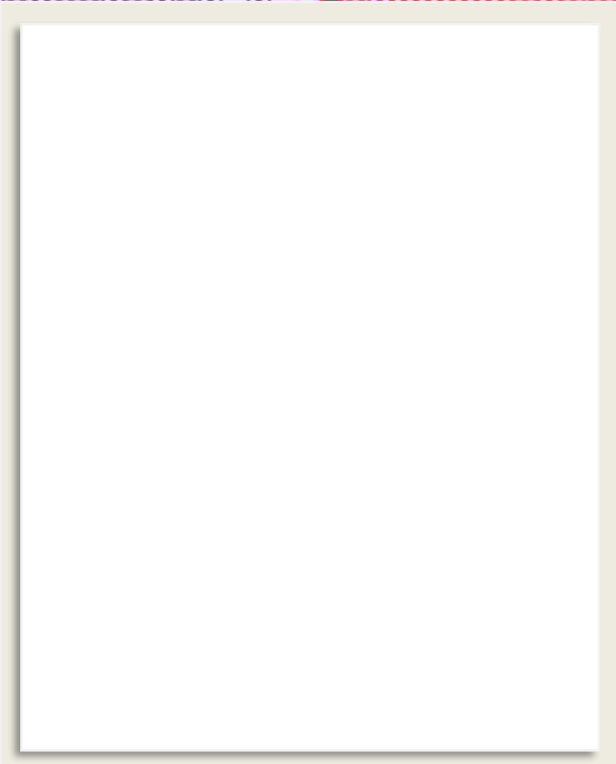
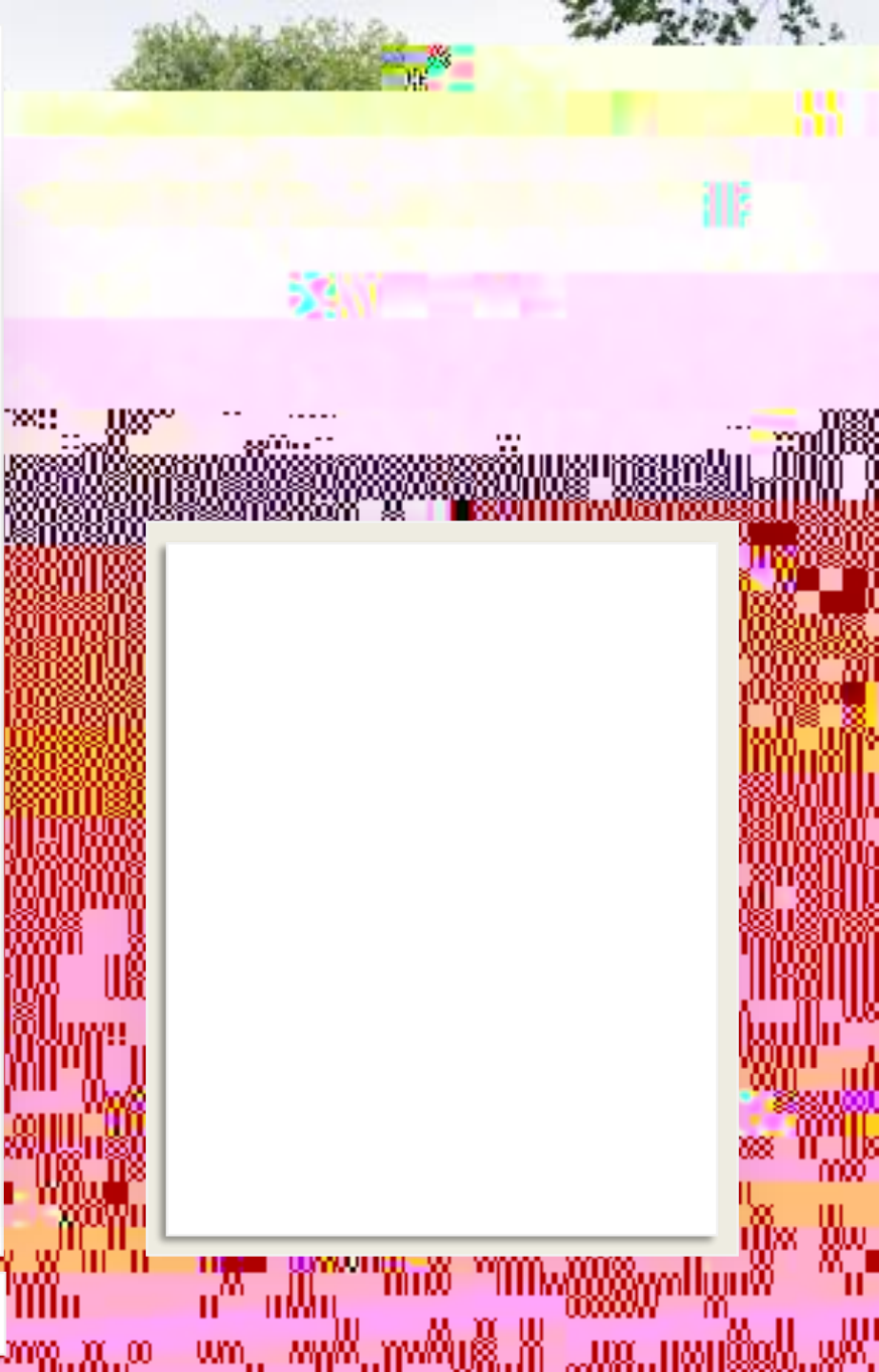
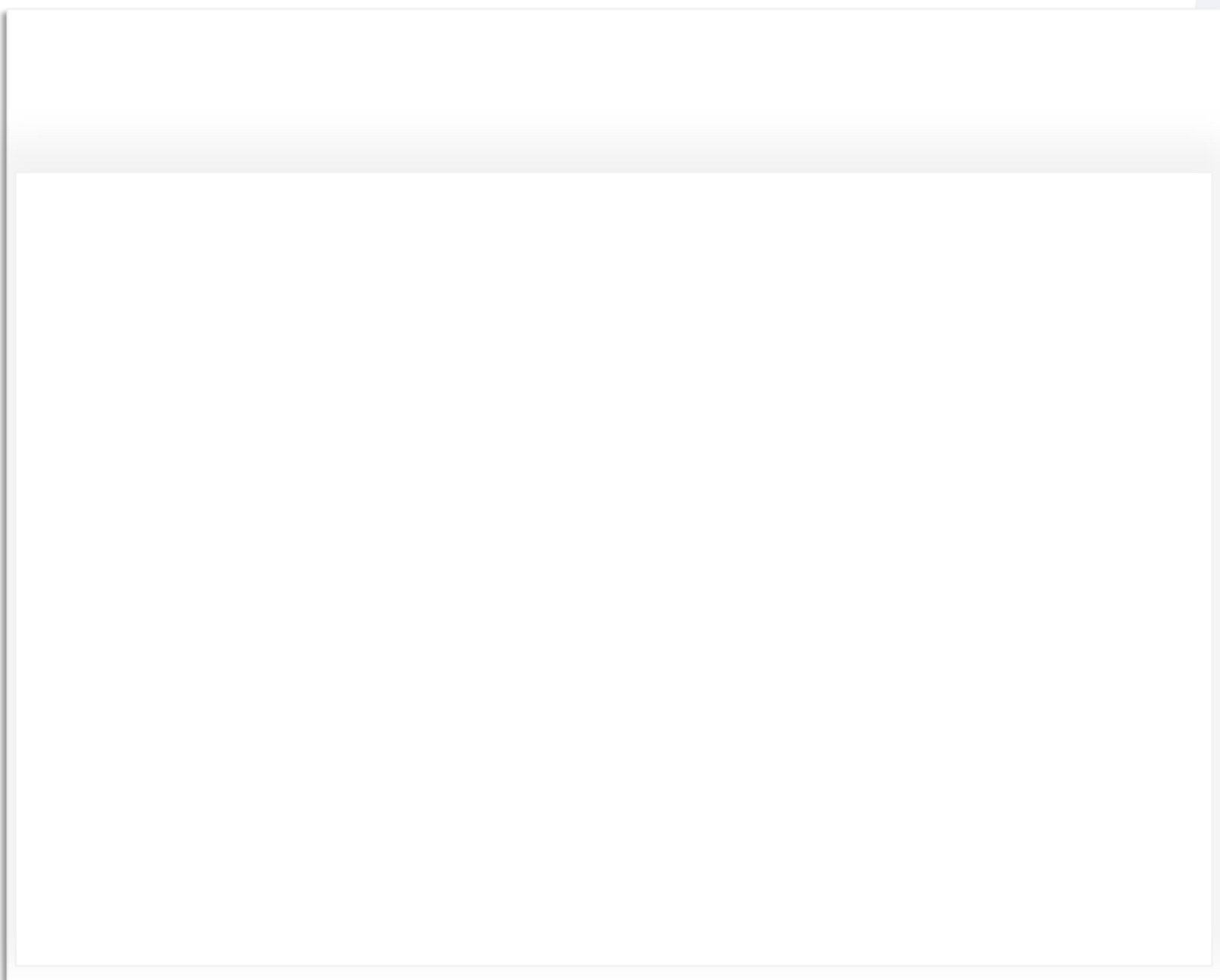
Consolidation of Formal Complaints







Dismissal of Formal Complaints



Optional Dismissal

Schools **may** dismiss a formal complaint of sexual harassment if, at any time:

- a complainant of

Dismissal of Complaints

“The § 106.45 grievance process obligates recipients to investigate and adjudicate allegations of sexual harassment for Title IX purposes; the Department does not have authority to require recipients to investigate and adjudicate misconduct that is not covered under Title IX, nor to **preclude a recipient from handling misconduct that does not implicate Title IX in the manner the recipient deems fit**. In response to commenters’ concerns, the final regulations clarify that dismissal is mandatory where the allegations, if true, would not meet the Title IX jurisdictional conditions...”

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Dismissal of Complaints

Must schools always investigate a formal complaint of sexual harassment?

- Yes.

Under what circumstances is a mandatory dismissal applied?

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Dismissal of Complaints

If a school is required to dismiss a complaint, can it still investigate and adjudicate the complaint under alternative procedures?

- Yes. Such a dismissal does not preclude action under another provision of the school's code of conduct.

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Office of Civil Rights

OCR Title IX Blog

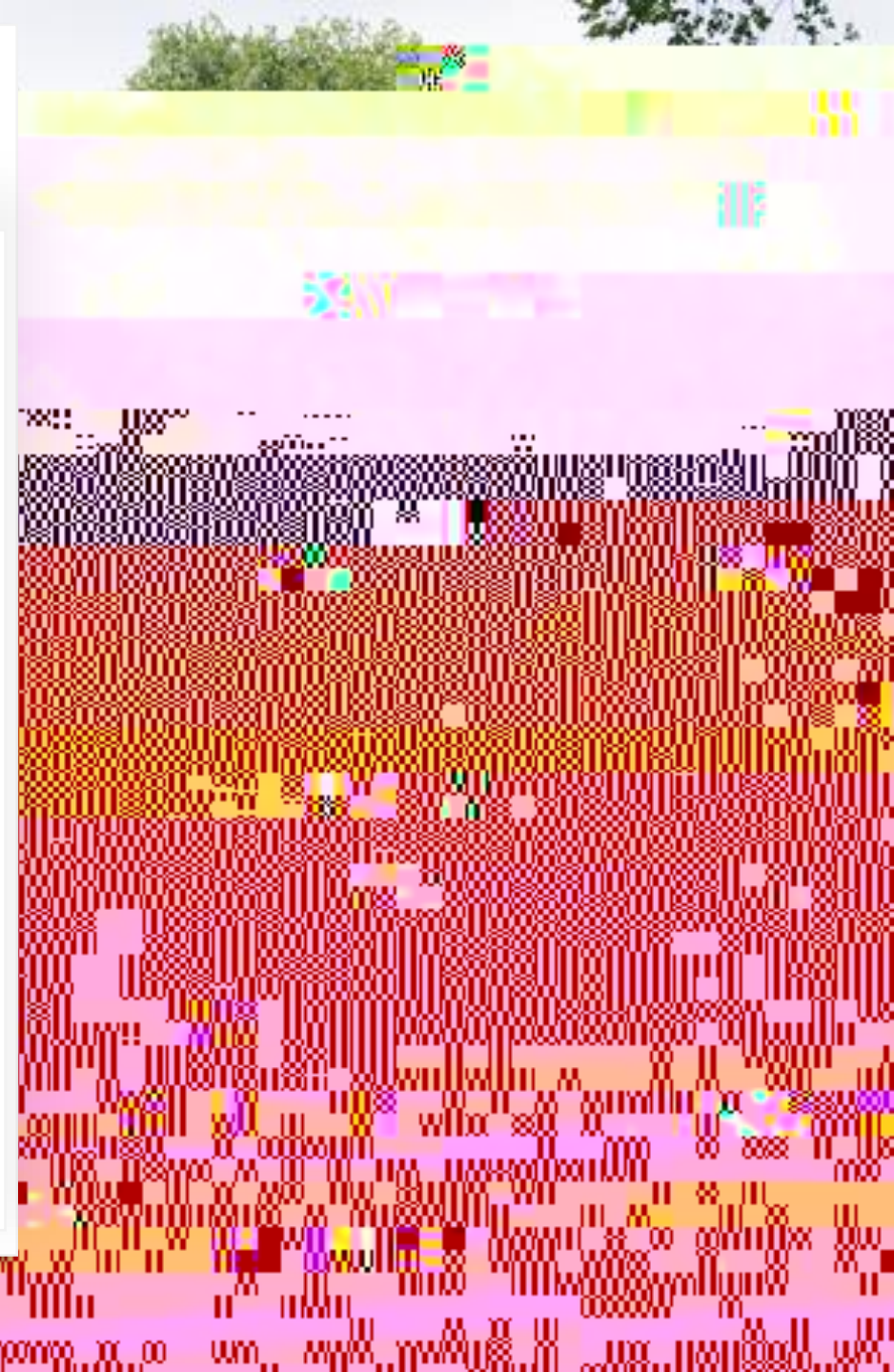
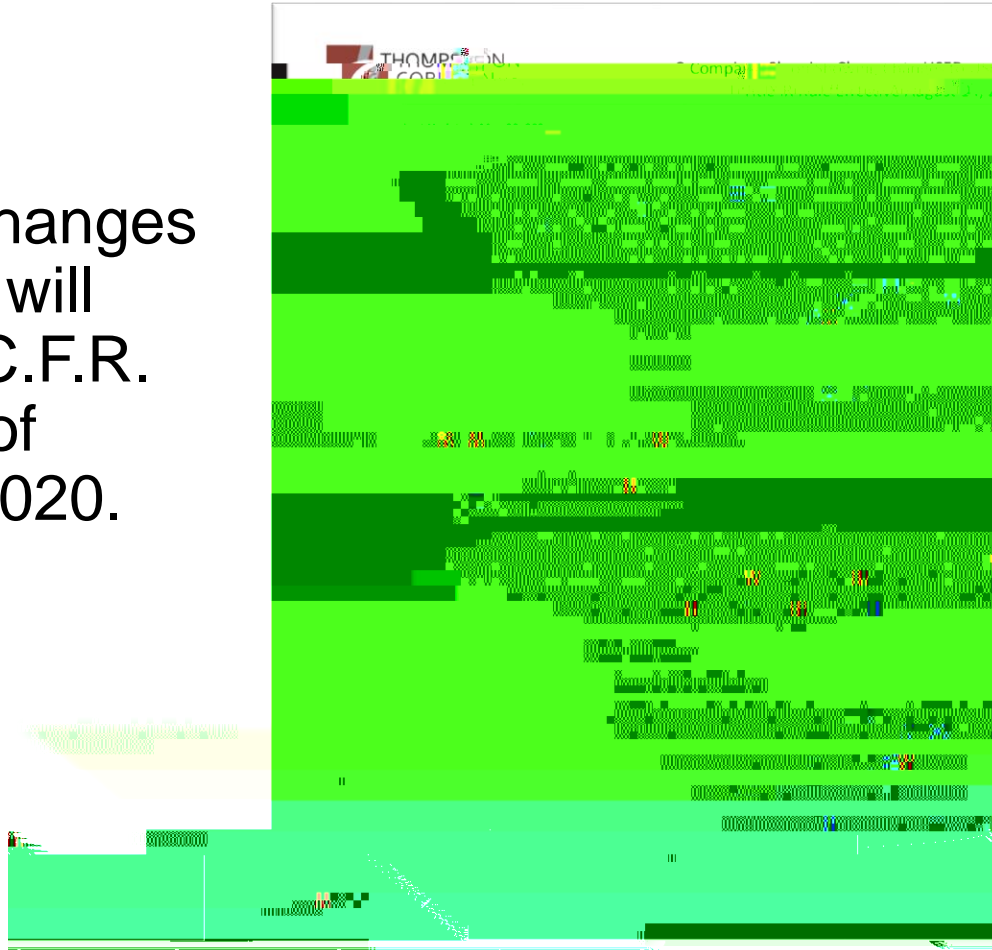
- Will include new guidance on a rolling basis.

OCR Email Address

Title IX Rule Comparison

Title IX Rule Comparison

- Shows the changes the new rule will make to 34 C.F.R. Part 106 as of August 14, 2020.



Higher Ed Webinar Series

2019 | 2020 Series Calendar

August 2019

[Examining the ED Approval Process for Higher Ed Mergers and Acquisitions](#)

September 2019

[Colleges Held for Ransom: Responding to a Ransomware Attack](#)

October 2019

Webinars on Demand

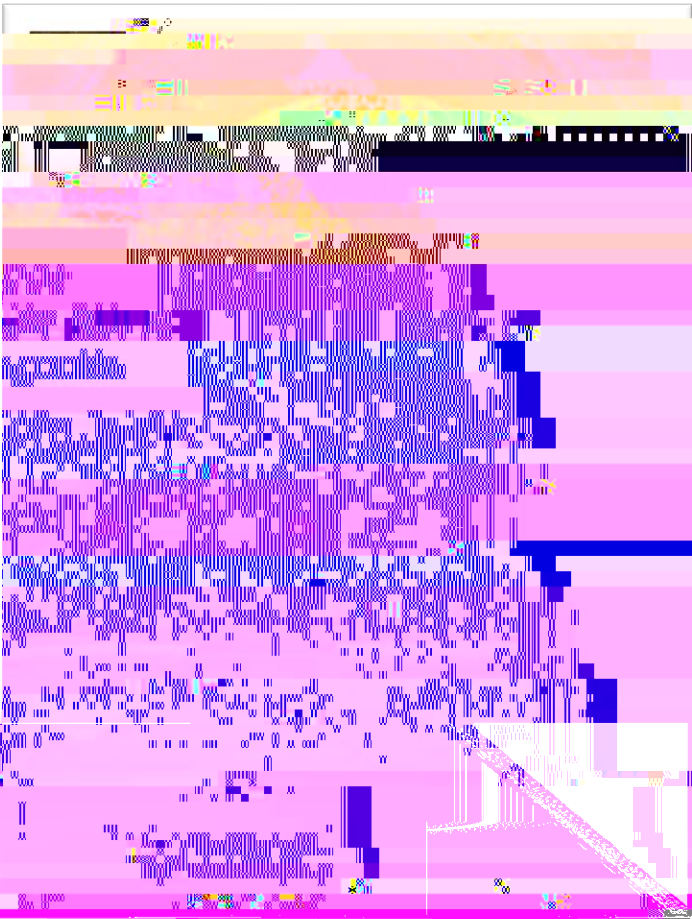
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REGucation (our blog)



TC Extra Credit



Professional Profile

Scott Goldschmidt

- Counsel, Higher Education Practice

Practice and Experience

- Former Deputy General Counsel for Catholic University, brings in-house perspective to legal, regulatory, and compliance issues faced by institutions.
- Routinely assists with matters involving discrimination law, student affairs, contract drafting and review, and policy development.

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Professional Profile

Aaron Lacey

- Partner and Chair, Higher Education Practice

Practice and Experience

- Provide regulatory counsel on federal, state, and accrediting agency laws and standards governing higher education.
- Represent institutions in administrative proceedings before state licensing entities, accrediting agencies, and the U.S. Department of Education, including matters arising from audits and investigations of the Office for Civil Rights.

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