



National Association of College and University Attorneys  
Presents:

## **The Title IX Evolution: Navigating the Expanded Terrain**

**Webinar**

**May 17, 2024**

12:00 PM – 2:00 PM Eastern  
11:00 AM – 1:00 PM Central  
10:00 AM – 12:00 PM Mountain  
9:00 AM – 11:00 AM Pacific

**Presenters:**

**Bindu Jayne**

Title IX Coordinator  
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**Patty Petrowski**

Associate Vice President and Deputy General Counsel  
University of Michigan

**Audrey Anderson**

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## The Title IX Evolution: Navigating the Expanded Terrain



**Bindu Jayne** currently serves as the Title IX Coordinator at Swarthmore College, where she is charged with coordinating the College’s centralized review, investigation, and resolution of reports of sexual assault and harassment and gender-based inequity. For over a decade, Bindu has worked in the equity and diversity space in higher education at such institutions as the University of Delaware, Appalachian State University, and Rowan University. In those positions, she oversaw offices responsible for responding to allegations of harassment and discrimination, providing educational opportunities about a variety of social justice initiatives, and creating inclusive campuses for students, faculty, and staff. Prior to her work in higher education, she began her legal career as an associate in the Philadelphia office of Morgan Lewis. Bindu received a B.A. from Cornell University, magna cum laude, and a J.D. from the University of Pennsylvania Law School.



**Patty Petrowski** is the University of Michigan’s Associate Vice President and Deputy General Counsel. She joined the U-M from a large law firm in Chicago, Illinois, where she worked from 2000-2014. As a partner in the firm’s Complex Litigation Group, she litigated, arbitrated, and tried cases involving a variety of subject matters, with significant experience representing major research universities and academic medical centers. Subject matters litigated include breach of contract, federal and state whistleblower statutes, contested trust and estate claims, insurance and reinsurance disputes, employment statutes, fraudulent transfer, religious discrimination, and securities fraud. In addition, Patty served as the co-chairperson of legal recruiting for the firm’s Chicago office and was a member of the firm’s Committee for the Retention and Promotion of Women.

In 2010, Patty was one of thirty-five demonstrated leaders competitively selected to participate in Leadership Greater Chicago, a year-long leadership development and networking program.

Patty received a J.D. degree from the University of Michigan Law School. She received a bachelor’s degree with High Honors in Political Economy from Michigan State University and was elected Phi Beta Kappa.



**Audrey Anderson** is Counsel at Bass, Berry & Sims and focuses her practice on representing colleges, universities and educational institutions. Drawing on her over 30 years of experience gained as outside litigation counsel, government counsel, and as the general counsel for a major research university, Audrey brings judgment, creativity and practicality to solving her client’s problems across a range of issues arising from the activities of students, faculty and others in learning, living, teaching, researching and working on a college campus. Whether an issue arises under the First Amendment or Title IX, occurs in the lab, the board

room or the athletics department, involves counseling, negotiation, or litigation, Audrey helps her clients find practical ways forward.

Her practice involves advising institutions on matters related to Title IX and other investigations; policy reviews and revisions; employment and labor issues, including tenure cases; statutory and regulatory compliance; admissions programs; OCR complaints; and litigation of all types. Audrey serves as a Title IX hearing officer and appellate officer for various universities and works objectively to evaluate evidence and conduct necessary hearings with involved parties. In addition and as needed, Audrey has stepped in to serve as interim general counsel at educational institutions while a search is conducted for a permanent replacement.

Prior to joining Bass, Berry & Sims, Audrey served as Vice Chancellor, General Counsel and University Secretary for Vanderbilt University. In this role, she was responsible for all legal advice provided to the university, including its medical center. Audrey also served in the Department of Homeland Security (DHS) beginning in 2009, and was Deputy General Counsel from September 2011 until she left the department in March 2013. Her duties there included advising on significant litigation and legislative matters across the department, and working with the Transportation Security Administration and the Federal Emergency Management Agency.

Prior to her term at DHS, Audrey was a partner in the education and litigation practice groups at Hogan & Hartson (now Hogan Lovells), where her practice focused on representing and advising public school districts in litigation and other matters, and representing clients in complex civil litigation and appellate litigation of all types. Audrey began her career serving as a law clerk for the Honorable Harold H. Greene of the U.S. District Court for the District of Columbia and for the Chief Justice of the United States, William H. Rehnquist.

Audrey currently serves as an adjunct faculty member at Vanderbilt Law School teaching higher education law and co-teaching a seminar on the Supreme Court. She is frequently called upon by the media to share her insights on changing laws and new rulings relevant to the higher education industry.

# Materials

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1. American Council on Education, Title IX Final Rule Outline of Key Provisions (Apr. 26, 2024).
2. The U.S. Department of Education, Office for Civil Rights, [Resource for Drafting Nondiscrimination Policies, Notices of Nondiscrimination, and Grievance Procedures under 2024 Amendments to the U.S. Department of Education’s Title IX Regulation](#)
3. [FACT SHEET: U.S. Department of Education’s 2024 Title IX Final Rule Overview](#)
4. [Brief Overview of Key Provisions of the Department of Education’s 2024 Title IX Final Rule](#)
5. [U.S. Department of Education Final Rule on Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance](#) (Apr. 22, 2024)
6. **\*New\*** Title IX Grid

## TITLE IX FINAL RULE OUTLINE OF KEY PROVISIONS

On April 19, 2024, the U.S. Department of Education released its 2024 Title IX Final Rule (the “final rule”), which makes amendments to regulations found at 34 C.F.R. 106.1 et seq.

### Effective Date

The final rule requires campuses to be in compliance by **August 1, 2024**.

### Scope and Jurisdiction Changes

- Unlike the current regulations issued in 2020, the final rule imposes obligations related not just to sexual harassment but to *all sex-based discrimination*.
  - It defines sex-based discrimination to include discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- Sexual harassment is now “sex-based harassment.” It continues to be comprised of:
  - Quid pro quo harassment,
  - Clery Crimes (sexual assault, stalking, dating violence, and domestic violence), and
  - Hostile environment harassment, which the final rule broadens to: “*Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity.*” [Emphasis added.]
- An institution’s education programs and activities subject to Title IX continue to include “all operations,” including off-campus properties controlled by recognized student groups, but the final rule extends Title IX’s application to all conduct “that is subject to the recipient’s disciplinary authority.”
- A complaint can be brought by (1) a student (defined in the final rule as anyone who has “gained admission”), (2) an employee, or (3) a third party who was participating in the institution’s programs or activities *when the alleged conduct took place*, even after that person stops participating in the institution’s programs or activities. There is no time limitation on when a complaint may be brought.

### Protections for Transgender Students; Athletics

- The final rule creates a new “*de minimis* harm” standard, which states it is discrimination on the basis of sex to treat individuals differently or separate them on the basis of sex, including on the basis of gender identity, when such treatment or separation causes “more than *de minimis* harm,” unless such different or separate treatment is permitted under a limited exception.
  - Exception: In circumstances where institutions are already permitted by Title IX to treat individuals differently or separate them on the basis of sex (such as sex-separate housing, Greek life, and similar), the *de minimis* harm standard does not apply.

This outline of the key changes to the Title IX regulations was prepared for ACE by Saul Ewing LLP and is subject to revision. (April 26, 2024) 1

- Preventing a person from participating in an activity consistent with that person’s gender identity definitionally subjects the person to “more than *de minimis* harm.”
- The final rule does not address transgender student participation in intercollegiate, club, or intramural athletics; the preamble makes clear that the section in the regulations pertaining generally to transgender participation in programs and activities **does not apply to athletics participation**.
  - Rulemaking regarding participation of transgender students in athletics is in process but delayed.

## Change to the Standard for When the Institution Is on Notice

- An institution with “knowledge” of conduct that “may constitute sex discrimination” has an obligation to respond promptly and effectively by following the processes described in the regulations.
- Knowledge is imputed to the institution if *any employee* is aware of the conduct at issue.

## Updated Reporting Obligations

- Institutions are allowed to use their discretion to designate confidential employees.
- All nonconfidential employees who have (1) authority to institute corrective measures or (2) responsibility for administrative leadership, teaching, or advising **must** notify the Title IX coordinator when the employee learns of conduct that “may constitute sex discrimination.”
- All other nonconfidential employees **must:**
  - Report known potential discrimination to the Title IX coordinator, **or**
  - Provide the contact information of the Title IX coordinator and information about how to make a complaint of sex discrimination.
    - Institutions may choose to require such employees to report, rather than refer.
- Reporting obligations apply to information about discrimination affecting students, employees, or third parties participating or attempting to participate in the institution’s programs or activities.

## Major Changes to Investigations and Adjudications (the “Grievance” Process and Procedures)

- Holding a live hearing is now optional, as long as the institution provides a process that enables the decision-maker to question parties and witnesses and adequately assess their credibility (if in dispute and relevant).
  - In sex-based harassment cases with a student complainant or respondent, each party must have the opportunity to propose relevant and not otherwise impermissible questions and have them asked.
    - In a live hearing, questions may be asked by the decision-maker or a party’s advisor, in the discretion of the institution.
    - In the absence of a live hearing, the meetings at which such questions are posed by the decision-maker or investigator must be recorded or transcribed, with the recording or transcription provided to the parties for the purpose of posing follow-up questions, if any.

- The grievance procedures for sex discrimination cases more broadly (including sex-based harassment cases in which neither the complainant nor the respondent is a student) are separate and even less restrictive than those applicable to student-involved sex-based harassment cases.
  - In cases outside the context of student-involved sex-based harassment, institutions can also restrict the participation of advisors and provide an accurate description of the evidence rather than directly providing the evidence itself.
    - Overall, the regulations reflect a shift towards differentiating treatment of students and employees. Notably, the regulations explicitly permit institutions to require employees—but not students—to participate as a witness in, or otherwise assist with, an investigation or adjudication of sex discrimination (including student-involved sex-based harassment).
- There remains an obligation to provide an equal opportunity for parties to access *relevant* evidence, and evidence which is not otherwise impermissible (i.e., evidence which is privileged, or which is, with limited exception, related to a complainant’s sexual interests or prior sexual conduct), but parties no longer have a right to access the broader category of all *directly related* evidence.
- Informal resolution remains a robust alternative to investigation and adjudication, and it has been expanded as an option to cases of alleged sex-based harassment of a postsecondary student by an employee.

## New Pregnancy-Related Provisions

- Discrimination on the basis of pregnancy or related conditions is explicitly prohibited.
  - “Pregnancy or related conditions” includes pregnancy, childbirth, termination of a pregnancy, or lactation or medical conditions or recovery related to these conditions.
- If a student discloses a pregnancy or related condition to an employee, unless the employee reasonably believes that the Title IX coordinator has already been notified, the employee must:
  - Promptly provide the student with the Title IX coordinator’s contact information, and
  - Inform the student that the Title IX coordinator can coordinate reasonable modifications to preserve their equal access to the institution’s education program or activity.
    - Modifications to accommodate pregnancy or related conditions are not reasonable if they fundamentally alter the nature of the education program or activity.
- Students have the right to access voluntary leaves of absence, with the student to be reinstated to the academic status they held before the leave began.
- Students also have the right to access a lactation space, which:
  - Cannot be a bathroom, and
  - Must be clean, shielded from view, and free from intrusion by others.
- Similar rights are provided to employees.

## Training Requirements

- *All employees* must receive training at the time of hire and annually that addresses:



- The institution’s obligation to address sex-based discrimination;
  - The scope of conduct that constitutes sex-based discrimination (including the definition of sex-based harassment); and
  - The institution’s reporting requirements for employees (*see* “Updated Reporting Obligations,” above).
- Title IX coordinators, investigators, decision-makers, informal resolution facilitators, and others with (1) responsibility for implementing the institution’s grievance procedures, or (2) the authority to modify or terminate supportive measures must be trained annually on a variety of enumerated topics specific to their positions.
  - Institutions are no longer required to publicly post training materials, but they will need to have a process and protocol for enabling them to be reviewed upon request.

## Expanded Title IX Coordinator Responsibilities

- Institutions are required to identify a single Title IX coordinator with ultimate responsibility for Title IX compliance but may delegate, or permit the Title IX coordinator to delegate, specific duties (for example, establishing a point of contact for the facilitation of accommodations for pregnancy or related conditions, or designating an individual with responsibilities to individual schools or campuses).
- Title IX coordinators are now formally required to (1) monitor the institution for barriers to reporting sex discrimination and (2) take steps reasonably calculated to address such barriers.
- Title IX coordinators are also now specifically tasked with preventing discrimination against, and coordinating accommodations to ensure access for, students who are pregnant or have related conditions.
- Enhanced training requirements include specific training on topics including the Title IX coordinator’s obligations to:
  - Respond promptly and effectively to any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects;
  - Support students who are pregnant or have related conditions;
  - Offer and coordinate supportive measures to students affected by sex discrimination, including sex-based harassment;
  - Satisfy recordkeeping requirements;
  - Treat complainants and respondents equitably;
  - Notify affected individuals of their rights; and
  - Initiate grievance procedures in response to complaints, including determining whether to initiate a complaint as Title IX coordinator.
    - A list of factors to consider in making such a determination is now provided.

## National Association of College and University Attorneys

### Title IX Regulations 2024

[Definitions](#)   [Jurisdiction](#)   [What Triggers an Institution’s Obligations](#)   [Dismissals Prior to Formal Grievance Process](#)  
[General Requirements for Formal Grievance Process](#)   [LGBTQI+](#)  
[Parental, Family, and Pregnancy Related Protections \(Students\)](#)   [Pre-Hearing Investigations](#)   [Live Hearing](#)   [Appeals](#)  
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Topic	Final Regulation	Selected Preamble Excerpts <i>Note: Preamble does not have legal or regulatory force</i>	Regulation Section or Preamble Page No.
<b>Definitions</b>			
Administrative Law Judge	[A] person appointed by the reviewing authority to preside over a hearing held under § 106.81.		§106.2
		Difference Between Hearings Under § 106.81 and §§ 106.45 and 106.46: A hearing under § 106.81 is distinct from a hearing that may be conducted as part of a recipient’s Title IX grievance procedures under §§ 106.45 or 106.46, neither of which requires a live hearing or participation of an administrative law judge.	p. 33
Administratively Separate Unit	[A] school, department, or college of an educational institution (other than a local educational agency), admission to which is independent of admission to any other component of such institution.		§106.2
	For purposes only of this section and		§106.15

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	subpart C, each administratively separate unit shall be deemed to be an educational institution.		
Admission	[S]election for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.		§106.2
Applicant	(As used in the definition of educational institution in this section and as used in § 106.4) means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.		§106.2
Assistant Secretary	[T]he Assistant Secretary for Civil Rights of the Department.		§106.2
Advisors		“[A]dvisors,” as used in § 106.45(b)(5), refers to any individual who is acting as an advisor to the party for purposes of the grievance procedures.	p. 653
Authorized Legal Representative		[A]n individual who is legally authorized to act on behalf of a certain minor, such as a foster parent caring for a youth in out-of-home care but who is not necessarily deemed a parent or guardian.	p. 224
		Does not refer to legal counsel.	p. 816
Complainant	(1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this		§106.2

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	part; or		
		[T]he Department agrees that Title IX can be violated not only by commission of an act but also by a failure to act.	p. 44
		[I]t is appropriate to apply the same definition of “complainant” to all forms of sex discrimination, not just sex-based harassment.	p. 37
	(2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part and who was participating or attempting to participate in the recipient’s education program or activity at the time of the alleged sex discrimination.		§106.2
		Title IX protects all “person[s]” from sex discrimination, 20 U.S.C. 1681(a)(1), and the relief it affords is not limited to persons who are presently experiencing sex discrimination as long as the discrimination they allegedly experienced was within the scope of the statute’s protections at the time it occurred. This means that former students and employees may seek relief under Title IX if they were previously “excluded from participation in,” “denied the benefits of,” or “subjected to discrimination under any education program or activity receiving Federal financial assistance.”	p. 38
		[S]omeone who is not a student (or person authorized to act on behalf of a student) or an employee could still be a complainant if they were participating or attempting to participate in the recipient’s education program or activity as, for example, a prospective student, or a guest speaker.	p. 41

Topic	Final Regulation	Selected Preamble Excerpts <i>Note: Preamble does not have legal or regulatory force</i>	Regulation Section or Preamble Page No.
		[C]omplainants are not limited to a university’s enrolled students; they can include members of the public who “are either taking part or trying to take part of a funding recipient institution’s educational program or activity” when they attend events such as campus tours, sporting events, and lectures, as long as the alleged discrimination relates to the individual’s participation or attempted participation in such program or activity.	p. 42
		Volunteers Covered by the Definition of Complainant: [E]nsuring that volunteers can participate free from sex discrimination should aid in recruitment and retention of such resources, not hinder it.	p. 40
		Postdoctoral Trainee or Fellow as Complainant: The Department declines to specify in the final regulations that a postdoctoral trainee or fellow may be a complainant...but that such an individual could fall into the definition of complainant as a student, employee, or other individual participating or attempting to participate in the recipient’s education program or activity, particularly if—as the commenter suggests—they are training under a recipient postsecondary institution at the time of the alleged sex discrimination.	p. 35
	[A]n oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or this part.		§106.2
		[A] complainant need not use any particular “magic words”—such as the phrase “initiate the recipient’s grievance	p. 46

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		procedures”—in order to trigger a recipient’s obligation to investigate the matter.	
		[A]llowing complaints to be made orally is necessary for a recipient to ensure it is learning of and addressing all sex discrimination in its education program or activity....	p. 49
		[B]y saying that a communication constitutes a complaint when it “objectively” can be understood as a request to investigate and make a determination, the Department means it can be understood as such by a reasonable person. This is a fact-specific determination, but in general amounts to more than a student’s general questions about grievance procedures.	p. 46
		Under the revised definition of “complaint,” whether oral or written, if the request can be objectively understood as a request for the recipient to investigate and make a determination about alleged sex discrimination under Title IX, then the recipient must interpret it as a request to initiate the grievance procedures.	p. 53
		[N]othing in these regulations prevents a complainant from memorializing their oral complaint in writing or confirming in writing that the recipient received their complaint.	p. 54
		Training on Tracking Oral Allegations: Regarding training for recipient employees on keeping track of oral allegations, the Department declines to specify any more than what is required by the final regulations at § 106.8(d).	p. 54
		While it might be helpful for employees other than the Title IX Coordinator, such as professors, to keep careful notes or commit oral allegations to writing, the Department declines to require that they do so or to mandate that all employees receive specific training on recordkeeping	p. 59
Confidential Employee		[A] confidential employee refers to an employee of the recipient.	p. 348

<b>Topic</b>	<b>Final Regulation</b>	<b>Selected Preamble Excerpts</b> <i>Note: Preamble does not have legal or regulatory force</i>	<b>Regulation Section or Preamble Page No.</b>
		[A] potential complainant who wants confidential support has the discretion to seek out a confidential employee, if provided by the recipient.	p. 55
	(1) An employee of a recipient whose communications are privileged or confidential under Federal or State Law. The employee’s confidential status, for purposes of this part, is only with respect to information received while the employee is functioning within the scope of their duties to which a privilege or confidentiality applies;		§106.2
		Required State Law Disclosures: [I]f State law requires a disclosure, such as mandated reporting laws regarding sexual assault of children, the disclosure is permissible under Title IX unless it would otherwise conflict with Title IX or this part.	p. 354
	(2) An employee of a recipient whom the recipient has designated as confidential under this part for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee’s confidential status is only with respect to information received about sex discrimination in connection with providing those services; or		§106.2
		Examples of Confidential Employees Under (2): These	p. 356

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		confidential employees may include, but are not limited to, guidance counselors, organizational ombuds, or staff within an on-campus sexual assault response center. The Department also confirms that these final regulations do not impose any limit on the number of employees a recipient can designate as confidential.	
	(3) An employee of a postsecondary institution who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination—but the employee’s confidential status is only with respect to information received while conducting the study.		§106.2
		Types of Researchers: [T]he third category of the definition of “confidential employee” includes researchers who are employed by one recipient and are conducting research studies that were approved by another recipient’s IRB.	p. 358
		Compliance with §106.44(d)(2): The Department declines to specifically require researchers who fall within the third category of confidential employees to provide the information required by § 106.44(d)(2) as part of their informed consent process because doing so would, in the Department’s opinion, inappropriately interfere with the researchers’ independence and professional judgment in carrying out their studies, though the Department notes that nothing prohibits these employees from doing so.	p. 369
Confidential Resources		Confidential resources include those who provide privileged and confidential support, such as physicians and clergy, regardless of whether they are employed by a recipient. Confidential resources	p. 349



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		also include individuals who are employed by a recipient and meet the definition of “confidential employee” in § 106.2, including those designated by the recipient to provide confidential services to individuals who may have experienced or been accused of engaging in conduct that may constitute sex discrimination.	
		Unlike a confidential employee, a confidential resource does not need to be an employee of the recipient. The confidential resource must, however, have a confidential status under a Federal, State, or local law, or by virtue of their profession.	p. 652
Department	[T]he Department of Education.		§106.2
Disciplinary Sanctions	[C]onsequences imposed on a respondent following a determination under Title IX that the respondent violated the recipient’s prohibition on sex discrimination.”		§106.2
		[Definition] does not specify what consequences a recipient can or must impose on a respondent or what factors to consider when determining what disciplinary sanction to impose.	p. 60
		[A]ny person, including third parties, may be considered a respondent subject to disciplinary sanctions.	p. 61
		[T]he Department’s definition of “disciplinary sanctions” applies to all recipients, including elementary schools and secondary schools, and does not set forth specific requirements for disciplinary sanctions at any level.	p. 61
Educational Institution	[A] local educational agency (LEA) as defined by section 8101 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (20 U.S.C.		§106.2

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	7801(30)), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education.		
Elementary School	[E]lementary school as defined by section 8101 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (20 U.S.C. 7801(19)), and a public or private preschool.		§106.2
Federal Financial Assistance	[A]ny of the following, when authorized or extended under a law administered by the Department: (1) A grant or loan of Federal financial assistance, including funds made available for: (i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and (ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment		§106.2

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	to that entity.		
	(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.		§106.2
	(3) Provision of the services of Federal		§106.2
	(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.		§106.2
	(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.		§106.2
Gender Identity		[D]escribe[s] an individual’s sense of their gender, which may or may not be different from their sex assigned at birth.	p. 1105
Institution of	[A]n institution which:		§106.2

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Graduate Higher Education	(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or		
	(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or		§106.2
	(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.		§106.2
Institution of Professional Education	[A]n institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary.		§106.2
Institution of Undergraduate Higher Education	(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally		§106.2

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	creditable toward a baccalaureate degree; or		
	(2) An institution offering academic study leading to a baccalaureate degree; or		§106.2
	(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.		§106.2
Institutional of Vocational Education	[A] school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.		§106.2
Lactation Space	[M]ust be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.		§106.40(b)(3)(v)
LGBTQI+		LGBTQI+ refers to “people who are lesbian, gay, bisexual, transgender, queer, questioning, asexual, intersex, nonbinary, or describe their sex characteristics, sexual orientation, or gender identity in another similar way.”	p. 20

<b>Topic</b>	<b>Final Regulation</b>	<b>Selected Preamble Excerpts</b> <i>Note: Preamble does not have legal or regulatory force</i>	<b>Regulation Section or Preamble Page No.</b>
Licensed		Under § 106.40(b)(3)(iv) “licensed” broadly encompasses any healthcare professional who is qualified to practice in their State.	p. 1030
Online Harassment		Online harassment can include, but is not limited to, unwelcome conduct on social media platforms such as sex-based derogatory name-calling, the nonconsensual distribution of intimate images (including authentic images and images that have been altered or generated by artificial intelligence (AI) technologies), cyberstalking, sending sex-based pictures or cartoons, and other sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity.	p. 143
		A recipient must evaluate online conduct with the same factors that are used to determine whether in-person conduct creates a hostile environment.	p. 143
Parental Status	[A]s used in §§ 106.21(c)(2)(i), 106.37(a)(3), 106.40(a), and 106.57(a)(1), means the status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is: (1) A biological parent; (2) An adoptive parent; (3) A foster parent; (4) A stepparent; (5) A legal custodian or guardian; (6) In loco parentis with respect to		§106.2

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	such a person; or (7) Actively seeking legal custody, guardianship, visitation, or adoption of such a person.		
		Parental Authority: The definition of “parental status” in § 106.2 does not bestow parental authority on any person. As a general matter, parental rights are determined by State law, and this definition does not abrogate those rights.	p. 950
Party	[A] complainant or respondent.		§106.2
		The term “party” does not include a Title IX Coordinator who initiates a complaint under § 106.44(f)(1)(v) or another participant in Title IX grievance procedures, such as a witness or adjudicator.	p. 185
Pattern Witness		[W]itnesses who were allegedly sexually harassed or assaulted by the same respondent....	p. 678
Peer Retaliation	[R]etaliation by a student against another student.		§106.2
		Examples of Conduct: [S]uch as teammates vandalizing a student’s locker because he complained to school administrators about unequal opportunities for girls or a student council president threatening to remove a member from a committee if they serve as a witness in a Title IX investigation of the president’s friend.	p. 1184
		[M]erely criticizing another student’s decision to participate in Title IX grievance procedures would not alone constitute peer retaliation under the final regulations.	p. 1185
Postsecondary Institution	[A]n institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education,		§106.2

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	or an institution of vocational education that serves postsecondary school students.		
		Institution of Vocational Education: [T]he definition includes an institution of vocational education that serves postsecondary students because an institution of vocational education could serve either secondary school students or postsecondary students.	p. 63
Pregnancy or Related Conditions	(1) Pregnancy, childbirth, termination of pregnancy, or lactation;		§106.2
	(2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or		§106.2
		Examples of Medical Conditions: [S]uch conditions include but are not limited to conditions identified in the July 2022 NPRM and by commenters, such as pregnancy-related fatigue, dehydration (or the need for increased water intake), nausea (or morning sickness), increased body temperature, anemia, and bladder dysfunction; gestational diabetes; preeclampsia; hyperemesis gravidarum ( <i>i.e.</i> , severe nausea and vomiting); pregnancy-induced hypertension (high blood pressure); infertility; recovery from childbirth, miscarriage, or abortion; ectopic pregnancy; prenatal or postpartum depression; and lactation conditions such as swelling or leaking of breast tissue or mastitis.	p. 930
	(3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.		§106.2
Pregnant Workers Fairness Act		The PWFA requires covered employers to make reasonable accommodations for a worker’s known limitations related to	p. 1064



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(PWFA)		pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship.	
Program or Activity and Program	[A]ll of the operations of – (1)(i) A department, agency, special purpose district, or other instrumentality of a State or local government; or (ii) The entity of a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;		§106.2
	(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or (ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;		§106.2
	(3)(i) An entire corporation, partnership, other private organization, or an entire sole proprietorship— (A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or		§106.2

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	(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or (ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or		
	(4) Any other entity that is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition, any part of which is extended Federal financial assistance.		§106.2
Prior Sexual Conduct		[A]ny conduct prior to the conclusion of the grievance procedures and is not limited to the conduct that occurred prior to the alleged incident of sex-based harassment.	p. 680
Recipient	[A]ny State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit,		§106.2

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	successor, assignee, or transferee thereof.		
Relevant	[R]elated to the allegations of sex discrimination under investigation as part of the grievance procedures under § 106.45, and if applicable § 106.46.		§106.2
	Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.		§106.2
		Credibility Determinations: [T]he Department declines to state that all evidence that aids in credibility determinations is relevant, as there may be evidence that arguably pertains to credibility but is irrelevant to the allegations of sex discrimination	p. 173
		Excluding Questions or Evidence: [A] recipient will still be permitted to exclude questions or evidence that are related to allegations of sex discrimination but would not aid a decisionmaker in determining whether the alleged sex discrimination occurred.	p. 174
Remedies	[M]easures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient's education program or activity limited or denied by sex discrimination.		§106.2
	These measures are provided to restore		§106.2

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	or preserve that person’s access to the recipient’s education program or activity after a recipient determines that sex discrimination occurred.		
		Example of Remedies: [E]nsuring that a complainant can move safely between classes and while at school or on campus such as by providing a campus escort or allowing a student to park in the teachers’ parking lot; making changes to class schedules and extracurricular activities to ensure the complainant and respondent are separated; making adjustments to student housing; providing services, including medical support and counseling; providing academic resources and support; reviewing any disciplinary actions taken against the complainant to determine whether there is a causal connection between the sex-based harassment and the misconduct; providing reimbursement for professional counseling services; making tuition adjustments; and any other remedies it deems appropriate.	p. 176
Respondent	[A] person who is alleged to have violated the recipient’s prohibition on sex discrimination.		§106.2
		[O]nly a person in their individual capacity can be a respondent in a Title IX grievance procedure.	p. 177
		The Department continues to decline to require a recipient to apply Title IX grievance procedures to groups or organizations. Nothing within the final regulations prohibits a recipient from addressing the actions of a student organization or other entity through a recipient’s applicable code of conduct procedures.	p. 177
Retaliation	[I]ntimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an		§106.2

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	employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process under § 106.44(k), in grievance procedures under § 106.45, and if applicable § 106.46, and in any other actions taken by a recipient under § 106.44(f)(1).		
	Nothing in this definition or this part precludes a recipient from requiring an employee or other person authorized by a recipient to provide aid, benefit, or service under the recipient's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this part.		§106.2
		Examples: [D]epending on the facts, making adverse assessments or hiring and promotional decisions; lowering a student's grades, making threats or disclosing confidential	p. 1177

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		information on social media; or excluding someone from an education program could constitute intimidation, threats, coercion, or discrimination that, if taken for the purpose of interfering with a person’s Title IX rights or because of a person’s participation in Title IX grievance procedures, would constitute retaliation under the final regulations. Whether a particular action is adverse in any given case would require a fact-specific analysis of how the action would affect a reasonable person in the complainant’s position.	
Reviewing Authority	[T]hat component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.		§106.2
Secondary School	[S]econdary school as defined by section 8101 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (20 U.S.C. 7801(45)), and an institution of vocational education that serves secondary school students.		§106.2
Secretary	[T]he Secretary of Education.		§106.2
Sex-Based Harassment	[A] form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in § 106.10,		§106.2
		The Department clarifies that sex discrimination refers to any discrimination based on sex, including, but not limited to, sex-	p. 66

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		based harassment....	
		The final regulations define sex-based harassment as a “form of sex discrimination that includes sexual harassment and harassment based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity, that is quid pro quo harassment, hostile environment harassment, or one of four specific offenses referenced in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act (“Clery Act”) as amended by the Violence Against Women Reauthorization Act of 2013”	p. 17
		“[O]n the basis of sex” does not require that the conduct be sexual in nature.	p. 72
		[A]cts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex are within the purview of Title IX and may constitute sex-based harassment provided they meet the requirements of the definition.	p. 73
		[S]exual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.	p. 73
		Applying Definition to Various Educational Settings: The final regulations take into account differences in the age and maturity of students in various educational settings, allowing recipients to adapt the regulations as appropriate to fulfill their Title IX obligations. The Department will take into account these types of differences and recipient flexibility on a case-by-case basis when addressing any complaints and applying the definition of “sex-based harassment.”	p. 66
Quid Pro Quo Harassment	An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the		§106.2

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	recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;		
		Abuse of Authority: The Department notes that quid pro quo sex-based harassment involves an abuse of authority that is generally unwelcome.	p. 82
		[A]cquiescence to the conduct or the failure to complain, resist, or object to the conduct does not mean that the conduct was welcome, and the fact that a person may have accepted the conduct does not mean they welcome it.	p. 82
		Student Leaders or Students: The Department declines to list student leaders or students generally as potential authorized persons in the definition of quid pro quo sex-based harassment because students are the intended beneficiaries of aid, benefits, or services of the recipient's education program or activity. If a student did ever occupy a position as some "other person authorized by the recipient to provide an aid, benefit, or service," then the student would fall under the definition as it is in these final regulations.	p. 83
		Members of Recipient's Leadership: [Q]uid pro quo sex-based harassment covers harassment by members of a recipient's leadership, including board members, paid or unpaid, to the extent those individuals are authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity.	p. 83
		Employee, Agent, or Other Person: [Q]uid pro quo sex-based harassment can include situations in which an employee, agent,	p. 83



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		or other person authorized by the recipient purports to provide and condition an aid, benefit, or service under the recipient's education program or activity on a person's participation in unwelcome sexual conduct, even if that person is unable to provide that aid, benefit, or service.	
		Threat of Detriment: [T]he threat of a detriment falls within the definition of quid pro quo sex-based harassment, whether or not the threat is actually carried out because a threat to, for example, award a poor grade unless a person participates in unwelcome sexual conduct, is a condition placed on the provision of the student's education, which is a service of the recipient.	p. 83
Hostile Environment Harassment	Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity ( <i>i.e.</i> , creates a hostile environment).		§106.2
		[T]he conduct in question must be (1) unwelcome, (2) sex-based, (3) subjectively and objectively offensive, as well as (4) so severe or pervasive (5) that it results in a limitation or denial of a person's ability to participate in or benefit from the recipient's education program or activity.	p. 96
		[T]he final regulations' definition of hostile environment sex-based harassment does not establish an open-ended, discretionary inquiry. The final regulations only prohibit conduct that meets all the elements listed above....	p. 113
		Totality of the Circumstances: [T]he definition of hostile	p. 114

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		environment sex-based harassment requires consideration of the totality of the circumstances in determining whether a person has been subjected to a hostile environment, which aims to ensure that recipients consider context when determining whether each element is met, to avoid inappropriately sweeping in conduct or speech that does not actually create a hostile environment under the circumstances.	
		[T]he definition in the final regulations proscribes only certain conduct that “limits or denies” a person’s ability to participate in a recipient’s education program or activity, rather than any conduct that might “alter” such participation.	p. 111
		Based on the specific circumstances in which a particular incident arises, a single serious incident—even if not pervasive—may be so severe as to create a hostile environment. And based on the specific circumstances in which it occurs, pervasive conduct—even if no single occurrence of the conduct, taken in isolation, is severe—may likewise create a hostile environment.	p. 94
		<p>Severe or Pervasive: [S]ex-based conduct that occurs on multiple occasions and is so persistent that, for example, it limits another student’s ability to complete assigned coursework at the student’s typical level of performance would potentially constitute the type of pervasive sex-based conduct the final regulations are intended to reach.</p> <p>Harassment can be pervasive if it is widespread, openly practiced, or well-known to students and staff (such as sex-based harassment occurring in the hallways, graffiti in public areas, or harassment occurring during recess under a teacher’s supervision).</p>	p. 123-124

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		[P]ervasiveness can also be found if there is a pattern or practice of harassment, as well as if the harassment is sustained and nontrivial	
		Standard for Objectively Offensive: [T]he objective standard is assessed from the perspective of a reasonable person in the complainant’s position.	p. 127
		Subjectively Offensive: Subjective offensiveness must be supported by evidence, and subjective offensiveness alone would not support a finding or discipline.	p. 128
		Evidence for Subjectively Offensive: Evidence regarding whether sex-based conduct meets the subjective element of the definition could include, but is not limited to, the complainant’s own statements about the alleged conduct or other sources that could establish the complainant’s experience of the alleged conduct.	p. 129
		Limits of Denies: Whether conduct limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity is a fact-based inquiry that requires consideration of all relevant and not otherwise impermissible evidence.	p. 132
		Other forms of harassment that are not or may not be “sexual” can also constitute hostile environment harassment.	p. 74
		Definition: The definition is aimed at discriminatory conduct—conduct that is unwelcome as well as sex-based, and that has an impact far greater than being bothersome or merely offensive	p. 77
		Sex Trafficking: [A]cts associated with sex-trafficking may also fall within the definition of hostile environment sex-based harassment if they meet the elements of the definition.	p. 154
	Whether a hostile environment has		§106.2

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	<p>been created is a fact-specific inquiry that includes consideration of the following:</p> <ul style="list-style-type: none"> <li>(i) The degree to which the conduct affected the complainant’s ability to access the recipient’s education program or activity;</li> <li>(ii) The type, frequency, and duration of the conduct;</li> <li>(iii) The parties’ ages, roles within the recipient’s education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;</li> <li>(iv) The location of the conduct and the context in which the conduct occurred; and</li> <li>(v) Other sex-based harassment in the recipient’s education program or activity; or</li> </ul>		
		<p>Potential Limit: The Department declines to limit the factors to be considered to those listed in the definition of hostile environment sex-based harassment because of the necessarily fact-specific nature of the totality of the circumstances analysis.</p>	p. 135
		<p>First Factor (Degree of Impact): [T]he definition does not limit how many people may experience a hostile environment related to conduct that constitutes sex-based harassment or how many people may make a complaint.</p>	p. 137
		<p>Fourth Factor (Location and Context) Examples: [H]arassing</p>	p. 140

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		conduct on a school bus may be more intimidating than on school grounds because of the confined space	
		Fifth Factor (Other Sex-Based Harassment): [R]espondent's past sex-based harassment of people other than the complainant would not be part of the analysis of whether current sex-based harassment by the respondent created a hostile environment for the complainant... [but] such pattern evidence may be permissible for use in Title IX grievance procedures, as the recipient must objectively evaluate pattern evidence to the extent it is relevant	p. 142
Specific Offenses	(i) Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;		§106.2
		Force or Nonforcible:[U]se of the words “forcible or nonforcible” in the Title IX definition of sexual assault is not meant to imply that force is required. Instead, the use of the terms communicates that either forcible or nonforcible sex offenses under the UCR fulfill the definition.	p. 157
		[N]othing in the final regulations precludes a recipient from providing examples and scenarios in its policy, from considering the age of the complainant when classifying certain incidents of sexual assault, or from providing related trainings to help students and others understand what types of conduct are prohibited under the recipient’s policy.	p. 158
		[A] single instance of sexual assault would likely meet the definition of hostile environment sex-based harassment...	p. 158
	ii) Dating violence meaning violence committed by a person:		§106.2

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	<p>(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and</p> <p>(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:</p> <p>(1) The length of the relationship;</p> <p>(2) The type of relationship; and</p> <p>(3) The frequency of interaction between the persons involved in the relationship;</p>		
		[T]he definition does not require that dating violence be a “crime of violence.”	p. 163
	<p>(iii) Domestic violence meaning felony or misdemeanor crimes committed by a person who:</p> <p>(A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;</p> <p>(B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;</p> <p>(C) Shares a child in common with the victim; or</p> <p>(D) Commits acts against a youth or adult victim who is protected from</p>		§106.2

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	those acts under the family or domestic violence laws of the jurisdiction; or		
		[N]othing precludes recipients from complying with the definition of domestic violence in these final regulations and to the extent applicable, any definition of domestic violence used by other Federal agencies....	p. 166
	(iv) Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) Fear for the person’s safety or the safety of others; or (B) Suffer substantial emotional distress.		§106.2
		Stalking Examples: Stalking can occur in person or using technology, and the duration, frequency, and intensity of the conduct should be considered. Stalking tactics can include, but are not limited to watching, following, using tracking devices, monitoring online activity, unwanted contact, property invasion or damage, hacking accounts, threats, violence, sabotage, and attacks.	p. 169
		Reasonable Person Standard: in the context of stalking a recipient would consider whether a reasonable person in the complainant’s position would fear for their safety or suffer emotional distress.	p. 170
		Satisfying Severity or Pervasiveness or Subjective and Objective Offensiveness: [T]he specific offenses of sexual assault, dating violence, domestic violence, and stalking need not satisfy the elements of severity or pervasiveness or subjective and objective	p. 154

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		offensiveness in order to constitute sex-based harassment.	
		Unwelcomeness: [S]pecific offenses need not satisfy the element of unwelcomeness in order to constitute sex-based harassment.	p. 155
	The Assistant Secretary will not require a recipient to adopt a particular definition of consent, where that term is applicable with respect to sex-based harassment.		§106.2
		[A] recipient is aware that it is within the recipient’s discretion whether and how to define consent in its policies.	p. 160
		[R]ecipients may consider relevant State law if they choose to adopt a definition of “consent.”	p. 161
		Burden of Proof and Burden of Gathering Evidence: Regardless of whether and how a recipient defines “consent,” the burden of proof, and the burden of gathering evidence sufficient to reach a determination regarding whether sex discrimination occurred, is on the recipient. The final regulations do not permit the recipient to shift that burden to a respondent to prove consent, nor do they permit the recipient to shift that burden to a complainant to prove absence of consent.	p. 161
Sex Stereotypes		“[F]ixed or generalized expectations regarding a person’s aptitudes, behavior, self-presentation, or other attributes based on sex.”	p. 1112
Simultaneously		[A]t the same time.	p. 915
Student	[A] person who has gained admission.		§106.2
Student with a Disability	[A] student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(9)(B),		§106.2



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	(20)(B), or a child with a disability as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3).		
Sufficient Information	Includes the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination under Title IX or this part, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to the recipient;		106.45(c)(1)(ii)
Supportive Measures	[I]ndividualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:		§106.2
	(1) Restore or preserve that party's access to the recipient's education program or activity, including measures that are designed to protect the safety of the parties or the recipient's educational environment; or		§106.2
	(2) Provide support during the recipient's grievance procedures under § 106.45, and if applicable § 106.46, or during the informal resolution		§106.2

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	process under § 106.44(k).		
Supportive Measures Examples	These measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.		§106.44(g)(1)
Title IX	Title IX of the Education Amendments of 1972.		§106.2
Title IX Coordinator	The Title IX Coordinator is responsible for coordinating the recipient's compliance with its obligations under Title IX and this part.		§106.44(f)
		The Title IX Coordinator requirements in § 106.44(f) do not impose an obligation on a recipient's Title IX Coordinator to respond to any conduct or speech other than that which reasonably may constitute sex discrimination	p. 70

## Jurisdiction

<b>Topic</b>	<b>Final Regulation</b>	<b>Selected Preamble Excerpts</b> <i>Note: Preamble does not have legal or regulatory force</i>	<b>Regulation Section or Preamble Page No.</b>
Purpose of Title IX Regulation	The purpose of this part is to effectuate Title IX, which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Public Law 93-380, 88 Stat. 484.		§106.1
		Application to Recipients that are not Educational Institutions: [R]ecipients that are not educational institutions ( <i>e.g.</i> , libraries, hospitals) also offer education programs and activities, and those education programs and activities are covered by Title IX.	p. 32
Against a Person in the United States	Except as provided in this subpart, this part applies to every recipient and to all sex discrimination occurring under a recipient’s education program or activity in the United States.		§106.11
		Education Program or Activity: A recipient remains responsible only for discrimination that occurs under its education program or activity, <i>i.e.</i> , “in a ‘context’ over which the [institution] has substantial control.”	p. 189
		Examples of Conduct Occurring Under a Recipient’s Education Program or Activity: [C]onduct occurring under a recipient’s education program or activity would include, but is not limited to, conduct that occurs in off-campus settings that are operated or	p. 190

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		overseen by the recipient, including, for example, field trips, online classes, and athletic programs; conduct subject to a recipient’s disciplinary authority that occurs off campus; conduct that takes place via school-sponsored electronic devices, computer and internet networks and digital platforms operated by, or used in the operations of, the recipient, including AI technologies; and conduct that occurs during training programs sponsored by a recipient at another location.	
	For purposes of this section, conduct that occurs under a recipient’s education program or activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by a postsecondary institution, and conduct that is subject to the recipient’s disciplinary authority.		§106.11
		[A] recipient is not responsible for the actions of parties over which it lacks significant control. Rather, a recipient is responsible only for alleged discriminatory conduct over which it exercises disciplinary authority or otherwise has substantial control.	p. 189
		Whether Conduct is Subject to Disciplinary Authority: How a recipient determines whether conduct would be subject to its disciplinary authority and what constitutes a “similar context” is a fact-specific analysis unique to each recipient; however, the Department reiterates that to the extent a recipient addresses other student misconduct or other interactions between students that occur off campus, a recipient may not disclaim	p. 204

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		responsibility for addressing sex discrimination that occurs in a similar context.	
Against a Person Outside the United States	A recipient has an obligation to address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States.		§106.11
		[R]ecipient must evaluate the totality of the circumstances when determining whether there is a sex-based hostile environment in its education program or activity, which may require that the recipient consider allegations about conduct that occurred outside of its education program or activity that may be contributing to the alleged sex-based hostile environment.	p. 193
		Factors to Consider: (1) the degree to which the conduct affected the complainant's ability to access the recipient's education program or activity; (2) the type, frequency and duration of the conduct; (3) the parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct; (4) the location of the conduct and the context in which the conduct occurred; and (5) other sex-based harassment in the recipient's education program or activity.	p. 194
		Interaction with Law Enforcement: [N]othing in the final regulations prevents a complainant from reporting sex-based harassment that occurs off campus or outside of a recipient's education program or activity to law enforcement, and the	p. 196

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		Department acknowledges that mandatory reporting laws often require a recipient to report sex-based harassment to law enforcement in addition to fulfilling the recipient's obligations under Title IX.	
		Outside the United States: [A] recipient does not have an obligation under Title IX address sex discrimination occurring outside of the United States.... A recipient does, however, have a responsibility to address a sex-based hostile environment in its education program or activity in the United States, even when some conduct alleged to be contributing to the hostile environment occurred outside of a recipient's education program or activity or outside of the United States, including in a study abroad program.	p. 198
Study Abroad Programs Occurring Outside the United States		Conduct occurring in a study abroad program is not governed by these regulations. However, if a student returns to the United States and conduct that occurred in a study abroad program contributes to a hostile environment in the United States, that conduct may be relevant and considered by the recipient so that it can address the sex discrimination occurring within its program in the United States.	p. 342
Application to Admissions	No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies.		§106.21(a)
Application to Education Programs or Activities	Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic,		§106.31(a)(1)

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	extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance.		
	In the limited circumstances in which Title IX or this part permits different treatment or separation on the basis of sex, a recipient must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, except as permitted by 20 U.S.C. 1681(a)(1) through (9) and the corresponding regulations §§ 106.12 through 106.15, 20 U.S.C. 1686 and its corresponding regulation § 106.32(b)(1), or § 106.41(b). Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person’s gender identity subjects a person to more than de minimis harm on the basis of sex.		§106.31(a)(2)
		Application: [I]t applies to any “person,” including students, employees, applicants for admission or employment, and other individuals participating or attempting to participate in the recipient’s education program or activity, which also could include parents of minor students, students from other institutions participating in events on a recipient’s campus,	p. 1128

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		visiting lecturers, or other community members whom the recipient invites to campus.	
		Sex-Separate Athletic Teams: § 106.31(a)(2) does not apply to male and female athletic teams a recipient offers under § 106.41(b).	p. 1129
		Validating Gender Identity: [A] recipient may not require a person to provide documentation (such as an amended birth certificate or evidence of medical treatment) to validate their gender identity for purposes of compliance with § 106.31(a)(2) if access to such documentation is prohibited by law in that jurisdiction.	p. 1139
		Sex-Specific Dress and Grooming Codes: [S]ex-specific appearance codes, including sex-specific dress and grooming codes, are subject to Title IX and § 106.31(a)(2) of the final regulations.	p. 1153
	This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of: (i) A recipient to which subpart C does not apply; or (ii) An entity, not a recipient, to which subpart C would not apply if the entity were a recipient.		§106.31(a)(3)
<b>What Triggers an Institution's Obligations</b>			
Who Can Make a Complaint?	The following persons have a right to make a complaint of sex discrimination, including complaints		§106.45(a)(2)



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	<p>of sex-based harassment, requesting that the recipient investigate and make a determination about alleged discrimination under Title IX or this part:</p> <ul style="list-style-type: none"> <li>(i) A complainant;</li> <li>(ii) A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant;</li> <li>(iii) The Title IX Coordinator, after making the determination specified in §106.44(f)(1)(v);</li> <li>(iv) With respect to complaints of sex discrimination other than sex-based harassment, in addition to the persons listed in paragraphs (a)(2)(i) through (iii) of this section, <ul style="list-style-type: none"> <li>(A) Any student or employee; or</li> <li>(B) Any person other than a student or employee who was participating or attempting to participate in the recipient’s education program or activity at the time of the alleged sex discrimination.</li> </ul> </li> </ul>		
		Section 106.45(a)(2) does not permit anyone who does not have one of the specified relationships with the recipient to make a complaint of sex discrimination, and it does not allow a person who was not subject to alleged sex-based harassment to make a complaint of sex-based harassment, unless they are the Title IX	p. 597

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		Coordinator or are authorized to act on a complainant's behalf per § 106.45(a)(2)(ii).	
		Complaints Made by the Title IX Coordinator: [C]omplaints initiated by the Title IX Coordinator would be based on the Title IX Coordinator's determination, in accordance with § 106.44(f)(1)(v), that the alleged conduct presents an imminent and serious threat to the health or safety of a complainant or other person, or that the alleged conduct prevents the recipient from ensuring equal access based on sex to its education program or activity, taking into consideration a variety of factors.	p. 601
Adoption, Publication, and Implementation of Recipient's Nondiscrimination Policy	Each recipient must adopt, publish, and implement a policy stating that the recipient does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and this part, including in admission (unless subpart C of this part does not apply) and employment.		§106.8(b)(1)
Adoption, Publication, and Implementation of Recipient's Grievance Procedures	A recipient must adopt, publish, and implement grievance procedures consistent with the requirements of § 106.45, and if applicable § 106.46, that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in the recipient's education program or		§106.8(b)(2)

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	activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or this part.		
		Postdoctoral Trainee: Whether a postdoctoral trainee is an employee is a fact-specific inquiry, but regardless of the outcome, they would likely still be entitled to make a complaint under a recipient’s grievance procedures if they are participating or attempting to participate in its education program or activity.	p. 244
Recipient’s Response to Sex Discrimination	(1) A recipient with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must respond promptly and effectively; and (2) A recipient must also comply with this section to address sex discrimination in its education program or activity.		§106.44(a)
		Conduct Occurring Before Recipient Became Aware: [A] recipient “with knowledge” of conduct that reasonably may constitute sex discrimination must respond promptly and effectively; that does not, however, mean that the recipient is responsible for conduct that occurred before an employee of the recipient becomes aware of the conduct.	p. 296
		Knowledge Standard: [T]he Department has expanded the knowledge standard from the 2020 amendments so that regardless of the type of recipient, a recipient is deemed to have knowledge of sex-based discrimination in its education program or activity and an obligation to respond consistent with the requirements in § 106.44 when any non-confidential employee	p. 295

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		has information about conduct that reasonably may constitute sex discrimination.	
		Proof that Conduct Violates Title IX: [T]he recipient need not have incontrovertible proof that conduct violates Title IX for it to have an obligation to respond; if the conduct reasonably may be sex discrimination, the recipient must respond in accordance with § 106.44.	p. 299
Barriers to Reporting Sex Discrimination	A recipient must require its Title IX Coordinator to: (1) Monitor the recipient’s education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX or this part; and (2) Take steps reasonably calculated to address such barriers.		§106.44(b)
		The Title IX Coordinator must monitor for barriers regardless of whether a concern has been raised about such barriers.	p. 313
		Types of Appropriate Responses: When a recipient deems it appropriate, a response could include trainings targeted at a particular academic department or other subdivision of the recipient where the barriers were identified; in-depth training for specific program staff; or widespread training for staff and students. Responses contemplated by § 106.44(b) could also include more frequent and prominent publication of the Title IX Coordinator’s contact information; relocation of the Title IX Coordinator’s office to a more visible, central, and accessible location; provision of adequate staff for the Title IX Coordinator’s office; enhanced training for employees with Title	p. 306

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		IX responsibilities, including training to ensure that they are free of conflicts of interest and do not discourage reporting; and the development and circulation of user-friendly Title IX materials.	
Notification About Conduct That May Constitute Sex-Based Harassment at Public Awareness Events	When a postsecondary institution’s Title IX Coordinator is notified of information about conduct that reasonably may constitute sex-based harassment under Title IX or this part that was provided by a person during a public event to raise awareness about sex-based harassment that was held on the postsecondary institution’s campus or through an online platform sponsored by a postsecondary institution, the postsecondary institution is not obligated to act in response to the information, unless it indicates an imminent and serious threat to the health or safety of a complainant, any students, employees, or other persons.		§106.44(e)
	However, in all cases the postsecondary institution must use this information to inform its efforts to prevent sex-based harassment, including by providing tailored training to address alleged sex-based harassment in a particular part of its education program or activity or at a specific location when information		§106.44(e)

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	indicates there may be multiple incidents of sex-based harassment. Nothing in Title IX or this part obligates a postsecondary institution to require its Title IX Coordinator or any other employee to attend such public awareness events.		
		Postsecondary Institution’s Discretion: [N]othing in § 106.44(e) obligates a postsecondary institution to take specific actions based on information disclosed during a public awareness event. Instead, as explained in the July 2022 NPRM, a postsecondary institution has discretion to determine how to incorporate information from such events into its prevention training.	p. 376
		Attendance at Public Awareness Event: [N]othing in § 106.44(e) would require a postsecondary institution’s employees to attend a public awareness event.	p. 377
		Type of Information Provided at a Postsecondary Event: The Department declines to dictate the type of information a postsecondary institution must provide at a public awareness event.	p. 378
		When Exception Doesn’t Apply: [T]he exception does not cover events held off campus or in a community space and does not cover disclosures made in the context of an academic assignment or via social media.	p. 380
Title IX Coordinator Requirements	A recipient must require its Title IX Coordinator, when notified of conduct that reasonably may constitute sex discrimination under Title IX or this part, to take the following actions to promptly and effectively end any sex		§106.44(f)(1)(i)-(ii)

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	<p>discrimination in its education program or activity, prevent its recurrence, and remedy its effects:</p> <p>(i) Treat the complainant and respondent equitably;</p> <p>(ii) Offer and coordinate supportive measures under paragraph (g) of this section, as appropriate, for the complainant. In addition, if the recipient has initiated grievance procedures under § 106.45, and if applicable § 106.46, or offered an informal resolution process under paragraph (k) of this section to the respondent, offer and coordinate supportive measures under paragraph (g) of this section, as appropriate, for the respondent;</p>		
		<p>Prompt Response: A reasonably prompt response to sex discrimination “is judged in the context of the recipient’s obligation to provide students and employees with education programs and activities free from sex discrimination.</p>	p. 391-392
		<p>Effective Response: [T]he Department considers effective action to mean that a Title IX Coordinator, upon learning of conduct that reasonably may constitute sex discrimination, takes reasonable steps calibrated to address possible sex discrimination based on all available information.</p>	p. 392
		<p>Prompt and Effective Response When Sex Discrimination is not Ended: [W]hen a Title IX Coordinator’s oversight and coordination of a recipient’s response through the specific</p>	p. 392; fn 36

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		actions required under § 106.44(f)(1)(i)–(vii) are not effective at ending sex discrimination and preventing its recurrence, the prompt and effective response requirement means that the Title IX Coordinator must reevaluate the response and take additional steps to end sex discrimination in the recipient’s education program or activity.	
	(iii)(A) Notify the complainant or, if the complainant is unknown, the individual who reported the conduct, of the grievance procedures under § 106.45, and if applicable § 106.46, and the informal resolution process under paragraph (k) of this section, if available and appropriate; and (B) If a complaint is made, notify the respondent of the grievance procedures under § 106.45, and if applicable § 106.46, and the informal resolution process under paragraph (k) of this section, if available and appropriate;		§106.44(f)(1)(iii)
		Webpages with Broken Links: [I]f a recipient only provides the required information through links to webpages that do not work, it does not satisfy its obligation under final § 106.44(f)(1)(iii)(B) to notify a respondent, if a complaint is made, of the recipient’s grievance procedures or an informal resolution process if available and appropriate.	p. 424
	In response to a complaint, initiate the grievance procedures under § 106.45,		§106.44(f)(1)(iv)



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	and if applicable § 106.46, or the informal resolution process under paragraph (k) of this section, if available and appropriate and requested by all parties;		
Fact-Specific Determination Title IX Coordinator Must Make to Initiate a Complaint of Sex Discrimination	<p>In the absence of a complaint or the withdrawal of any or all of the allegations in a complaint, and in the absence or termination of an informal resolution process, determine whether to initiate a complaint of sex discrimination that complies with the grievance procedures under § 106.45, and if applicable § 106.46.</p> <p>(A) To make this fact-specific determination, the Title IX Coordinator must consider, at a minimum, the following factors:</p> <p>(1) The complainant’s request not to proceed with initiation of a complaint;</p> <p>(2) The complainant’s reasonable safety concerns regarding initiation of a complaint;</p> <p>(3) The risk that additional acts of sex discrimination would occur if a complaint is not initiated;</p> <p>(4) The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent</p>		§106.44(f)(1)(v)

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	<p>from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;</p> <p>(5) The age and relationship of the parties, including whether the respondent is an employee of the recipient;</p> <p>(6) The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;</p> <p>(7) The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and</p> <p>(8) Whether the recipient could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures under § 106.45, and if applicable § 106.46.</p> <p>(B) If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or</p>		

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	other person, or that the conduct as alleged prevents the recipient from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a complaint.		
		Title IX Coordinator Unable to Initiate a Complaint Absent These Circumstances: A recipient should not proceed without the complainant if the alleged conduct neither presents an imminent and serious threat to the health or safety of the complainant or other person, nor prevents the recipient from ensuring equal access based on sex to its education program or activity, <i>see</i> 87 FR 41445, and § 106.44(f)(1)(v)(B) restricts a Title IX Coordinator from initiating a complaint absent these circumstances.	p. 405
		Investigation by Title IX Coordinator: Consideration of the § 106.44(f)(1)(v)(A) factors will not require an investigation by a Title IX Coordinator to determine whether to initiate a complaint. Most of the required factors relate to information that the Title IX Coordinator will receive with the report or in conversations with a complainant if they agree to speak with the Title IX Coordinator....	p. 406
		Threshold Determination: [A] Title IX Coordinator’s initial assessment under § 106.44(f)(1)(v) is a threshold determination required to satisfy a recipient’s obligation under Title IX to ensure equal educational access on the basis of sex, but it is not a credibility determination or an assessment of whether sex discrimination occurred.	p. 407
	If initiating a complaint under paragraph (f)(1)(v) of this section,		§106.44(f)(1)(vi)

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	notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant’s safety or the safety of others, including by providing supportive measures consistent with paragraph (g) of this section; and		
	Regardless of whether a complaint is initiated, take other appropriate prompt and effective steps, in addition to steps necessary to effectuate the remedies provided to an individual complainant, if any, to ensure that sex discrimination does not continue or recur within the recipient’s education program or activity.		§106.44(f)(1)(vii)
		Examples of Prompt and Effective Steps: [Steps] are limited to non-disciplinary action, including for example providing additional training for employees, educational programming aimed at the prevention of sex discrimination, or remedies such as permitting a complainant to retake a class	p. 418
		No Additional Steps Necessary: [I]t will not always be necessary for a Title IX Coordinator to take additional steps to ensure that sex discrimination does not continue or recur in its education program or activity.	p. 419
When Title IX Coordinator Does Not Have to Comply with Requirements	A Title IX Coordinator is not required to comply with paragraphs (f)(1)(i) through (vii) of this section upon being notified of conduct that may constitute sex discrimination if the Title IX		§106.44(f)(2)

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	Coordinator reasonably determines that the conduct as alleged could not constitute sex discrimination under Title IX or this part.		
Supportive Measures	Under paragraph (f) of this section, a recipient must offer and coordinate supportive measures, as appropriate, as described in paragraphs (g)(1) through (6) of this section. For allegations of sex discrimination other than sex-based harassment or retaliation, a recipient's provision of supportive measures does not require the recipient, its employee, or any other person authorized to provide aid, benefit, or service on the recipient's behalf to alter the alleged discriminatory conduct for the purpose of providing a supportive measure.		§106.44(g)
		Delegating Duties Related to Supportive Measures: [A]lthough the final regulations require one Title IX Coordinator to retain ultimate oversight over a recipient's Title IX responsibilities, including oversight over the offering and coordination of supportive measures, nothing in the final regulations otherwise restricts how the duties of offering and coordinating supportive measures may be assigned to other personnel and the Department recognizes that some recipients may find it helpful to delegate certain duties related to the provision of supportive measures.	p. 435
		Supportive Measures for Complainants: [S]upportive measures must be offered to complainants, as appropriate, regardless of	p. 437

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		whether grievance procedures are initiated.	
		Supportive Measures for Respondents: [S]upportive measures may also be offered to a respondent....But because a respondent will not always receive notice of a complaint if a complainant elects not to move forward with grievance procedures, the Title IX Coordinator must offer supportive measures to a respondent, as appropriate, only if grievance procedures have been initiated or an informal resolution process has been offered.	p. 437
Varying Supportive Measures	Supportive measures may vary depending on what the recipient deems to be reasonably available.		§106.44(g)(1)
Unreasonable Burden of Supportive Measures	Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties or the recipient’s educational environment, or to provide support during the recipient’s grievance procedures under § 106.45, and if applicable § 106.46, or during the informal resolution process under § 106.44(k). A recipient must not impose such measures for punitive or disciplinary reasons.		§106.44(g)(2)
		Fact-Specific Inquiry: [T]he unreasonableness of a burden on a party must take into account the nature of the educational programs, activities, opportunities, and benefits in which the party is participating, not solely those components that are “academic” in nature.	p. 448
Modifying or Terminating	A recipient may, as appropriate, modify or terminate supportive		§106.44(g)(3)

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Supportive Measures	measures at the conclusion of the grievance procedures under § 106.45, and if applicable § 106.46, or at the conclusion of the informal resolution process under paragraph (k) of this section, or the recipient may continue them beyond that point.		
Modification or Reversal of Supportive Measures	A recipient must provide a complainant or respondent with a timely opportunity to seek, from an appropriate and impartial employee, modification or reversal of the recipient's decision to provide, deny, modify, or terminate supportive measures applicable to them. The impartial employee must be someone other than the employee who made the challenged decision and must have authority to modify or reverse the decision, if the impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the definition of supportive measures in § 106.2. A recipient must also provide a party with the opportunity to seek additional modification or termination of a supportive measure applicable		§106.44(g)(4)

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	to them if circumstances change materially.		
		Materially Change: Materially changed circumstances will vary depending on the particular context of the complainant and respondent.	p. 455
		Challenges to Supportive Measures: [C]hallenges to supportive measures under § 106.44(g)(4) could include, but are not limited to, challenges concerning whether a supportive measure is reasonably burdensome, whether a supportive measure is reasonably available, whether the supportive measure is being imposed for punitive or disciplinary reasons, whether the supportive measure is being imposed without fee or charge, and whether the supportive measure is effective in meeting the purposes for which it is intended, including to restore or preserve access to the education program or activity, provide safety, or provide support during the grievance procedures.	p. 455
Disclosing Information About Supportive Measures	A recipient must not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity, or when an exception in §106.44(j)(1) through (5) applies.		§106.44(g)(5)
Emergency Removal of Respondent	Nothing in this part precludes a recipient from removing a		§106.44(h)



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	<p>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 imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision must not be construed to modify any rights under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 <i>et seq.</i>, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, or the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 <i>et seq.</i></p>		
		<p>Serious, Non-Physical Threats: The Department concludes that serious, non-physical threats can be assessed as objectively as physical threats.</p>	p. 469
		<p>Permanent Removal: § 106.44(h) does not permit a recipient to permanently remove someone from its education program or activity...[E]mergency removal is not intended to serve as a substitute for grievance procedures that would resolve underlying allegations of sex discrimination.</p>	p. 469-470

<b>Topic</b>	<b>Final Regulation</b>	<b>Selected Preamble Excerpts</b> <i>Note: Preamble does not have legal or regulatory force</i>	<b>Regulation Section or Preamble Page No.</b>
Prohibited Disclosures of Personally Identifiable Information	<p>A recipient must not disclose personally identifiable information obtained in the course of complying with this part, except in the following circumstances:</p> <p>(1) When the recipient has obtained prior written consent from a person with the legal right to consent to the disclosure;</p> <p>(2) When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;</p> <p>(3) To carry out the purposes of this part, including action taken to address conduct that reasonably may constitute sex discrimination under Title IX in the recipient’s education program or activity;</p> <p>(4) As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or other funding agreement; or</p> <p>(5) To the extent such disclosures are not otherwise in conflict with Title IX or this part, when required by State or local law or when permitted under</p>		§106.44(j)

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	FERPA, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99.		
<b>Dismissals Prior to Formal Grievance Process</b>			
Dismissal of a Complaint	A recipient may dismiss a complaint of sex discrimination made through its grievance procedures under this section, and if applicable § 106.46, for any of the following reasons:		§106.45(d)(1)
		Exhaustive and Permissive: The Department appreciates the opportunity to clarify that the categories for which a recipient may dismiss a complaint in § 106.45(d)(1) are exhaustive. As such, unless one of the four reasons under § 106.45(d)(1) is satisfied, a recipient must implement grievance procedures under § 106.45, and as applicable § 106.46, or an informal resolution process under § 106.44(k), if available and appropriate. We note that dismissals under § 106.45(d)(1) are permissive, rather than mandatory, and that a recipient could either decline, initiate, or continue grievance procedures if any of the four reasons is satisfied.	p. 694-695
		Dismissing a Complaint Generally: [A] recipient may dismiss a complaint because the alleged conduct did not occur under the recipient's education program or activity.	p. 690
	(i) The recipient is unable to identify the respondent after taking reasonable steps to do so;		
		Reasonable Steps to Identify Respondent: These steps may include, but are not limited to, interviewing the complainant,	p. 696

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		interviewing potential witnesses, and reviewing contemporaneous records such as video footage and visitor logs if relevant.	
	(ii) The respondent is not participating in the recipient's education program or activity and is not employed by the recipient;		
		Dismissal Not Required Under This Section: [U]nder § 106.45(d)(1)(ii), dismissal of a complaint is permitted, but not required.	p. 696
	(iii) The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint under § 106.44(f)(1)(v), and the recipient determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX or this part even if proven; or		
	(iv) The recipient determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX or this part. Prior to dismissing the complaint under this paragraph, the recipient must make reasonable efforts to clarify the allegations with the complainant.		
Dismissal of a	When dismissing a complaint alleging		§106.46(d)

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Complaint (Involving Student Complainant or Respondent at postsecondary institutions)	sex-based harassment involving a student complainant or a student respondent, a postsecondary institution must: (1) Provide the parties, simultaneously, with written notice of the dismissal and the basis for the dismissal, if dismissing a complaint under any of the bases in § 106.45(d)(1), except if the dismissal occurs before the respondent has been notified of the allegations, in which case the recipient must provide such written notice only to the complainant; and (2) Obtain the complainant’s withdrawal in writing if dismissing a complaint based on the complainant’s voluntary withdrawal of the complaint or allegations under § 106.45(d)(1)(iii).		
Requirements When Dismissing a Complaint	A recipient that dismisses a complaint must, at a minimum: (i) Offer supportive measures to the complainant as appropriate under § 106.44(g); (ii) For dismissals under paragraph (d)(1)(iii) or (iv) of this section in which the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate under § 106.44(g); and (iii) Require its Title IX Coordinator to		§106.45(d)(4)

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	take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity under § 106.44(f)(1)(vii).		
<b>General Requirements for Formal Grievance Process</b>			
Interaction Between §106.45 and §106.46		[A]ll recipients must implement grievance procedures consistent with § 106.45 or offer informal resolution consistent with § 106.44(k), as available and appropriate, to resolve a complaint of sex discrimination. At the same time, only postsecondary institutions have an additional obligation to implement grievance procedures consistent with § 106.46 (or offer informal resolution consistent with § 106.44(k), as available and appropriate), and this obligation is limited to resolving an allegation of sex-based harassment in which either the complainant or respondent is a student.	p. 531
		Difference b/w §106.45 and §106.46: [W]ith regard to handling sex-based harassment complaints, § 106.45 provides the requirements for grievance procedures for elementary schools and secondary schools, whereas §106.46, in addition to §106.45, provides the requirements for those complaints involving a postsecondary student.	p. 220
Grievance Procedures Generally (Writing and Incorporate § 106.45	A recipient's grievance procedures for the prompt and equitable resolution of complaints of sex discrimination must be in writing and include provisions that incorporate the requirements of this		§106.45(a)(1)

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Requirements)	section. The requirements related to a respondent apply only to sex discrimination complaints alleging that a person violated the recipient's prohibition on sex discrimination. When a sex discrimination complaint alleges that a recipient's policy or practice discriminates on the basis of sex, the recipient is not considered a respondent.		
		Using Existing Procedures: [N]othing in the final regulations prohibits a recipient from using an existing process that otherwise satisfies the requirements of § 106.45 to investigate and resolve Title IX complaints, such as investigation and grievance procedures that are consistent with State antibullying or student discipline laws.	p. 562
		Recipient is not a Respondent: The Department notes that the language in § 106.45(a)(1) regarding a recipient not being considered a respondent is to clarify that when a complaint is against a recipient and not an individual respondent, the recipient would not be entitled to certain procedural rights and steps afforded to individual respondents.	p. 589
Grievance Procedures Generally (Involving Student Complainant or Respondent at Postsecondary Institutions)	A postsecondary institution's written grievance procedures for prompt and equitable resolution of complaints of sex-based harassment involving a student complainant or student respondent must include provisions that incorporate the requirements of § 106.45 and this section.		§106.46(a)
		Scope of § 106.46: § 106.46 applies to any sex-based harassment	p. 581

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		complaint in which a postsecondary student is either a complainant or a respondent, including complaints in which the other party is an employee, another student, or an individual who is neither a student nor an employee but who was participating or attempting to participate in the recipient’s education program or activity at the time of the alleged sex discrimination.	
		Student vs. Employees at a Postsecondary Institution: [A] postsecondary institution must apply grievance procedures consistent with § 106.45 to any complaint of sex discrimination—including all employee-to-employee sex-based harassment complaints. <i>See</i> § 106.46(a). In contrast, a postsecondary institution must apply grievance procedures consistent with § 106.46 to any sex-based harassment complaint that involves a student party—including sex-based harassment complaints in which an employee is the other party	p. 548
		Maintaining Grievance Procedures Depending on Employees vs. Students: Nothing in the final regulations prohibits a postsecondary institution from, for example, choosing to maintain one set of grievance procedures for employee-to-employee sex-based harassment complaints that are consistent with § 106.45 and its legal or contractual requirements on employee-involved complaints; one set of grievance procedures for employee-to-student sex-based harassment complaints that are consistent with § 106.46 and those same legal or contractual requirements; and another set of grievance procedures for student-to-student sex-based harassment complaints that are consistent with § 106.46 and State law governing student discipline.	p. 569
Basic Requirements for Grievance	A recipient’s grievance procedures must:		§106.45(b)



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Procedures	(1) Treat complainants and respondents equitably;		
		Sex of the Complainant or Respondent: This requirement applies regardless of the sex of the complainant or respondent.	p. 607
	(2) Require that any person designated as a Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The decisionmaker may be the same person as the Title IX Coordinator or investigator;		
		Who §106.45(b)(2) Applies To: [T]he Department notes that § 106.45(b)(2) applies to all decisionmakers, including those who decide appeals of dismissals....	p. 614
		Ensuring Personnel are Unbiased: A recipient has flexibility in how it ensures its personnel are unbiased, which could include restricting Title IX personnel from pursuing close relationships with students, training more than one employee to perform Title IX roles so they can step in when conflicts of interest arise, or hiring outside personnel when conflicts of interest arise.	p. 617
		Investigator Develops Conflict of Interest or Bias: [I]f an investigator developed a conflict of interest or bias during an investigation, then the recipient must designate someone else to serve as the investigator and decisionmaker.	p. 626
		Single-Investigator Model: [T]he final regulations permit, but do not require, a single-investigator model.	p. 623
	(3) Include a presumption that the respondent is not responsible for the		

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	alleged sex discrimination until a determination is made at the conclusion of the recipient's grievance procedures for complaints of sex discrimination;		
		When Section Does Not Apply: § 106.45(b)(3) would not apply to a sex discrimination complaint that does not allege that a person violated the recipient's prohibition on sex discrimination, but instead alleges the recipient violated Title IX.	p. 640
	(4) Establish reasonably prompt timeframes for the major stages of the grievance procedures, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay. Major stages include, for example, evaluation ( <i>i.e.</i> , the recipient's decision whether to dismiss or investigate a complaint of sex discrimination); investigation; determination; and appeal, if any;		
		Timeframe Flexibility: [T]he Department therefore declines to set a specific minimum or maximum timeframe for recipients or to require that recipients use business or calendar days.	p. 645
		Extensions for Good Cause: [T]he Department maintains that good cause for an extension of a timeframe may include, for example, reasonable extensions of time to accommodate the absence of a party, a party's advisor, or a witness; however, the Department intends to grant flexibility, based on recipients' experience and familiarity with their cases, to determine whether	p. 648

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		particular circumstances constitute good cause that could justify extending a timeframe.	
	(5) Require the recipient to take reasonable steps to protect the privacy of the parties and witnesses during the pendency of a recipient’s grievance procedures, provided that the steps do not restrict the ability of the parties to: obtain and present evidence, including by speaking to witnesses, subject to § 106.71; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures;		
	(6) Require an objective evaluation of all evidence that is relevant, as defined in § 106.2, and not otherwise impermissible under paragraph (b)(7) of this section—including both inculpatory and exculpatory evidence—and provide that credibility determinations must not be based on a person’s status as a complainant, respondent, or witness;		
		Supportive Measures as “Relevant Evidence”: [S]upportive measures are not “relevant evidence” that can be considered in reaching a determination under § 106.45(b)(6) and (h)(1).	p. 450
	(7) Exclude the following types of evidence, and questions seeking that evidence, as impermissible ( <i>i.e.</i> , must		

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	<p>not be accessed or considered, except by the recipient to determine whether an exception in paragraphs (i) through (iii) applies; must not be disclosed; and must not otherwise be used), regardless of whether they are relevant:</p> <p>(i) Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;</p> <p>(ii) A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the recipient obtains that party's or witness's voluntary, written consent for use in the recipient's grievance procedures; and</p> <p>(iii) Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about</p>		

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	specific incidents of the complainant’s prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant’s consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred; and		
		Redacting Information: A recipient may redact information that is not relevant to the allegations but that is contained within documents or evidence that are relevant to the allegations. A recipient must redact (or otherwise refrain from disclosing) information that is impermissible under § 106.45(b)(7)—such as information protected by a legally recognized privilege or provided to a confidential employee; records made by a physician or psychologist in connection with the treatment of a party or witness; or evidence about the complainant’s sexual interests or prior sexual conduct, with narrow exceptions—even if the information is contained within documents or evidence that are relevant to the allegations.	p. 656
		Partial Disclosures: The Department recognizes that there may be circumstances in which a partial disclosure is reasonable, such as when portions of the document are privileged or otherwise legally protected, when portions of the document are appropriately redacted or withheld as irrelevant, or when the party only has access to a portion of the document.	p. 667
		IEP or Section 504 Plans Under §106.45(b)(7)(ii): §	p. 671

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		106.45(b)(7)(ii)'s prohibition on the use of records related to treatment includes a student's IEP or Section 504 plan.	
		§106.45(b)(7)(iii)'s Application to Respondents: The Department has determined that respondents' prior sexual conduct does not require a special provision to adequately protect them, whereas the Department maintains—consistent with case law and rape shield protections in many States—that rape shield protections for complainants are needed to counteract historical and societal misperceptions that a complainant's sexual history is always relevant to sex-based harassment allegations. The Department continues to caution recipients that some situations will involve counterclaims between parties, such that a respondent is also a complainant. <i>See</i> 85 FR 30352. In such situations, the recipient must take care to properly apply the rape shield protections to any party designated as a “complainant,” even if the same party is also a “respondent” in a consolidated grievance process.	p. 677, fn 52
		Pattern Witnesses: [T]he Department declines to extend the protections of § 106.45(b)(7)(iii) to pattern witnesses.	p. 678
	(8) If a recipient adopts grievance procedures that apply to the resolution of some, but not all, complaints articulate consistent principles for how the recipient will determine which procedures apply.		
		Using Different Procedures Within a Specific Complaint Investigation: [A]lthough this provision permits a recipient to use different procedures for some, but not all, complaints of sex discrimination, a recipient is not permitted to use different procedures for different parties within a specific complaint	p. 682

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		investigation (e.g., use a live hearing with questioning by an advisor for assessing the credibility of one party and use live questioning during individual meetings to assess the credibility of the other party) absent a party's need for a disability-related accommodation or language access services.	
Additional Provisions in Grievance Procedures	If a recipient adopts additional provisions as part of its grievance procedures for handling complaints of sex discrimination, including sex-based harassment, such additional provisions must apply equally to the parties.		§106.45(j)
		Taking Individual Needs Into Account: A recipient is permitted to take into account the individual needs and circumstances of a person when applying the additional provisions. <i>See</i> 85 FR 30189. For example, a provision under which a recipient offers disability accommodations or an interpreter as part of its grievance procedures applies equally to the parties even if only one party needs and receives such accommodations or an interpreter. The recipient does not have to provide an interpreter or disability accommodation to any party that does not need one simply because another party that does need one is receiving one. The fact that the parties had an equal opportunity to receive an accommodation or an interpreter as needed is enough to satisfy § 106.45(j).	p. 792
Range of Supportive Measures and Disciplinary Sanctions and Remedies	For complaints alleging sex-based harassment, the grievance procedures must: (1) Describe the range of supportive measures available to complainants and respondents under § 106.44(g); and		§106.45(l)

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	(2) List, or describe the range of, the possible disciplinary sanctions that the recipient may impose and remedies that the recipient may provide following a determination that sex-based harassment occurred.		
Consolidation of Complaints	A recipient may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. If one of the complaints to be consolidated is a complaint of sex-based harassment involving a student complainant or student respondent at a postsecondary institution, the grievance procedures for investigating and resolving the consolidated complaint must comply with the requirements of § 106.46 in addition to the requirements of this section. When more than one complainant or more than one respondent is involved, references in this section and in § 106.46 to a party, complainant, or respondent include the plural, as applicable.		§106.45(e)
		Discretionary Approach: The Department continues to	p. 716



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		support a discretionary approach, which enables a recipient to consider the facts and circumstances of the particular complaints when deciding whether to consolidate, including the toll of separate proceedings on the parties and any risks to the fairness of the investigation or outcome.	
		Consolidating Complaints for Other Reasons: Nothing in these final regulations expressly prohibits recipients from consolidating in circumstances other than those outlined in § 106.45(e), and § 106.45(j) expressly permits a recipient to adopt additional provisions as long as they apply equally to the parties. Recipients, however, must be mindful of their obligations under these final regulations ( <i>e.g.</i> , the obligation to conduct adequate, reliable, and impartial investigations) and their obligations under other laws ( <i>e.g.</i> , FERPA).	p. 717
Assessing Credibility Generally	A recipient must provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.		§106.45(g)
		Recipient's Process for Assessing Credibility: § 106.45(g) is consistent with permitting a recipient to choose a single-investigator model instead of holding a live hearing with questioning by an advisor because § 106.45(g) provides recipients with discretion to design a process for assessing credibility that does not include a live hearing with questioning by an advisor.	p. 745
		Using Existing Processes: The Department also notes that nothing in the final regulations precludes a recipient from using	p. 748

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		an existing process to satisfy its obligations under § 106.45(g) to assess credibility, if that process otherwise satisfies § 106.45(g).	
Process for Questioning Parties and Witnesses Involving Student Complainants or Respondents at Postsecondary Institutions	A postsecondary institution must provide a process as specified in this subpart that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment.		§106.46(f)(1)
Requirements for Questioning Parties and Witnesses Involving Student Complainants or Respondents at Postsecondary Institutions	Questioning of the parties and witnesses must take place consistent with the following provisions before determining whether sex-based harassment occurred: (i) When a postsecondary institution chooses not to conduct a live hearing under paragraph (g) of this section, the process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses under §§ 106.2 and 106.45(b)(7), including questions challenging credibility, must: (A) Allow the investigator or decisionmaker to ask such questions during individual meetings with a party or witness; (B) Allow each party to propose such questions that the party wants asked of		§106.46(f)(1)(i)-(ii)

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	<p>any party or witness and have those questions asked by the investigator or decisionmaker during one or more individual meetings, including follow-up meetings, with a party or witness, subject to the requirements in paragraph (f)(3) of this section; and (C) Provide each party with an audio or audiovisual recording or transcript with enough time for the party to have a reasonable opportunity to propose follow-up questions.</p> <p>(ii) When a postsecondary institution chooses to conduct a live hearing under paragraph (g) of this section, the process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses under §§ 106.2 and 106.45(b)(7), including questions challenging credibility, must allow the decisionmaker to ask such questions, and either:</p> <p>(A) Allow each party to propose such questions that the party wants asked of any party or witness and have those questions asked by the decisionmaker, subject to the requirements under paragraph (f)(3) of this section; or</p> <p>(B) Allow each party’s advisor to ask</p>		

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	<p>any party or witness such questions, subject to the requirements under paragraph (f)(3) of this section. Such questioning must never be conducted by a party personally. If a postsecondary institution permits advisor-conducted questioning and a party does not have an advisor to ask questions on their behalf, the postsecondary institution must provide the party with an advisor of the postsecondary institution's choice, without charge to the party, for the purpose of advisor-conducted questioning. In those instances, the postsecondary institution must not appoint a confidential employee and may appoint, but is not required to appoint, an attorney to serve as an advisor.</p>		
		<p>Additional Procedural Protections: The Department reiterates, however, that these regulations establish only the baseline procedures that recipients must follow. Any recipient that concludes that its constitutional obligations, other sources of authority, or other circumstances require additional procedural protections may provide for such protections</p>	p. 874
		<p>Number of Meetings Necessary: [T]he revised language of § 106.46(f)(1)(i)(B) also clarifies that there may be one or more individual meetings, including follow-up meetings with the parties and witnesses, as needed to establish facts, assess credibility, and ask follow-up questions. It is not necessary to</p>	p. 875

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		specify how many individual meetings must occur because the appropriate number will vary depending on the facts and circumstances of the case and the type and number of questions proposed by the parties, but the Department also does not anticipate that there would be an endless cycle of meetings.	
		Relevant and Permissible Questions: [T]he Department notes that questions proposed by the parties to be asked of parties and witnesses must be relevant and not otherwise impermissible under §§ 106.2 and 106.45(b)(7) and may not be unclear or harassing under § 106.46(f)(3). Thus, if at some point the follow-up questions proposed by the party are duplicative of questions that have already been asked or are designed to harass as opposed to assess credibility or elicit relevant information, the postsecondary institution may decline to hold additional meetings to ask the questions.	p. 875
		Virtual Meetings: [T]he Department clarifies that nothing in the final regulations precludes a recipient from conducting individual meetings with parties and witnesses virtually with technology enabling the decisionmaker or investigator and the party or witness to simultaneously see and hear one another.	p. 876
		Assessing Credibility: [A] postsecondary institution is not required to use the same method of assessing credibility for all live hearings, but absent a party's need for a disability or language access accommodation or the provision of auxiliary aids or services, it must use the same method for assessing credibility for each party or witness within resolution of a particular complaint because grievance procedures must be fair and treat the parties equitably.	p. 878
		Parties Cross-Examining Each Other: [E]ven if a postsecondary institution chooses to use a live hearing with questioning by an	p. 879

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		advisor, the parties are never permitted to personally cross-examine each other....	
Interaction of §106.45(g) and §106.46(f)(1)(i)-(ii)	Compliance with paragraph (f)(1)(i) or (ii) of this section satisfies the requirements of § 106.45(g).		§106.46(f)(2)
Decisionmaker's Evaluation of Questions	The decisionmaker must determine whether a proposed question is relevant under § 106.2 and not otherwise impermissible under § 106.45(b)(7), prior to the question being posed, and must explain any decision to exclude a question as not relevant or otherwise impermissible. If a decisionmaker determines that a party's question is relevant and not otherwise impermissible, then the question must be asked except that a postsecondary institution must not permit questions that are unclear or harassing of the party or witness being questioned. The decisionmaker must give a party an opportunity to clarify or revise a question that the decisionmaker has determined is unclear or harassing and, if the party sufficiently clarifies or revises a question to satisfy the terms of this paragraph, the question must be asked. A postsecondary institution may also adopt and apply other reasonable rules regarding decorum, provided they		§106.46(f)(3)

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	apply equally to the parties.		
		Opportunity to Clarify a Question: This opportunity to clarify or revise a question is not available when a decisionmaker determines that a question is not relevant or otherwise impermissible because, in those cases, it is the underlying substance of the question—not the manner in which it was asked—that is prohibited.	p. 889
		Unclear or Harassing Questions: The Department declines to define unclear or harassing in the regulatory text because...[a determination] is necessarily fact-specific. The Department notes that the prohibition on these sorts of questions could apply to both the question and to the manner in which the question is asked.	p. 891
		Questions about Sexual Interests or Prior Sexual Conduct: [Q]uestions about the complainant’s sexual interests would always be excluded as impermissible, and questions about the complainant’s prior sexual conduct would be excluded as impermissible unless offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant’s prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment.	p. 891
Party or Witness Who Refuses to Respond to Decisionmaker’s Question	A decisionmaker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The decisionmaker must not draw an inference about whether sex-based harassment occurred based solely on a party’s or witness’s refusal		§106.46(f)(4)

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	to respond to such questions.		
		Totality of the Circumstances: [T]he Department has determined a decisionmaker must have the flexibility to determine, based on the totality of the circumstances, the weight to be given, if any, to a statement made by a party or witness who refuses to respond to questions deemed relevant and not impermissible, including those related to credibility.	p. 895
Making a Determination on Whether Sex Discrimination Occurred	Following an investigation and evaluation of all relevant and not otherwise impermissible evidence under paragraphs (f) and (g) of this section, the recipient must:		§106.45(h)
		Burden on Recipient: [T]he Department reminds all stakeholders that under the regulations, the burden is on the recipient to gather evidence that meets the standard of proof, not on the complainant or the respondent. <i>See</i> 106.45(f)(1).	p. 754
		Beyond a Reasonable Doubt Standard: [T]he beyond a reasonable doubt standard is never appropriate to use in sex discrimination proceedings.	p. 759
	(1) Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred, unless the recipient uses the clear and convincing evidence standard of proof in all other comparable proceedings, including proceedings relating to other discrimination complaints, in which case the recipient may elect to use that standard of proof in determining whether sex		



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	discrimination occurred. Both standards of proof require the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness; if the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker must not determine that sex discrimination occurred.		
		Comparable Proceedings include, for example, allegations of similar types of person-to-person (as distinct from recipient-to-person) offenses that are physical in nature and not based on sex.	p. 762
		Standard Used: [T]he Department clarifies that under the final regulations, a recipient may only use the clear and convincing evidence standard for sex discrimination proceedings if it uses that standard for all of its comparable proceedings. If a recipient uses the clear and convincing evidence standard for some comparable proceedings and the preponderance of the evidence standard for others, then it must use the preponderance of the evidence standard to evaluate sex discrimination complaints.	p. 762
	(2) Notify the parties in writing of the determination whether sex discrimination occurred under Title IX or this part including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if		

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	applicable;		
	(3) If there is a determination that sex discrimination occurred, as appropriate, require the Title IX Coordinator to coordinate the provision and implementation of remedies to a complainant and other persons the recipient identifies as having had equal access to the recipient’s education program or activity limited or denied by sex discrimination, coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions, and require the Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient’s education program or activity under § 106.44(f)(1)(vii). A recipient may not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the recipient’s grievance procedures that the respondent engaged in prohibited sex discrimination;		
	(4) Comply with § 106.45, and if applicable § 106.46, before the		

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	imposition of any disciplinary sanctions against a respondent; and		
		Section 106.45(h)(4) also applies to all complaints of sex discrimination, not just formal complaints of sexual harassment as it did under the 2020 amendments.	p. 779
	(5) Not discipline a party, witness, or others participating in a recipient’s grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the recipient’s determination whether sex discrimination occurred.		
		Section 106.45(h)(5) Explained: Section 106.45(h)(5) informs parties, witnesses, and others that they cannot be disciplined under any circumstance for making a false statement—whether the discipline would constitute retaliation or not—if the discipline is based solely on the recipient’s determination whether sex discrimination occurred.	p. 784
		To be clear, § 106.45(h)(5) permits a disciplinary process to be initiated under a recipient’s code of conduct to address false statements as long as there is evidence independent of the determination whether sex discrimination occurred, and evidence developed during the Title IX grievance process may be used in such a disciplinary process.	p. 783
Making a Written Determination on Whether Sex-Based Harassment Occurred Involving Student	The postsecondary institution must provide the determination whether sex-based harassment occurred in writing to the parties simultaneously. (1) The written determination must include:		§106.46(h)

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Complainants or Respondents at Postsecondary Institutions	<p>(i) A description of the alleged sex-based harassment;</p> <p>(ii) Information about the policies and procedures that the postsecondary institution used to evaluate the allegations;</p> <p>(iii) The decisionmaker’s evaluation of the relevant and not otherwise impermissible evidence and determination whether sex-based harassment occurred;</p> <p>(iv) When the decisionmaker finds that sex-based harassment occurred, any disciplinary sanctions the postsecondary institution will impose on the respondent, whether remedies other than the imposition of disciplinary sanctions will be provided by the postsecondary institution to the complainant, and, to the extent appropriate, other students identified by the postsecondary institution to be experiencing the effects of the sex-based harassment; and</p> <p>(v) The postsecondary institution’s procedures for the complainant and respondent to appeal.</p>		
		Information About Remedies: § 106.46(h) does not require a recipient to provide information about the particular remedies offered in the written determination, only whether remedies will be provided, to protect the privacy of the complainant while	p. 916

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		preserving the overall fairness of giving both parties identical copies of the written determination simultaneously.	
Finality of Determination of Responsibility	The determination regarding responsibility becomes final either on the date that the postsecondary institution provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.		§106.46(h)(2)
Assistant Secretary Review of Sex-Based Harassment Complaints	The Assistant Secretary will not deem a recipient to have violated this part solely because the Assistant Secretary would have reached a different determination in a particular complaint alleging sex-based harassment than a recipient reached under § 106.45, and if applicable § 106.46, based on the Assistant Secretary’s independent weighing of the evidence.		§106.47
		§ 106.47 applies only to determinations regarding whether sex-based harassment occurred under § 106.45, and if applicable § 106.46.	p. 59
		OCR’s Judgment: OCR will not substitute its judgment for the judgment of the recipient’s decisionmaker regarding the weighing of relevant and not otherwise impermissible evidence in a particular case.	p. 59
		Recipient Noncompliance: [N]othing in § 106.47 prevents OCR from holding a recipient accountable for noncompliance with any provision of the final regulations, including its determination	p. 59

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		whether a complainant’s communication with the recipient constitutes a complaint under the definition in § 106.2.	
<b>LGBTQI+</b>			
Scope of Title IX	[I]ncludes discrimination on the basis of sex stereotypes, sex characteristics... sexual orientation, and gender identity.		§106.10
		The Department notes that school policies that limit or deny a student’s participation in a recipient’s education program or activity on the basis of that student’s sexual orientation or gender identity are subject to Title IX’s prohibitions on sex discrimination.	p. 1103
		Bostock: Title IX’s prohibition on discrimination “on the basis of” sex clearly encompasses discrimination on the basis of sexual orientation and gender identity, given that such bases of discrimination meet the same but-for causation test relied upon in <i>Bostock</i> .	p. 1097
Gender Identity		To comply with the prohibition on gender identity discrimination, a recipient must not treat individuals more or less favorably based on their gender identity and, as described in more detail in the discussion of § 106.31(a)(2), generally may not prevent a person from participating in its education program or activity consistent with the person’s gender identity.	p. 1106
		The Department has determined that “gender identity” encompasses a person’s “transgender status,” but is a more widely understood term that more accurately and fully reflects the scope of Title IX’s protections.	p. 1107
Sexual Orientation		[A] recipient’s intentional separation or different treatment of students based on their sexual orientation generally would	p. 1108

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		constitute sex discrimination under the final regulations.	
Sex Characteristics		[S]ex characteristics is intended to refer to physiological sex-based characteristics. Sex discrimination based on a person’s physiological sex characteristics may include discrimination based on a person’s anatomy, hormones, and chromosomes associated with male or female bodies. As explained in the July 2022 NPRM, discrimination on the basis of sex characteristics includes discrimination based on intersex traits.	p. 1110
Sex Stereotypes		Sex stereotyping violates Title IX when it operates to exclude a person from participation in, deny a person the benefits of, or otherwise subject a person to discrimination under a recipient’s education program or activity.	p. 1112
Membership Practices of Student Groups		[T]o the extent Title IX prohibits student groups from discriminating on the basis of sex, including sexual orientation and gender identity, those groups may, consistent with Title IX and other applicable laws, impose membership criteria not related to sex that promote the student group’s mission (for example, requiring that members have a legitimate good faith interest in the group’s mission).	p. 118
Sex-Based Harassment Involving Sex Stereotyping or Gender Identity		Sex-based harassment, including harassment predicated on sex stereotyping or gender identity, is covered by Title IX if it is sex-based, unwelcome, subjectively and objectively offensive, and sufficiently severe or pervasive to limit or deny a student’s ability to participate in or benefit from a recipient’s education program or activity ( <i>i.e.</i> , creates a hostile environment).	p. 148
Misgendering as a Form of Sex-Based Harassment		[W]hether verbal conduct constitutes sex-based harassment is necessarily fact-specific. While the final regulations do not purport to identify all of the circumstances that could constitute sex-based harassment under Title IX, a stray remark, such as a misuse of language, would not constitute harassment under this	p. 148

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		standard.	
Lactating Students		A] recipient must ensure that any student who is lactating can voluntarily access a lactation space that complies with § 106.40(b)(3)(v) regardless of a student’s gender identity or gender expression.	p. 1037
<b>Parental, Family, and Pregnancy Related Protections (Students)</b>			
Scope of Title IX	[I]ncludes discrimination on the basis...pregnancy or related conditions....		§106.10
		Menstruation, Perimenopause, Menopause, or Related Conditions: We appreciate the opportunity to clarify for schools, students, and employees that harassment and other discrimination based on menstruation, perimenopause, menopause, or their related conditions and symptoms is prohibited sex discrimination under § 106.10.	p. 1117
		Example of Barriers: These barriers could include, for example, menstruation-related harassment by students or employees, unreasonable limits on students’ or employees’ bathroom access to address menstrual needs, conduct by school officials that publicly exposes that a student is menstruating ( <i>e.g.</i> , requiring a student to remove a garment around their waist, or prohibiting a student from changing clothes at school when the student needs to address a menstruation-related issue), or similar menstruation-related restrictions or discipline.	p. 1118
Prohibited Conduct Generally	A recipient must not adopt or implement any policy, practice, or procedure concerning a student’s		§106.40(a)



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	current, potential, or past parental, family, or marital status that treats students differently on the basis of sex.		
		“Parental Status”: [T]he definition of “parental status” is not limited to a timeframe immediately following the birth or adoption of a child and agrees that the protection of § 106.40(a) applies throughout a student’s participation in a recipient’s education program or activity.	p. 961
Prohibited Conduct Involving Pregnancy or Related Conditions	A recipient must not discriminate in its education program or activity against any student based on the student’s current, potential, or past pregnancy or related conditions.		§106.40(b)(1)
		Prohibited Conduct: [T]he Department maintains its longstanding interpretation that a recipient violates Title IX by stopping or reducing financial assistance on the basis of pregnancy or related conditions; subjecting students of one sex to additional or different requirements, such as requiring women athletes to sign contracts listing pregnancy as an infraction; or excluding students from participating in a recipient’s education program or activity, including extracurricular activities and athletics, on the basis of the student’s pregnancy or a related condition.	p. 963
Approved Conduct Involving Pregnancy or Related Conditions	A recipient does not engage in prohibited discrimination when it allows a student, based on pregnancy or related conditions, to voluntarily participate in a separate portion of its education program or activity provided		§106.40(b)(1)

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	the recipient ensures that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions.		
Providing Title IX Coordinator Contact Information	A recipient must ensure that when a student, or a person who has a legal right to act on behalf of the student, informs any employee of the student’s pregnancy or related conditions, unless the employee reasonably believes that the Title IX Coordinator has been notified, the employee promptly provides that person with the Title IX Coordinator’s contact information and informs that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student’s equal access to the recipient’s education program or activity.		§106.40(b)(2)
		Directly Inform: [A] student or their legal representative must directly inform an employee to trigger the requirements under this provision. It is not enough for an employee to be informed indirectly, or by someone other than the student or their legal representative, or to merely suspect that a student may be pregnant or experiencing pregnancy-related conditions. A student or a person who has a legal right to act on behalf of the student “informs” an employee of a student’s pregnancy or related conditions when the student or such person tells the employee that the student is pregnant or experiencing pregnancy-	p. 968

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		related conditions, either verbally or in writing.	
Specific Actions Recipient Must Take to Prevent Discrimination and Ensure Equal Access	A recipient must take specific actions under paragraphs (b)(3)(i) through (vi) of this section to promptly and effectively prevent sex discrimination and ensure equal access to the recipient's education program or activity once the student, or a person who has a legal right to act on behalf of the student, notifies the Title IX Coordinator of the student's pregnancy or related conditions. The Title IX Coordinator must coordinate these actions.		§106.40(b)(3)
		Determining Promptness: Determining promptness in each case is a fact-specific inquiry that depends on a variety of factors, including the needs of the student, the substance and timing of the requested modification, and the characteristics of the education program or activity.	p. 975
		Determining Effectiveness: Effectiveness requires, for example, ensuring that all relevant school staff are complying with their role in carrying out § 106.40(b)(3)(ii)–(vi) and that there are no other structural or resource barriers to compliance.	p. 978
		Delegating Duties: [I]t is the recipient's responsibility to take, and the Title IX Coordinator's responsibility to coordinate, these actions, including the provision of reasonable modifications because of pregnancy or related conditions.	p. 1002
Recipient's Responsibility to Provide Information	The recipient must inform the student, and if applicable, the person who notified the Title IX Coordinator of the		§106.40(b)(3)(i)

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About Recipient Obligations	student's pregnancy or related conditions and has a legal right to act on behalf of the student, of the recipient's obligations under paragraphs (b)(1) through (5) of this section and § 106.44(j) and provide the recipient's notice of nondiscrimination under § 106.8(c)(1).		
Recipient's Responsibility to Make Reasonable Modifications	The recipient must make reasonable modifications to the recipient's policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to the recipient's education program or activity. Each reasonable modification must be based on the student's individualized needs. In determining what modifications are required under this paragraph, the recipient must consult with the student. A modification that a recipient can demonstrate would fundamentally alter the nature of its education program or activity is not a reasonable modification.		§106.40(b)(3)(ii)(A)
	The student has discretion to accept or decline each reasonable modification offered by the recipient. If a student accepts a recipient's offered reasonable modification, the recipient		§106.40(b)(3)(ii)(B)

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	must implement it.		
		Student Declines Reasonable Modification: If a student declines an offered reasonable modification that is based on the student’s individualized needs and that would prevent sex discrimination and ensure equal access, the recipient is not required to determine whether there are other reasonable modifications based on that specific need, even if there are other reasonable modifications that could be offered. A recipient would, however, be responsible to offer and make reasonable modifications consistent with final § 106.40(b)(3)(ii)(A) and (B) if any new or additional needs arise.	p. 993
		Fact-Specific Determination: [T]he determination whether a modification is reasonable will necessarily be a fact-specific inquiry that considers, for example, whether the student has a preferred modification, whether alternative modifications exist, and the feasibility and effectiveness of the modification in addressing the student’s specific needs.	p. 993
Reasonable Modifications	[M]ay include, but are not limited to, breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom; intermittent absences to attend medical appointments; access to online or homebound education; changes in schedule or course sequence extensions of time for coursework and rescheduling of tests and examinations; allowing a student to sit		§106.40(b)(3)(ii)(C)

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	or stand, or carry or keep water nearby; counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access; or other changes to policies, practices, or procedures.		
		Reasonable Modifications for Individual Student vs. Broader Policy: [A] recipient can implement a reasonable modification for just one student, such as a modification that is provided to just the student who is pregnant or experiencing pregnancy-related conditions, or implement a broader policy or procedural change that affects many students, including the student who is pregnant or experiencing pregnancy-related conditions....	p. 1014
		Reasonable Modifications in Abortion Care: Were a recipient to treat requests for reasonable modifications for abortion care differently than they do requests for reasonable modifications for other temporary medical conditions with respect to the information students must provide to accompany such requests, such treatment could contravene the broad nondiscrimination mandate in section 1681, as discussed above.	p. 1007
Voluntary Access to Separate and Comparable Portion of Program or Activity	The recipient must allow the student to voluntarily access any separate and comparable portion of the recipient's education program or activity under paragraph (b)(1) of this section.		§106.40(b)(3)(iii)
		Meaning of Voluntary Under this Section: [R]ecipients must not coerce or pressure any student to participate in such separate programs.	p. 1017

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		Factors to Determine Comparability: [T]he Department considers, as appropriate, factors including the policies and criteria of admission; the educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology; the qualifications of the instructors; and the quality, accessibility, and availability of facilities and resources provided to the class.	p. 1019
Student Needing Voluntary Leave of Absence	The recipient must allow the student to voluntarily take a leave of absence from the recipient’s education program or activity to cover, at minimum, the period of time deemed medically necessary by the student’s licensed healthcare provider. To the extent that a student qualifies for leave under a leave policy maintained by a recipient that allows a greater period of time than the medically necessary period, the recipient must permit the student to take voluntary leave under that policy instead if the student so chooses. When the student returns to the recipient’s education program or activity, the student must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began.		§106.40(b)(3)(iv)

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		Extracurricular Status: [I]f a student elects to take a voluntary leave of absence under § 106.40(b)(3)(iv), in some instances, an extracurricular activity, event, or program will have ended by the time a student returns from leave or the student may not be able to participate due to timing or other logistical reasons. 87 FR 41521. Therefore, although the final regulations create a presumption that a student returning from leave should be reinstated to the same extracurricular status, there may be some limited instances when exact reinstatement would not be administratively possible or practicable under the circumstances.	p. 1023
Lactation Space	The recipient must ensure that the student can access a lactation space[.]		§106.40(b)(3)(v)
		Requirements for Lactation Space: [T]here is no requirement that a lactation space be a particular size or shape or include particular structural features. <i>See</i> 87 FR 41560. Accordingly, recipients are not required to construct new lactation spaces if an existing space otherwise meets the requirements of § 106.40(b)(3)(v).  [S]pace is functional, appropriate, and safe for the student’s use.	p. 1034, 1036
		Lactation Space on the Weekends: [W]hether a recipient must make a lactation space accessible to a student in the evenings or on weekends depends on a variety of factors, including whether an inability to access a lactation space would frustrate a lactating student’s ability to participate in the recipient’s education program or activity, which may include extracurricular activities or attendance at school-related events in the evenings or on weekends.	p. 1037
Limitation on Requiring	A recipient must not require supporting documentation under		§106.40(b)(3)(vi)



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Supporting Documentation	paragraphs (b)(3)(ii) through (v) unless the documentation is necessary and reasonable for the recipient to determine the reasonable modifications to make or whether to take additional specific actions under paragraphs (b)(3)(ii) through (v).		
		Necessary and Reasonable Documentation: [G]enerally includes no more than is sufficient to confirm—in a manner that is fair to the student under the circumstances—that a student has a need related to pregnancy or related conditions that requires a reasonable modification or other specific action under § 106.40(b)(3)(ii) through (v).	p. 1041
	Examples of situations when requiring supporting documentation is not necessary and reasonable include, but are not limited to, when the student’s need for a specific action under paragraphs (b)(3)(ii) through (v) is obvious, such as when a student who is pregnant needs a bigger uniform; when the student has previously provided the recipient with sufficient supporting documentation; when the reasonable modification because of pregnancy or related conditions at issue is allowing a student to carry or keep water nearby and drink, use a bigger desk, sit or stand, or take breaks to eat, drink, or		§106.40(b)(3)(vi)

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	use the restroom; when the student has lactation needs; or when the specific action under paragraphs (b)(3)(ii) through (v) is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.		
Treating Pregnancy or Related Conditions Comparable to Other Temporary Medical Conditions	To the extent consistent with paragraph (b)(3) of this section, a recipient must treat pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions with respect to any medical or hospital benefit, service, plan, or policy the recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's education program or activity.		§106.40(b)(4)
Requiring Certification to Participate	A recipient must not require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in the recipient's class, program, or extracurricular activity unless: (i) The certified level of physical ability or health is necessary for participation in the class, program, or		§106.40(b)(5)

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	<p>extracurricular activity;</p> <p>(ii) The recipient requires such certification of all student participating in the class, program, or extracurricular activity; and</p> <p>(iii) The information obtained is not used as a basis for discrimination prohibited by this part.</p>		
Application to Admissions	<p>In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:</p> <p>(1) Must treat pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions; and</p> <p>(2) Must not:</p> <p>(i) Adopt or implement any policy, practice, or procedure concerning the current, potential, or past parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;</p> <p>(ii) Discriminate against any person on the basis of current, potential, or past pregnancy or related conditions, or adopt or implement any policy, practice, or procedure that so discriminates; and</p>		§106.21(c)

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	(iii) Make a pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is “Miss or Mrs.” A recipient may ask an applicant to self-identify their sex, but only if this question is asked of all applicants and if the response is not used as a basis for discrimination prohibited by this part.		
		The Department confirms that Subpart C of the regulations, which governs admissions, does not apply to nonvocational elementary schools and secondary schools.	p. 953
<b>Pre-Hearing Investigation</b>			
Complaint Investigation	A recipient must provide for adequate, reliable, and impartial investigation of complaints. To do so, the recipient must:		§106.45(f)
	(1) Ensure that the burden is on the recipient—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred;		
	(2) Provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible;		

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	(3) Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance, consistent with § 106.2 and with paragraph (b)(7) of this section; and		
		Revisiting Evidence: To avoid inadvertently excluding relevant evidence, a recipient may need to revisit an earlier relevance determination and reconsider a witness or a piece of evidence that the recipient had previously excluded.	p. 728
	(4) Provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, consistent with § 106.2 and with paragraph (b)(7) of this section, in the following manner: (i) A recipient must provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence. If the recipient provides a description of the evidence, it must further provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party; (ii) A recipient must provide a		

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	<p>reasonable opportunity to respond to the evidence or to the accurate description of the evidence described in paragraph (f)(4)(i) of this section; and</p> <p>(iii) A recipient must take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. For purposes of this paragraph, disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.</p>		
		<p>Presenting Relevant and Not Otherwise Impermissible Evidence: Section 106.45(f)(4) does not require a recipient to give the parties a physical or electronic copy of the description or the underlying evidence. Recipients may tailor the manner in which they present the relevant and not otherwise impermissible evidence in light of various factors, such as the ages of the parties, the severity of the alleged conduct, the volume of evidence, and other case-specific or recipient-specific factors.</p>	p. 733
		<p>Description of the Evidence: Under § 106.45(f)(4), a recipient may provide a description of the evidence orally or in writing.</p>	p. 733
		<p>Equal Opportunity to Access Evidence: A recipient cannot choose to provide access to the underlying evidence to one party and to provide a description of the evidence to the other party or parties. The requirement to provide an equal opportunity to</p>	p. 734

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		access the evidence also extends to the mode of delivery, such as whether a physical or electronic copy is provided. The requirement to provide an equal opportunity to access the evidence, however, does not mean that a recipient must treat the parties in an identical manner. A recipient may need to provide a particular mode of access through auxiliary aids and services to a party with a disability to ensure effective communication, which would not be applicable to the other party.	
		Reasonableness Timeframe: [A] reasonable timeframe accommodates the nature and volume of evidence, which can vary greatly based on the allegations in a complaint....	p. 738
Complaint Investigation Involving a Student Complainant or Respondent at Postsecondary Institutions	When investigating a complaint alleging sex-based harassment and throughout the postsecondary institution's grievance procedures for complaints of sex-based harassment involving a student complainant or a student respondent, a postsecondary institution:		§106.46(e)
	(1) Must provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare to participate;		
	(2) Must provide the parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be,		

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	but is not required to be, an attorney, and not limit the choice or presence of the advisor for the complainant or respondent in any meeting or proceeding; however, the postsecondary institution may establish restrictions regarding the extent to which the advisor may participate in the grievance procedures, as long as the restrictions apply equally to the parties;		
		Multiple Advisors: [T]he Department declines to require an institution to allow parties to be accompanied to meetings and proceedings by multiple advisors.	p. 809
		Choice of Advisors: The Department also notes that while these final regulations do not require an institution to pay for the parties' advisors, nothing in the final regulations precludes an institution from choosing to do so. Likewise, nothing in these regulations precludes an institution from offering to provide attorney-advisors or non-attorney advisors to the parties, though § 106.46(e)(2) ensures that the parties retain the right to select their own advisor of choice and decline the institution's offer.	p. 815
		Confidential Employee as Advisor: [T]he Department wishes to clarify that a party may choose a confidential employee to serve as their advisor of choice under § 106.46(e)(2); however, an institution may not appoint or otherwise require a confidential employee to serve as the postsecondary institution's advisor of choice to ask questions on behalf of a party when the party lacks their own advisor of choice.	p. 816
	(3) Must provide the parties with the		



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	same opportunities, if any, to have persons other than the advisor of the parties' choice present during any meeting or proceeding;		
		Parents or Guardian Attendance: Section 106.46(e)(3) gives a postsecondary institution the discretion to permit parties to have persons other than the party's advisor—such as the party's parent or guardian—attend any meeting or proceeding; however, a recipient must not permit a parent or guardian of a postsecondary student to attend a meeting or proceeding when their presence would violate FERPA.	p. 823
	(4) Has discretion to determine whether the parties may present expert witnesses as long as the determination applies equally to the parties;		
	(5) Must allow for the reasonable extension of timeframes on a case-by-case basis for good cause with written notice to the parties that includes the reason for the delay; and		
	(6) Must provide each party and the party's advisor, if any, with an equal opportunity to access the evidence that is relevant to the allegations of sex-based harassment and not otherwise impermissible, consistent with §§ 106.2 and 106.45(b)(7), in the following manner: (i) A postsecondary institution must provide an equal opportunity to access		

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	<p>either the relevant and not otherwise impermissible evidence, or the same written investigative report that accurately summarizes this evidence. If the postsecondary institution provides access to an investigative report, it must further provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party;</p> <p>(ii) A postsecondary institution must provide the parties with a reasonable opportunity to review and respond to the evidence or the investigative report described in paragraph (e)(6)(i) of this section prior to the determination whether sex-based harassment occurred. If a postsecondary institution conducts a live hearing as part of its grievance procedures, it must provide this opportunity to review the evidence in advance of the live hearing; it is at the postsecondary institution's discretion whether to provide this opportunity to respond prior to the live hearing, during the live hearing, or both prior to and during the live hearing;</p> <p>(iii) A postsecondary institution must</p>		

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	take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the sex-based harassment grievance procedures. For purposes of this paragraph, disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex-based harassment are authorized; and (iv) Compliance with paragraph (e)(6) of this section satisfies the requirements of § 106.45(f)(4).		
		Access to Evidence: The Department appreciates the opportunity to clarify that a decisionmaker cannot rely on evidence to which the parties were not given access.	p. 831
		Equal Opportunity Under §106.46(e)(6)(i): The requirement to provide an equal opportunity to access the evidence means that the parties must have the same opportunity to access the evidence, but it does not mean that an institution must treat the parties in an identical manner regarding the mode of accessing the evidence.	p. 838
		Reasonableness Standard Under §106.46(e)(6)(ii): [P]ostsecondary institutions must ensure that the parties are able to meaningfully review and respond to the evidence or the investigative report. The nature and volume of evidence varies greatly based on the allegations in a complaint, and a reasonable timeframe accommodates this variation.	p. 841
		Authorized Disclosures Under §106.46(e)(6)(iii): [A]uthorized	p. 845

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		disclosures for purposes of § 106.46(e)(6)(iii) include those disclosures that are permitted under § 106.45(b)(5). In addition, consistent with § 106.46(e)(6)(iii), institutions may authorize narrow disclosures to particular individuals or of particular pieces of evidence, depending on the circumstances.	
<b>Live Hearing</b>			
Live Hearings at Postsecondary Institutions	A postsecondary institution's sex-based harassment grievance procedures may, but need not, provide for a live hearing.		§106.46(g)
		Holding a Live Hearing: [R]elevant case law interpreting Title IX, due process, and fundamental fairness does not require a postsecondary institution to hold a live hearing in all cases as long as the postsecondary institution provides another live-questioning process.	p. 906
		Interaction with §§106.46(f)(1)(i)-(ii): If the postsecondary institution chooses to use a live hearing under § 106.46(g), then it must follow the procedures in § 106.46(f)(1)(ii). Conversely, if the postsecondary institution chooses not to use a live hearing under § 106.46(g), then it must follow the procedures in § 106.46(f)(1)(i).	p. 910
Live Hearing Requirements at Postsecondary Institutions	If a postsecondary institution chooses to conduct a live hearing, it may conduct the live hearing with the parties physically present in the same geographic location. At the postsecondary institution's discretion the institution may, or upon the request		§106.46(g)

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	of either party it must, conduct the live hearing with the parties physically present in separate locations, with technology enabling the decisionmaker and parties to simultaneously see and hear the party or the witness while that person is speaking. A postsecondary institution must create an audio or audiovisual recording or transcript, of any live hearing and make it available to the parties for inspection and review.		
<b>Appeals</b>			
Appeals Generally	In addition to an appeal of a dismissal consistent with paragraph (d)(3) of this section, a recipient must offer the parties an appeal process that, at a minimum, is the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints. For a complaint of sex-based harassment involving a student complainant or student respondent, a postsecondary institution must also offer an appeal on the bases set out in § 106.46(i)(1).		§106.45(i)
		Appeals Timeframe: The Department also notes that the final regulations do not require recipients to adopt a specific	p. 790

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		timeframe for an appeal and that a recipient has discretion to set its own reasonably prompt timeframe for implementing appeals under § 106.45(i).	
		Live Hearings During Appeals Process: The Department declines to require recipients to provide for a live hearing during the appeals process, but notes that nothing in the final regulations precludes a recipient from providing such a hearing in its discretion or when required by applicable case law or other sources of law	p. 631
Requirements for the Appeals Process	A recipient must notify the complainant that a dismissal may be appealed and provide the complainant with an opportunity to appeal the dismissal of a complaint on the bases set out in § 106.46(i)(1). If the dismissal occurs after the respondent has been notified of the allegations, then the recipient must also notify the respondent that the dismissal may be appealed on the bases set out in § 106.46(i)(1).		§106.45(d)(3)
		Basis for Offering an Appeal from a Dismissed Complaint: § 106.45(d)(3) requires a recipient to offer an appeal from a dismissed complaint on the same bases as required under the 2020 amendments, 87 FR 41478–79, which are specifically procedural irregularity; new evidence that was not reasonably available at the time of the dismissal; or Title IX Coordinator, investigator, or decisionmaker bias or conflict of interest.	p. 706-707
	Requirements for Appeals: (i) Notify the parties of any appeal, including		§106.45(d)(3)

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	<p>notice of the allegations consistent with paragraph (c) of this section if notice was not previously provided to the respondent;</p> <p>(ii) Implement appeal procedures equally for the parties;</p> <p>(iii) Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;</p> <p>(iv) Ensure that the decisionmaker for the appeal has been trained as set out in § 106.8(d)(2);</p> <p>(v) Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and</p> <p>(vi) Notify the parties of the result of the appeal and the rationale for the result.</p>		
		Title IX Coordinator: [A] Title IX Coordinator would be prohibited from deciding the appeal if they took part in the investigation or dismissal of the complaint.	p. 709
Appeals at Postsecondary Institutions	A postsecondary institution must offer the parties an appeal from a determination whether sex-based harassment occurred, and from a postsecondary institution's dismissal of a complaint or any allegations therein		§106.46(i)(1)

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		Scope of §106.46(i): [T]he Department wishes to clarify that only a postsecondary institution that receives a complaint of sex-based harassment involving a student party must offer the parties an appeal consistent with § 106.46(i).	p. 920
Grounds for Appeals	(i) Procedural irregularity that would change the outcome; (ii) New evidence that would change the outcome and that was not reasonably available when the determination whether sex-based harassment occurred or dismissal was made; and (iii) The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome. (2) A postsecondary institution may offer an appeal to the parties on additional bases, so long as the procedures and additional bases for appeal are equally available to all parties.		§106.46(i)(1)-(2)
		Inappropriate Basis for an Appeal: The Department similarly declines to require a postsecondary institution to offer an appeal on the basis of simple error or a determination being clearly erroneous or against the weight of the evidence.	p. 922
	As to all appeals, the postsecondary		§106.46(i)(3)



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	institution must comply with the requirements in § 106.45(d)(3)(i), (v), and (vi) in writing.		
<b>Informal Resolution</b>			
Informal Resolution	In lieu of resolving a complaint through the recipient's grievance procedures, the parties may instead elect to participate in an informal resolution process under § 106.44(k) if provided by the recipient consistent with that paragraph.		§106.45(k)
Informal Resolution Involving Student Complainants or Respondents at Postsecondary Institutions	If a postsecondary institution offers or provides the parties to the grievance procedures under § 106.45 and under this section with an informal resolution process under § 106.44(k), the postsecondary institution must inform the parties in writing of the offer and their rights and responsibilities in the informal resolution process and otherwise comply with the provisions of § 106.44(k)(3) in writing.		§106.46(j)
Informal Resolutions Permitted	At any time prior to determining whether sex discrimination occurred under § 106.45, and if applicable § 106.46, a recipient may offer to a complainant and respondent an informal resolution process, unless the		§106.44(k)(1)

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	complaint includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student or such a process would conflict with Federal, State or local law. A recipient that provides the parties an informal resolution process must, to the extent necessary, also require its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient’s education program or activity.		
		Informal Resolutions Generally: [I]nformal resolution may encompass a wide variety of alternative dispute resolution processes, and these final regulations provide a recipient discretion to choose a resolution option that is best for them, the parties, and their educational communities.	p. 528
		[N]othing in § 106.44(k) prohibits a recipient from offering an informal resolution process in which a respondent may accept responsibility or accountability for sex discrimination or harm caused. The Department intends for the limitation regarding such determinations in § 106.44(k)(1)—that a recipient may offer an informal resolution process “prior to determining whether sex discrimination occurred” under § 106.45, and if applicable § 106.46—to clarify at what point a recipient may offer informal resolution, but not to limit the types of informal resolution a recipient may offer.	p. 503-504
	(i) Subject to the limitations in		

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	<p>paragraph (k)(1) of this section, a recipient has discretion to determine whether it is appropriate to offer an informal resolution process when it receives information about conduct that reasonably may constitute sex discrimination under Title IX or this part or when a complaint of sex discrimination is made, and may decline to offer informal resolution despite one or more of the parties' wishes.</p> <p>(ii) In addition to the limitations in paragraph (k)(1) of this section, circumstances when a recipient may decline to allow informal resolution include but are not limited to when the recipient determines that the alleged conduct would present a future risk of harm to others.</p>		
		Assessing Future Risk of Harm: [A]n assessment may depend on the particular allegations that the parties seek to resolve informally and may take into account relevant factors, such as whether either party has a history of engaging in violent conduct or made credible threats of self-harm or harm to others.	p. 511-512
Informal Resolution (Voluntary Consent Required)	A recipient must not require or pressure the parties to participate in an informal resolution process. The recipient must obtain the parties' voluntary consent to the informal		§106.44(k)(2)

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	resolution process and must not require waiver of the right to an investigation and determination of a complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right.		
		Disclosing Personally Identifiable Information: [A] recipient must comply with § 106.44(j) when conducting an informal resolution process and must therefore not disclose personally identifiable information about the participants in an informal resolution process except in the circumstances enumerated in that provision.	p. 521
Informal Resolution (Notice Requirement)	Before initiation of an informal resolution process, the recipient must provide to the parties notice that explains: (i) The allegations; (ii) The requirements of the informal resolution process; (iii) That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the recipient’s grievance procedures; (iv) That the parties’ agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or		§106.44(k)(3)

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	<p>resuming grievance procedures arising from the same allegations;</p> <p>(v) The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and</p> <p>(vi) What information the recipient will maintain and whether and how the recipient could disclose such information for use in grievance procedures under § 106.45, and if applicable § 106.46, if grievance procedures are initiated or resumed.</p>		
		<p>Obtaining Voluntary Consent: We also believe it unnecessary to specify how a recipient obtains the voluntary consent required by § 106.44(k)(2). We instead believe it appropriate to entrust such decisions to a recipient’s discretion and judgment.</p>	p. 515
Informal Resolution (Facilitator)	<p>The facilitator for the informal resolution process must not be the same person as the investigator or the decisionmaker in the recipient’s grievance procedures. Any person designated by a recipient to facilitate an informal resolution process must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Any person facilitating informal resolution</p>		§106.44(k)(4)

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	must receive training under § 106.8(d)(3).		
Informal Resolution Agreement	Potential terms that may be included in an informal resolution agreement include but are not limited to: (i) Restrictions on contact; and (ii) Restrictions on the respondent's participation in one or more of the recipient's programs or activities or attendance at specific events, including restrictions the recipient could have imposed as remedies or disciplinary sanctions had the recipient determined at the conclusion of the recipient's grievance procedures that sex discrimination occurred.		§106.44(k)(5)
		[R]estrictions on contact under § 106.44(k)(5)(i) may be non-mutual or mutual.	p. 525
<b>Retaliation</b>			
Retaliation Prohibited	A recipient must prohibit retaliation, including peer retaliation, in its education program or activity. When a recipient has information about conduct that reasonably may constitute retaliation under Title IX or this part, the recipient is obligated to comply with § 106.44.		§106.71

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		The prohibition on retaliation would not prevent a recipient from enforcing its code of conduct for legitimate, nondiscriminatory reasons.	p. 1165
		Who Can Make a Retaliation Complaint: [A]ny of the persons specified in § 106.45(a)(2) has a right to make a retaliation complaint. 87 FR 41541. Under the final regulations, this includes a complainant; a parent, guardian, or other authorized legal representative with the legal right to act on behalf of the complainant; the Title IX Coordinator, after making the determination specified in § 106.44(f)(1)(v); or any student, employee, or person other than a student or employee who was participating or attempting to participate in the recipient’s education program or activity at the time of the alleged retaliation. <i>See</i> § 106.45(a)(2). Anyone who has participated in any way in the Title IX process, including as a complainant, respondent, or a witness, may make a retaliation complaint if they believe the recipient or any other person, including a complainant, respondent, or witness, took adverse action against them because of their participation in Title IX grievance procedures. Further, any of the persons listed in § 106.45(a)(2), regardless of any participation in the Title IX process, may make a complaint of retaliation if they believe the recipient or another person has otherwise taken adverse action against them for the purpose of interfering with their Title IX rights.	p. 1169
		Cross-Complaint: [C]ross-complaint would not constitute retaliation under these regulations as long as there is another reason for the cross-complaint that is not a pretext for sex-based retaliation.	p. 1159
Recipient’s Response to a	Upon receiving a complaint alleging retaliation, a recipient must initiate its		§106.71

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Retaliation Complaint	grievance procedures under § 106.45, or, as appropriate, an informal resolution process under § 106.44(k). As set out in § 106.45(e), if the complaint is consolidated with a complaint of sex-based harassment involving a student complainant or student respondent at a postsecondary institution, the grievance procedures initiated by the consolidated complaint must comply with the requirements of both §§ 106.45 and 106.46.		
		Establishing Retaliatory Motive: [A] retaliatory motive may be established through either direct evidence ( <i>e.g.</i> , a written or oral statement demonstrating the action was taken for the purpose of interfering with Title IX rights) or circumstantial evidence ( <i>e.g.</i> , changes in the recipient’s treatment of the complainant following the protected activity, the time span between when the individual engaged in a protected activity and when the recipient took the adverse action, different treatment of the complainant compared to other similarly situated individuals, deviation from established policies or practices).	p. 1180
<b>Application to Employees</b>			
Pre-Employment Inquiry Regarding Marital Status	A recipient must not make a pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is “Miss or Mrs.”		§106.60(a)



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Pre-Employment Inquiry Regarding Sex	A recipient may ask an applicant for employment to self-identify their sex, but only if this question is asked of all applicants and if the response is not used as a basis for discrimination prohibited by Title IX or this part.		§106.60(b)
Employment Generally	Granting and return from leaves of absence, leave for pregnancy or related conditions, leave for persons of either sex to care for children or dependents, or any other leave;		§106.51(b)(6)
Parental, Family, or Marital Status & Pregnancy or Related Conditions Generally	A recipient must not adopt or implement any policy, practice, or procedure, or take any employment action, on the basis of sex: (1) Concerning the current, potential, or past parental, family, or marital status of an employee or applicant for employment, which treats persons differently; or (2) That is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.		§106.57(a)
Employment Discrimination Related to Pregnancy or Related Conditions	A recipient must not discriminate against any employee or applicant for employment on the basis of current, potential, or past pregnancy or related conditions.		§106.57(b)

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		Reasonable Modifications: [T]he Department does not agree that reasonable modifications for employees are currently necessary to effectuate Title IX and ensure equal opportunity for recipient employees.	p. 1062-1063
		Sex Stereotypes and Pregnancy: § 106.10 of the final regulations prohibits discrimination on the basis of sex stereotypes, which may include discrimination based on others' expectations regarding a person's pregnancy or related conditions and assumptions about limitations that may result. For example, a school that fired a teacher when she got married based on the assumption that all married women get pregnant and quit their jobs would be discriminating based on sex stereotypes about both married women and about pregnancy and would thus violate Title IX's prohibition on discrimination "on the basis of sex."	p. 932
Discrimination on the Basis of Termination of Pregnancy		First, the Department notes that discrimination on the basis of pregnancy is a type of sex discrimination acknowledged by case law.	p. 944
		Second, because pregnancy is necessarily a condition related to sex characteristics (e.g., uterus, ovaries, fallopian tubes), discrimination based on conditions that arise from pregnancy, including termination of pregnancy, constitutes discrimination on the basis of sex characteristics.	p. 944
		Finally, pregnancy discrimination, including because of termination of pregnancy, is also a type of discrimination on the basis of sex stereotypes.	p. 945
Treatment of Pregnancy or Related Conditions	A recipient must treat pregnancy or related conditions as any other temporary medical conditions for all		§106.57(c)

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	job-related purposes, including commencement, duration and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; and reinstatement; and under any fringe benefit offered to employees by virtue of employment.		
Voluntary Leaves of Absence Related to Pregnancy or Related Conditions	In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient must treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.		§106.57(d)
		Reasonable Period of Time: [This] is a fact-specific inquiry that depends on the totality of the circumstances, including the period of time deemed medically necessary by an employee’s healthcare provider.	p. 1068
Providing Lactation	(1) A recipient must provide		§106.57(e)

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Time and Space for Employees	reasonable break time for an employee to express breast milk or breastfeed as needed. (2) A recipient must ensure that an employee can access a lactation space, which must be a space other than a bathroom that is clean, shielded from view, free from intrusion from others, and may be used by an employee for expressing breast milk or breastfeeding as needed.		
		Multiple Individuals Needing Simultaneous Access to a Lactation Space: [A] recipient must develop a solution consistent with § 106.57(e)(2) that meets the needs of the users of the space. Such a solution might include, as commenters suggested, using signage or a scheduling system, or installing partitions or screens in the space so it can be used by multiple persons at the same time.	p. 1073-1074
Confidential Employees	A recipient must notify all participants in the recipient's education program or activity of how to contact its confidential employees, if any, excluding any employee whose confidential status is only with respect to their conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination as set out in the definition of confidential employee in		§106.44(d)(1)

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	§ 106.2.		
Confidential Employee Requirements	A recipient must require a confidential employee to explain to any person who informs the confidential employee of conduct that reasonably may constitute sex discrimination under Title IX or this part: (i) The employee’s status as confidential for purposes of this part, including the circumstances in which the employee is not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination; (ii) How to contact the recipient’s Title IX Coordinator and how to make a complaint of sex discrimination; and (iii) That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the grievance procedures.		§106.44(d)(2)
		Requiring Confidential Employee to Verify Compliance: [N]othing in the final regulations precludes a recipient from requiring a confidential employee to verify the employee’s compliance with the requirements of § 106.44(d)(2) in a manner that does not require disclosure to the recipient of details that are confidential.	p. 367

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		Supportive Measures: [T]he Department declines to require confidential employees to be responsible for offering and coordinating supportive measures.	p. 436
Administrative Leave	Nothing in this part precludes a recipient from placing an employee respondent on administrative leave from employment responsibilities during the pendency of the recipient's grievance procedures. This provision must not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, or the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 <i>et seq.</i>		§106.44(i)
		Student Employees: The Department appreciates the opportunity to clarify that nothing in § 106.44(i) interferes with a recipient's discretion to place respondents who are employees, including student employees, on administrative leave from their employment responsibilities. This discretion extends only to a student-employee's employment responsibilities during the pendency of the recipient's grievance procedures; a recipient must comply with § 106.45, and if applicable § 106.46, before any disciplinary sanctions are imposed on a student-employee respondent, and supportive measures may not be provided for punitive or disciplinary reasons.	p. 481
Student Employee(s) is Either Complainant or Respondent	When a complainant or respondent is both a student and an employee of a postsecondary institution, the postsecondary institution must make a		§106.46(b)

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	fact-specific inquiry to determine whether the requirements of this section apply. In making this determination, a postsecondary institution must, at a minimum, consider whether the party's primary relationship with the postsecondary institution is to receive an education and whether the alleged sex-based harassment occurred while the party was performing employment-related work.		
		Fact-Specific Inquiry: Whether § 106.46 applies for a complaint involving a party who is both a student and an employee is ultimately a fact-specific inquiry in which the recipient may consider any other factors the postsecondary institution reasonably deems appropriate and then determine, in light of all the factors, whether to apply § 106.46.	p. 797
		If §106.46 Doesn't Apply: If, after conducting a fact-specific inquiry, a postsecondary institution determines that the grievance procedure requirements in § 106.46 do not apply, the postsecondary institution must still comply with the grievance procedure requirements in § 106.45. The grievance procedure requirements in § 106.45 appropriately ensure that a recipient can respond to sex-based harassment involving employees promptly and equitably as required by Title IX, while also providing appropriate procedural protections for employees.	p. 798
Employee's Responsibility Regarding Sex-		If an employee has information about sex-based harassment among its students that took place online, such as the nonconsensual sharing of intimate images, and that created a	p. 143

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Based Harassment Occurring Online		hostile environment in the recipient’s education program or activity, the recipient has an obligation to address the conduct.	
Satisfying §106.45 and §106.46 (Employee Conduct)		[N]othing in these regulations prohibits a recipient from using an existing process to satisfy the requirements of §§ 106.45 or 106.46, such as grievance procedures set forth in a collective bargaining agreement or other contractual agreement between the recipient and its employees, as long as those procedures do not conflict with the requirements of §§ 106.45 and 106.46.	p. 568
Standard of Proof Used for Allegations Against Employees		The Department has decided that in this case the value of flexibility to recipients to manage their relationships with their employees and students, respectively, counsels against requiring recipients to use the same standard of proof to evaluate allegations against employees that they use to evaluate allegations against students.	p. 767
<b>Record Keeping</b>			
Recordkeeping (Complaints and Resolution Process)	Maintain for 7 Years: For each complaint of sex discrimination, records documenting the informal resolution process under § 106.44(k) or the grievance procedures under § 106.45, and if applicable § 106.46, and the resulting outcome.		§106.8(f)(1)
		Dismissal of Complaint: The Department also notes that if, after the Title IX Coordinator was notified of conduct that reasonably may constitute sex discrimination, a recipient determined that the allegations did not constitute sex discrimination, or dismissed the complaint, that information would be included in the records a recipient is required to maintain under § 106.8(f).	p. 273-274



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Recordkeeping (Notifications)	Maintain for 7 Years: For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or this part, including notifications under § 106.44(c)(1) or (2), records documenting the actions the recipient took to meet its obligations under § 106.44.		§106.8(f)(2)
Recordkeeping (Training Materials)	Maintain for 7 Years: All materials used to provide training under paragraph (d) of this section. A recipient must make these training materials available upon request for inspection by members of the public.		§106.8(f)(3)
		Posting Training Materials on a Website: [N]othing in the final regulations precludes a recipient from choosing to post its training materials on a website to fulfill its obligations to make the training materials available for public inspection upon request.	p. 280
<b>Preemption and Intersection with Laws</b>			
Preemption	The obligation to comply with Title IX and this part is not obviated or alleviated by any State or local law or other requirement that conflicts with Title IX or this part.		§106.6(b)

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		Complying with State Law: [N]othing in the final regulations prevents a recipient from complying with a State law, including a State law designed to address sex discrimination, as long as compliance would not conflict with any requirement in the final regulations.	p. 235
Intersection with Other Laws (HIPPA)		These Title IX regulations apply to records involved in a Title IX grievance proceeding, regardless of whether HIPAA also applies to the records.	p. 673
Intersection with Other Laws (§444 of GEPA/FERPA)	The obligation to comply with Title IX and this part is not obviated or alleviated by FERPA, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99.		§106.6(e)
		[T]he GEPA override, which is statutorily mandated by GEPA, 20 U.S.C. 1221(d), requires that Title IX override FERPA when there is a direct conflict.... As discussed above, the constitutional override, in addition to the GEPA override, will apply when there is a direct conflict between constitutional due process rights and FERPA.	p. 214
		Disclosure of Information: To the extent these final regulations require disclosure of personally identifiable information from education records to the parties (or their parents, guardians, authorized legal representatives, or advisors) that directly conflicts with FERPA (e.g., disclosure of a student complainant’s education records to an employee respondent as part of investigating an allegation of sex-based harassment), the constitutional override and the GEPA override apply, and require such disclosure.	p. 216
		Redacting Information: To the extent that FERPA would require the redaction of personally identifiable information in education	p. 217

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		records, the Department takes the position that principles of due process and fundamental fairness require the disclosure of unredacted information to the parties that is relevant to the allegations and not otherwise impermissible.	
		Consolidation of Complaints: If consolidation of certain complaints means that a recipient is unable to comply with FERPA, the recipient is not permitted to exercise its discretion to consolidate those complaints.	p. 721
		Student Disciplinary Records: [T]hat student disciplinary records are education records as defined in FERPA and that such records may only be disclosed with the prior written consent of the parent or eligible student or under one of the enumerated exceptions to FERPA's general consent requirement.	p. 848, fn 66
		Transfers: [W]hen a student or employee whom a recipient has determined engaged in sex discrimination transfers to another recipient institution, the final regulations do not prohibit the first recipient from informing the other recipient of the misconduct and doing so does not constitute retaliation if the recipient has a legitimate nondiscriminatory reason.	p. 1178
Intersection with Other Laws (Title VI of the Civil Rights Act of 1964)	The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein. These procedures may be found at 34 CFR 100.6 through 100.11 and 34 CFR part 101.		§106.81
Intersection with Other Laws (First Amendment)		[N]othing in the Title IX regulations requires a recipient to restrict any rights that would otherwise be protected from government action by the First Amendment.	p. 105
		Compelling Interest: [T]he government's compelling interest in preventing discrimination is well established.	p. 106

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		Hostile Environment Sex-Based Harassment: The Department agrees that the First Amendment allows for proscription of a narrow category of speech that, based on the totality of the circumstances, constitutes hostile environment sex-based harassment.	p. 110
		Private Recipients: [N]othing in these final regulations requires a private recipient to restrict any rights that would otherwise be protected from government action by the First Amendment.	p. 120
		Interaction with §106.44(b): Were a recipient to become aware that speech occurring in classrooms, no matter the viewpoint being expressed, was creating a barrier to reporting, it would be obligated to address those barriers in ways that do not infringe on an individual’s otherwise protected First Amendment rights by, for example, clarifying the recipient’s policies for reporting possible sex discrimination.	p. 311
		Emergency Removals: The Department reiterates that emergency removal is intended to apply only to those situations that pose an imminent and serious threat to health and safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination, an intentionally high standard. The Department does not anticipate that speech that simply and even strongly articulates a point of view on ethical, social, political, or religious topics would meet this standard even though others may find that speech offensive or objectionable	p. 474
Intersection with Other Laws (State Laws)		A recipient may continue to comply with State law to the extent that it does not conflict with the requirements in these final regulations. In the event of an actual conflict between State or local law and the provisions in §§ 106.45 and 106.46, the latter would have preemptive effect over conflicting State or local law.	p. 586
		[T]he Department notes that the definition of “sex-based	p. 66

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		harassment” in the final regulations applies to all recipients and that, as stated in § 106.6(b), the obligation to comply with Title IX is not obviated or alleviated by any State or local law or other requirement that conflicts with Title IX or this part.	
		[T]he Department maintains that State workplace harassment laws can generally be applied in ways that do not create conflicts.	p. 66
		Free Speech and the First Amendment: [N]othing in Title IX or these final regulations would preempt a State law that governs speech protected by the First Amendment, including as applied to a private recipient. However, a recipient’s obligation to comply with Title IX and these final regulations is not obviated or alleviated by a conflicting State law that governs speech that is not protected by the First Amendment.	p. 120
Intersection with Other Laws (Due Process)		[C]ourts have held that public postsecondary institutions’ disciplinary proceedings are subject to the requirements of procedural due process....And while the Due Process Clauses of the Fifth and Fourteenth Amendments do not apply to a private recipient, the Department does not intend to impose, nor does Title IX require, different procedural standards for public and private recipients.	p. 537
		The Department reiterates its strong agreement that procedures to resolve disputes about sex discrimination, including sex-based harassment, must comport with due process.	p. 538
Intersection with Other Laws (Abortion Neutrality Provision, 20 U.S.C. 1688)		[I]f a recipient’s refusal to provide or pay for benefits or services related to abortion is challenged as sex discrimination under section 1681, the recipient could cite section 1688 to argue that it is under no obligation to provide or pay for any benefit or services related to an abortion.	p. 936
		Case-By-Case Analysis: A determination that the Danforth	p. 936

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		Amendment limits Title IX, if at all, in ways beyond those just described will be fact-specific and must be evaluated on a case-by-case basis, considering whether the issue involves (1) a request for a recipient to pay for or provide (2) a benefit or service, that is (3) related to an abortion, within the intent of section 1688.	
Intersection with Other Laws (Pregnancy Generally)		[N]othing in § 106.40(b)(3)(ii) obviates a recipient’s separate obligation to comply with other applicable civil rights law, including the ADA, Section 504, Title VII as amended by the PDA, or the Pregnant Workers Fairness Act (PWFA), codified at 42 U.S.C. 2000gg <i>et seq.</i> , which has become law since the issuance of the July 2022 NPRM.	p. 1010
		In addition, since the July 2022 NPRM was issued, Congress passed the PWFA, which also pertains to pregnancy, childbirth, and related medical conditions in the workplace, and the PUMP Act, which pertains to lactation rights. The Department clarifies that nothing in § 106.57(c) obviates a recipient’s separate obligation to comply with those other civil rights laws.	p. 1066
Conflicts with Collective Bargaining Agreements and Union Contracts		[T]he Department notes that nothing in these regulations interferes with a recipient’s ability to negotiate a grievance process within a collective bargaining agreement that is distinct from grievance procedures under Title IX. Nor do these regulations interfere with a recipient employee’s right to pursue remedies under an applicable collective bargaining agreement instead of making a complaint to initiate grievance procedures under Title IX. However, if an employee chooses to pursue a remedy under a collective bargaining agreement, and that process does not include baseline requirements consistent with § 106.45, and if applicable § 106.46, there can be no finding of responsibility or disciplinary action against an individual	p. 574-575

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		respondent for sex discrimination under Title IX. Further, an employee’s decision to pursue a remedy under an applicable collective bargaining agreement rather than under the Title IX grievance procedures would not alleviate the Title IX Coordinator’s obligation to determine whether to initiate a sex discrimination complaint under the recipient’s Title IX grievance procedures by making a fact-specific determination consistent with § 106.44(f)(1)(v) and to comply with § 106.44(f)(1)(vii).	
		Section 106.44(i) [on administrative leave] is not intended to override or modify rights under other laws or collective bargaining agreements.	p. 483
Conflicts with Law Enforcement		In circumstances in which alleged sex discrimination may also be a crime, it would be appropriate for law enforcement to pursue their own investigation of such conduct.	p. 616
Conflicts with Parental Rights	Nothing in Title IX or this part may be read in derogation of any legal right of a parent, guardian, or other authorized legal representative to act on behalf of a complainant, respondent, or other person, subject to paragraph (e) of this section, including but not limited to making a complaint through the recipient’s grievance procedures for complaints of sex discrimination.		§106.6(g)
		Vicarious Liability: [N]othing in the regulations holds parents vicariously liable for the actions of their children or requires a recipient to investigate a parent whose student is a respondent in a grievance proceeding.	p. 1193
		Disclosing Information: [N]othing in these final regulations prevents a recipient from disclosing information about a minor	p. 1146

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		child to their parent who has the legal right to receive disclosures on behalf of their child.	
Conflict with Academic Freedom		[N]othing in the Title IX regulations restricts the academic freedom of faculty members.	p. 117
		Conduct that may very well amount to harassment in other settings may not amount to harassment if engaged in appropriately in the academic setting, especially in the context of postsecondary academic discourse.	p. 117
Elementary or Secondary Students with Disabilities	If a complainant or respondent is an elementary or secondary student with a disability, the recipient must require the Title IX Coordinator to consult with one or more members, as appropriate, of the student's Individualized Education Program (IEP) team, 34 CFR 300.321, if any, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision under 34 CFR 104.35(c), if any, to determine how to comply with the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 <i>et seq.</i> , and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, throughout the recipient's implementation of grievance procedures under § 106.45.		§106.8(e)
Postsecondary Students with	If a complainant or respondent is a postsecondary student with a		§106.8(e)



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Disabilities	disability, the Title IX Coordinator may consult, as appropriate, with the individual or office that the recipient has designated to provide support to students with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.		
		Students with Disabilities at Postsecondary Institutions: [N]othing in § 106.8(e) prohibits a recipient from consulting additional school officials as appropriate under the circumstances or from providing advisors to students with disabilities, nor does it abrogate a recipient’s obligation to comply with other Federal laws that protect the rights of students with disabilities at the postsecondary level.	p. 271
		Legitimate Educational Interest: To the extent that a Title IX Coordinator obtains access to personally identifiable information from the education records of a party with a disability to comply with § 106.8(e), the Department views this access as a legitimate educational interest.	p. 221
Supportive Measures for Students with Disabilities	If the complainant or respondent is an elementary or secondary student with a disability, the recipient must require the Title IX Coordinator to consult with one or more members, as appropriate, of the student’s Individualized Education Program (IEP) team, 34 CFR 300.321, if any, or one or more members, as appropriate, of the group of persons responsible for		§106.44(g)(6)

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	<p>the student’s placement decision under 34 CFR 104.35(c), if any, to determine how to comply with the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 <i>et seq.</i>, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, in the implementation of supportive measures.</p> <p>(ii) If the complainant or respondent is a postsecondary student with a disability, the Title IX Coordinator may consult, as appropriate, with the individual or office that the recipient has designated to provide support to students with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, in the implementation of supportive measures.</p>		
		[I]f a complainant has a disability, that individual retains full rights under Section 504 and the ADA, as applicable.	p. 47
		Live Hearings: [R]ecipients must comply with applicable disability laws, including by providing appropriate reasonable accommodations and providing auxiliary aids and services during a live hearing. What is required will depend on the disability and the circumstances, but might include, for example, providing a party or witness with extra time to answer a question or a particular means of answering questions.	p. 884
		Pregnancy or Pregnancy-Related Condition: [I]f someone who is	p. 930

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		pregnant or experiencing a pregnancy-related condition has a disability as defined in Section 504 or the ADA, that individual is protected from discrimination under Section 504 and the ADA, as applicable, whether or not the disability is related to pregnancy.	
		Pregnancy as a Disability: [P]regnancy itself is not a disability.	p. 1066
<b>Notifications</b>			
Designation of a Title IX Coordinator	Each recipient must designate and authorize at least one employee, referred to herein as a Title IX Coordinator, to coordinate its efforts to comply with its responsibilities under Title IX and this part. If a recipient has more than one Title IX Coordinator, it must designate one of its Title IX Coordinators to retain ultimate oversight over those responsibilities and ensure the recipient's consistent compliance with its responsibilities under Title IX and this part.		§106.8(a)(1)
	As appropriate, a recipient may delegate, or permit a Title IX Coordinator to delegate, specific duties to one or more designees.		§106.8(a)(2)
Notice of Nondiscrimination	A recipient must provide a notice of nondiscrimination to students; parents, guardians, or other authorized legal		§106.8(c)

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	representatives of elementary school and secondary school students employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the recipient.		
Notice of Nondiscrimination Must Include	(A) A statement that the recipient does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and this part, including in admission (unless subpart C of this part does not apply) and employment; (B) A statement that inquiries about the application of Title IX and this part to the recipient may be referred to the recipient's Title IX Coordinator, the Office for Civil Rights, or both; (C) The name or title, office address, email address, and telephone number of the recipient's Title IX Coordinator; (D) How to locate the recipient's nondiscrimination policy under paragraph (b)(1) of this section; and the recipient's grievance procedures under paragraph (b)(2) of this section; and (E) How to report information about		§106.8(c)(1)(i)

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	conduct that may constitute sex discrimination under Title IX; and how to make a complaint of sex discrimination under this part.		
Including Exceptions or Exemptions in Notice of Nondiscrimination	Nothing in this part prevents a recipient from including in its notice of nondiscrimination information about any exceptions or exemptions applicable to the recipient under Title IX.		§106.8(c)(1)(ii)
Publishing Notice of Nondiscrimination	(i) Each recipient must prominently include all elements of its notice of nondiscrimination set out in paragraphs (c)(1)(i)(A) through (E) of this section on its website and in each handbook, catalog, announcement, bulletin, and application form that it makes available to persons entitled to notice under paragraph (c) of this section, or which are otherwise used in connection with the recruitment of students or employees. (ii) If necessary, due to the format or size of any publication under paragraph (c)(2)(i) of this section, the recipient may instead include in those publications a statement that the recipient prohibits sex discrimination in any education program or activity		§106.8(c)(2)

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	<p>that it operates and that individuals may report concerns or questions to the Title IX Coordinator, and provide the location of the notice on the recipient's website.</p> <p>(iii) A recipient must not use or distribute a publication stating that the recipient treats applicants, students, or employees differently on the basis of sex, except as such treatment is permitted by Title IX or this part.</p>		
		<p>Additional Ways to Publish Notice of Nondiscrimination: [T]he final regulations do not bar a recipient from additionally posting its notice of nondiscrimination in a public location at each school or building the recipient operates, sharing it at specific events, or re-distributing it annually. Likewise, nothing in these final regulations prohibits a recipient from identifying other ways, in addition to the recipient's website, that students, parents, and others can access the full notice, if only the short-form notice is used in print.</p>	p. 250
Notice of Allegations	<p>Upon initiation of the recipient's grievance procedures, a recipient must provide notice of the allegations to the parties whose identities are known.</p>		§106.45(c)
		<p>[W]hether a complaint is made orally or in writing, the recipient is responsible upon initiation of its grievance procedures for providing sufficient notice of the allegations to the parties to allow them to respond to the allegations.</p>	p. 50-51
		<p>What Recipient Must Include in Notice: § 106.45(c) specifies that the recipient must include the identities of the parties</p>	p. 687

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		involved in the incident, the conduct alleged to constitute sex discrimination under Title IX or this part, and the date and location of the alleged incident, if available to the recipient. A recipient may, but is not required to, provide additional information at that time, as long as sharing the information does not violate other obligations.	
		Informal Resolution: With respect to informal resolution, the Department appreciates the opportunity to clarify that a recipient must provide the notice of allegations upon initiation of the recipient's grievance procedures, which necessarily precedes offering the parties any opportunity for informal resolution.	p. 688
Notice of Allegations Must Include	(i) The recipient's grievance procedures under this section, and if applicable § 106.46, and any informal resolution process under § 106.44(k); (ii) Sufficient information available at the time to allow the parties to respond to the allegations. (iii) A statement that retaliation is prohibited; and (iv) A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence as set out in paragraph (f)(4) of this section; and if the recipient provides a description of the evidence, the parties are entitled to an equal opportunity to access to the relevant and not otherwise		§106.45(c)(1)

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	impermissible evidence upon the request of any party.		
Written Notice of Allegations	Upon the initiation of the postsecondary institution's sex-based harassment grievance procedures under this section, a postsecondary institution must provide written notice to the parties whose identities are known with sufficient time for the parties to prepare a response before any initial interview.		§106.46(c)
		[F]or complaints of sex-based harassment involving student complainants or student respondents at postsecondary institutions, written notice is required by § 106.46(c).	p. 51
Written Notice of Allegations Include	(1) The written notice must include all information required under § 106.45(c)(1)(i) through (iii) and also inform the parties that: (i) The respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the grievance procedures under this section and that prior to the determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker; (ii) They may have an advisor of their choice to serve in the role set out in		§106.46(c)(1)



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	<p>paragraph (e)(2) of this section, and that the advisor may be, but is not required to be, an attorney;</p> <p>(iii) They are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigative report that accurately summarizes this evidence as set out in paragraph (e)(6) of this section; and if the postsecondary institution provides access to an investigative report, the parties are entitled to an equal opportunity to access to the relevant and not otherwise impermissible evidence upon the request of any party; and</p> <p>(iv) If applicable, the postsecondary institution’s code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance procedure.</p>		
Notice of Additional Allegations	<p>If, in the course of an investigation, the recipient decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided under paragraph (c) of this section or that are included in a complaint that is</p>		§106.45(c)(2)

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	consolidated under paragraph (e) of this section, the recipient must provide notice of the additional allegations to the parties whose identities are known.		
Written Notice of Additional Allegations	If, in the course of an investigation, the recipient decides to investigate additional allegations of sex-based harassment by the respondent toward the complainant that are not included in the written notice provided under paragraph (c) of this section or that are included in a complaint that is consolidated under § 106.45(e), the recipient must provide written notice of the additional allegations to the parties whose identities are known.		§106.46(c)(2)
Delay of Written Notice of Allegations	To the extent the postsecondary institution has reasonable concerns for the safety of any person as a result of providing this notice, the postsecondary institution may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.		§106.46(c)(3)
		When a Delay is Justified: The Department notes that delay may be justified based on a need to address a concern for the safety of	p. 803

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		any person, including a complainant, a respondent, or other person.	
		Whether a Concern for Safety is Reasonably Necessary: [D]etermination as to whether a concern for safety is reasonable necessarily begins with the particular allegations and particular individuals involved and may take into account factors such as any history of violent or abusive conduct, any credible threats of self-harm or harm to others, whether a person needs to secure different housing or a schedule change, or evidence of substance abuse.	p. 803
		Timeframe for Delay: The notice may be delayed only to the extent necessary to address reasonable safety concerns, and the recipient must always provide notice with sufficient time for the parties to prepare a response before any initial interview.	p. 804
Notification of Dismissal of a Complaint	Upon dismissal, a recipient must promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the recipient must also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.		§106.45(d)(2)
		Respondent and Complainant: § 106.45(d)(2) requires the recipient to notify the complainant and, as applicable, the respondent of the basis for the dismissal.	p. 705
Elementary or Secondary School	An elementary school or secondary school recipient must require all of its		§106.44(c)(1)

<b>Topic</b>	<b>Final Regulation</b>	<b>Selected Preamble Excerpts</b> <i>Note: Preamble does not have legal or regulatory force</i>	<b>Regulation Section or Preamble Page No.</b>
Recipient Notification Requirements When Employee Has Information That May Constitute Sex Discrimination	employees who are not confidential employees to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX or this part.		
Notification Requirements For All Other Recipients When Employee Has Information That May Constitute Sex Discrimination	All other recipients must, at a minimum, require: (i) Any employee who is not a confidential employee and who either has authority to institute corrective measures on behalf of the recipient or has responsibility for administrative leadership, teaching, or advising in the recipient’s education program or activity to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX or this part; and (ii) All other employees who are not confidential employees and not covered by paragraph (c)(2)(i) of this section to either: (A) Notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under		§106.44(c)(2)

Topic	Final Regulation	Selected Preamble Excerpts <i>Note: Preamble does not have legal or regulatory force</i>	Regulation Section or Preamble Page No.
	Title IX or this part; or (B) Provide the contact information of the Title IX Coordinator and information about how to make a complaint of sex discrimination to any person who provides the employee with information about conduct that reasonably may constitute sex discrimination under Title IX or this part.		
		Distinguishing Between Two Categories of Employees: Specifically, under paragraph (c)(2), all recipients other than elementary schools and secondary schools, including postsecondary institutions, must distinguish between two categories of employees who are not confidential employees: (1) those who either have authority to institute corrective measures on behalf of the recipient or responsibility for administrative leadership, teaching, or advising in the recipient’s education program or activity (“Category 1”); and (2) all other employees who are not confidential employees and not covered under Category 1 (“Category 2”).	p. 337-338
		Discretion to Simplify Notification Requirement: A recipient has discretion to further simplify the notification requirement by requiring all employees to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX, or it can follow the framework with two categories of employees and undergo a straightforward set of inquiries to determine whether the employee is in Category 1 and must report the information to the Title IX Coordinator.	p. 338

<b>Topic</b>	<b>Final Regulation</b>	<b>Selected Preamble Excerpts</b> <i>Note: Preamble does not have legal or regulatory force</i>	<b>Regulation Section or Preamble Page No.</b>
		“Information About Conduct That Reasonably May Constitute Sex Discrimination”: [I]f an employee directly witnesses conduct under the recipient’s program or activity that reasonably may constitute sex discrimination, including sex-based harassment, the employee will be considered to have “information about conduct that reasonably may constitute sex discrimination” under § 106.44(c) of the final regulations. In such circumstances, the employee is required to report the information to the Title IX Coordinator, or, as applicable, provide the Title IX Coordinator’s contact information and information about how to make a complaint of sex discrimination to the person who was subjected to the conduct.	p. 321
Determining Whether a Person is a Student or Employee at a Postsecondary Institution	A postsecondary institution must reasonably determine and specify whether and under what circumstances a person who is both a student and an employee is subject to the requirements of paragraph (c)(2) of this section.		§106.44(c)(3)
		Notice to Student-Employees: [R]ecipient should give notice to its student-employees of the circumstances under which a person who is both a student and an employee is subject to the requirements of paragraph (c)(2).	p. 344
Employee Who Has Been Subject to Conduct That May Be Sex Discrimination	The requirements of paragraphs (c)(1) and (2) of this section do not apply to an employee who has personally been subject to conduct that reasonably may constitute sex discrimination under Title IX or this part.		§106.44(c)(4)
		Employee Complainant Tells Another Employee: [I]f the	p. 345

Topic	Final Regulation	Selected Preamble Excerpts <i>Note: Preamble does not have legal or regulatory force</i>	Regulation Section or Preamble Page No.
		employee complainant tells another employee, then the employee who receives the information would have notification requirements under § 106.44(c)(1) and (2).	
<b>Training</b>			
Training Generally	The recipient must ensure that the persons described in paragraphs (d)(1) through (4) of this section receive training related to their duties under Title IX promptly upon hiring or change of position that alters their duties under Title IX or this part, and annually thereafter. This training must not rely on sex stereotypes.		§106.8(d)
		Hiring Outside Trainers: The Department further notes that the regulations do not require a recipient to hire outside trainers or purchase outside training materials, but that a recipient may choose to do so.	p. 254
		Live Trainings: [T]he final regulations do not require training to be conducted in-person and do not preclude trainings from being conducted online or virtually, either synchronously or asynchronously	p. 263
All Employees	All employees must be trained on: (i) The recipient’s obligation to address sex discrimination in its education program or activity; (ii) The scope of conduct that constitutes sex discrimination under Title IX and this part, including the		§106.8(d)(1)

<b>Topic</b>	<b>Final Regulation</b>	<b>Selected Preamble Excerpts</b> <i>Note: Preamble does not have legal or regulatory force</i>	<b>Regulation Section or Preamble Page No.</b>
	definition of sex-based harassment; and (iii) All applicable notification and information requirements under §§ 106.40(b)(2) and 106.44.		
		Clarification on Who Should be Trained: The Department notes that this would include any advisors, graduate students, contractors, volunteers, or third-party agents who are performing roles that are directly involved in carrying out the recipient’s Title IX duties.	p. 259
		Clarification on Who Should be Trained: The Department also reiterates that nothing within the final regulations prohibits a recipient from choosing to train volunteers, contractors, third-party agents, or other non-employees if such training will further the recipient’s compliance with these final regulations.	p. 259
Investigators, Decisionmakers, and Other Responsible Persons	In addition to the training requirements in paragraph (d)(1) of this section, all investigators, decisionmakers, and other persons who are responsible for implementing the recipient’s grievance procedures or have the authority to modify or terminate supportive measures under § 106.44(g)(4) must be trained on the following topics to the extent related to their responsibilities: (i) The recipient’s obligations under § 106.44; (ii) The recipient’s grievance procedures under § 106.45, and if		§106.8(d)(2)



<b>Topic</b>	<b>Final Regulation</b>	<b>Selected Preamble Excerpts</b> <i>Note: Preamble does not have legal or regulatory force</i>	<b>Regulation Section or Preamble Page No.</b>
	<p>applicable § 106.46;</p> <p>(iii) How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and</p> <p>(iv) The meaning and application of the term “relevant” in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under § 106.45, and if applicable § 106.46.</p>		
Facilitators of an Informal Resolution Process	<p>In addition to the training requirements in paragraph (d)(1) of this section, all facilitators of an informal resolution process under § 106.44(k) must be trained on the rules and practices associated with the recipient’s informal resolution process and on how to serve impartially, including by avoiding conflicts of interest and bias.</p>		§106.8(d)(3)
Title IX Coordinator and Designees	<p>In addition to the training requirements in paragraphs (d)(1) through (3) of this section, the Title IX Coordinator and any designees under paragraph (a) of this section must be trained on their specific responsibilities under paragraph (a) of this section, §§ 106.40(b)(3), 106.44(f) and (g), the recipient’s recordkeeping system and the requirements of paragraph (f) of</p>		§106.8(d)(4)

Topic	Final Regulation	Selected Preamble Excerpts <i>Note: Preamble does not have legal or regulatory force</i>	Regulation Section or Preamble Page No.
	this section, and any other training necessary to coordinate the recipient's compliance with Title IX.		
<b>Exemptions</b>			
Religious Exemption		The Department declines to amend § 106.12, the provision governing religious exemptions, in these final regulations.	p. 1196
		[E]ducational institutions controlled by a religious organization are not subject to Title IX or to Title IX regulations to the extent application of the statute or the regulations would not be consistent with the religious tenets of the controlling religious organization.	p. 118
		A recipient “that merely has loose ties to religious teachings or principles, without establishing ‘control’ by a religious organization, is not eligible to assert a religious exemption.”	p. 1198
		The Department notes that that the religious exemption in Title IX applies to an “educational institution” or other “entity” that is controlled by a religious organization, 20 U.S.C. 1681(a)(3); 1687(4); it does not address an individual student or employee’s exercise of their religious beliefs.	p. 1151
		The statutory religious exemption applies regardless of whether a recipient has sought advance assurance from OCR or notified the public of its intent to rely on the exemption.	p. 247
		If an institution wishes to claim an exemption, its highest-ranking official may submit a written statement to the Assistant Secretary for Civil Rights, identifying the provisions of Title IX that conflict with a specific tenet of the controlling religious organization.	p. 1151

Topic	Final Regulation	Selected Preamble Excerpts <i>Note: Preamble does not have legal or regulatory force</i>	Regulation Section or Preamble Page No.
<b>Effective Date</b>			
Effective Date		[T]he Department has determined that these final regulations are effective August 1, 2024.	p. 14
Retroactivity		[T]he Department does not intend the final regulations to be enforced retroactively, as stated in the July 2022 NPRM.	p. 36
		[T]hey apply only to sex discrimination that allegedly occurred on or after August 1, 2024.	p. 1092
		Retroactivity of Complaint: [I]f an individual who left a recipient institution makes a complaint requesting compliance solely with regulatory requirements that were not in effect at the time of the alleged conduct, the recipient would dismiss the complaint.	p. 39

Prepared by NACUA, May 17, 2024.

The content should not be considered to be or used as legal advice. Legal questions should be directed to institutional legal counsel.



## **The Title IX Evolution: Navigating the Expanded Terrain**

May 17, 2024

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## **The Title IX Evolution: Navigating the Expanded Terrain**

May 17, 2024

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Authorized By:



Amanda McLean  
Meetings and Events Coordinator

**The Title IX Evolution: Navigating the Expanded Terrains**

May 17, 2024

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NACUA

Webinar



**The Title IX Evolution:  
Navigating the Expanded Terrain**

**Bindu Jayne**, Title IX Coordinator, Swarthmore College

**Patty Petrowski**, Associate Vice President and Deputy General Counsel, University of Michigan

**Audrey J. Anderson**, Counsel, Bass, Berry & Sims

# Presenters



**Bindu Jayne**  
Title IX Coordinator  
Swarthmore College



**Patty Petrowski**  
Associate Vice President and  
Deputy General Counsel  
University of Michigan



**Audrey Anderson**  
Counsel  
Bass, Berry & Sims



# Context

- July 12, 2022, NPRM published
- More than 240,000 comments received
- April 19, 2024, final rule published
- August 1, 2024, effective date

# When Do the New Regulations Take Effect?

Conduct occurring  
between Aug. 14, 2020, and July 31, 2024

Conduct occurring  
after Aug. 1, 2024

2020 Regs Apply

New Regs Effective

New Regs Apply

Aug. 1, 2024

**NOTE:** The date  
of the conduct -  
not the date of  
report -  
controls.



# Definitions & Jurisdiction

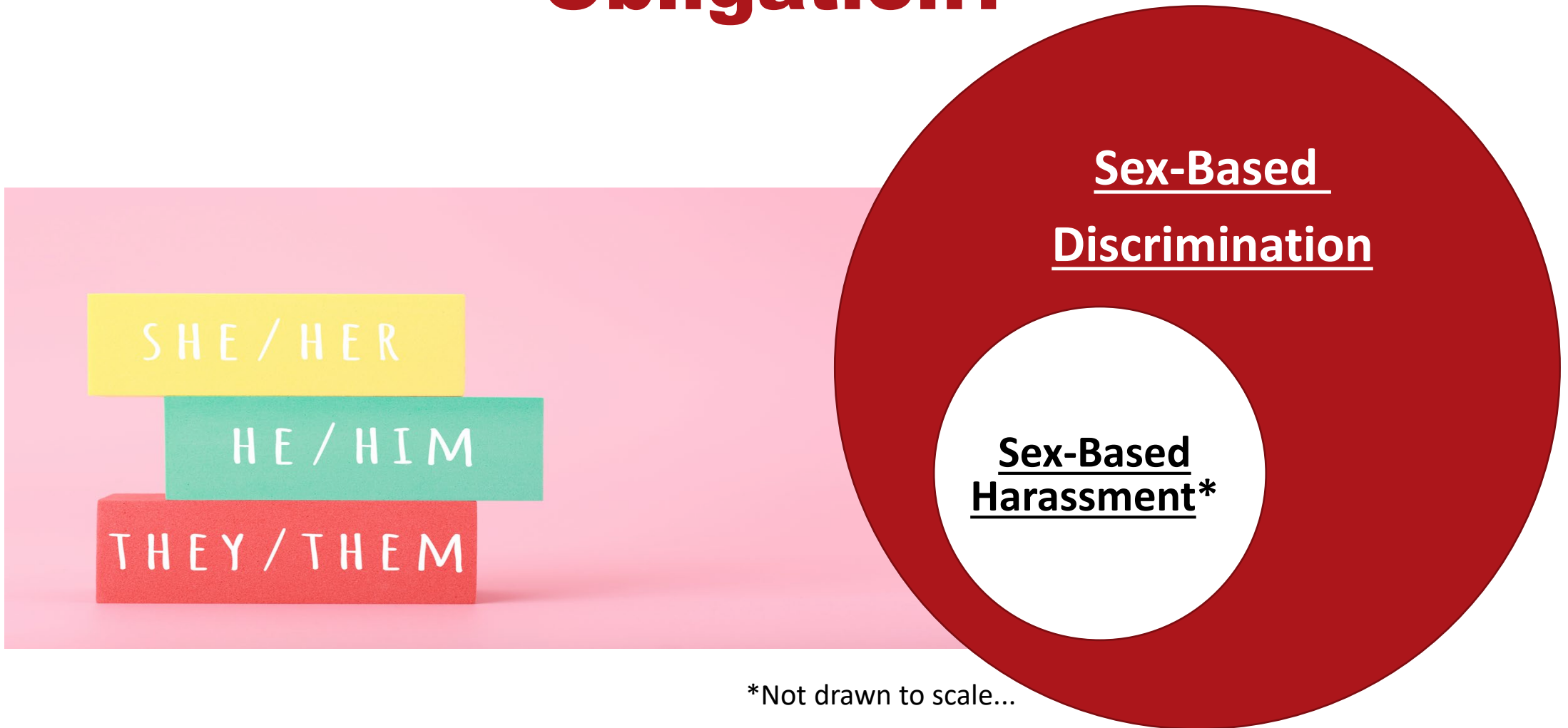
# Big Picture

Recipients have an obligation to respond appropriately to notice of sex discrimination in its programs and activities.

The reach and scope of each of these terms has changed, and generally to broaden both what triggers an institutional response *and* what that response needs to be.



# What Triggers a Response Obligation?



\*Not drawn to scale...

# What Triggers a Response Obligation?

## Sex Discrimination

- Sex stereotypes
- Sex characteristics
- Sexual orientation
- Gender identity
- Pregnancy/parental status

## Sex-Based Harassment

- Quid pro quo
- Hostile environment
- Clergy crimes

# What Triggers a Response Obligation?

## Hostile Environment Sex-Based Harassment Definition

Much broader than 2020 regulations

- Severe **or** pervasive
- Subjectively **and** objectively offensive
- Denies **or** limits
- Totality of circumstances, considering:
  - Degree of limitation on access
  - Type, frequency, and duration of conduct
  - Parties' ages, roles, and previous interactions
  - Location and context of conduct
  - Other sex-based harassment in recipient's program or activity



# What Triggers a Response Obligation?

Conduct or impact in education program or activity, in the United States

- “All operations”
- Buildings owned or controlled by officially recognized student orgs and/or
- **Subject to institution’s disciplinary authority**





# What Triggers a Response Obligation?

No obligation to address conduct that happens outside of the United States or outside of the recipient's education program or activity BUT

A recipient must evaluate the totality of the circumstances when determining whether there is a sex-based hostile environment in its education program or activity which may require that the recipient consider allegations about conduct that occurred outside of the education program or activity that may be contributing to the alleged sex-based hostile environment.

Preamble, p. 202

# What Triggers a Response Obligation?

"A person who has gained admission"



**Student**



**Employee**



**Visitor?**



**Stranger?**

Any other person who was participating or attempting to participate in the P&A at the time of the conduct

# De Minimis Standard

- In the limited circumstances that TIX permits different treatment or separation on the basis of sex (such as, housing, fraternities/sororities, single sex institutions), the different treatment or separation must be no more than de minimis harm.
- *Per se violation:* Adopting a policy or practice that prevents a person from participating in an education program/activity consistent with their gender identity subjects a person to more than de minimis harm on the basis of sex.

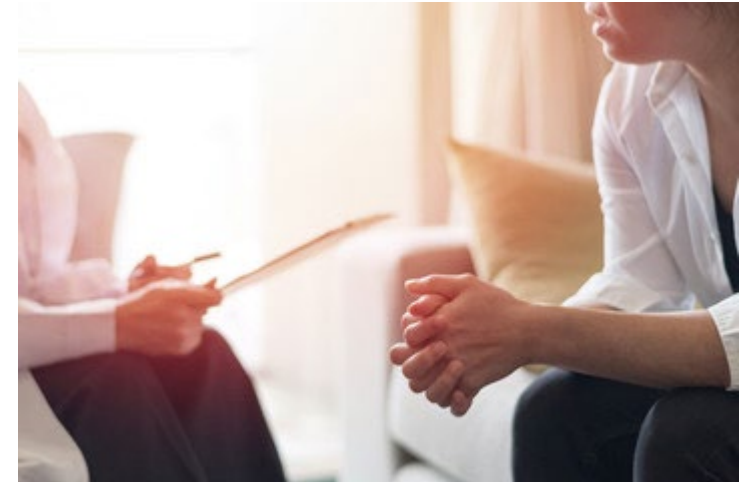
§106.31(a)(2)



# Response Obligations

# Notification Requirements

- Actual knowledge is no longer the sole factor triggering notice and a school's response obligation.
- Instead, all employees – even confidential employees – must do something when they become aware of conduct that may constitute sex discrimination.
- Much broader than officials with authority to institute corrective measures under the current regulations.



# Notification Requirements

## Notify Title IX Coordinator

- Any employee with authority to institute corrective measures on behalf of recipient
- Any employee with responsibility for administrative leadership, teaching, or advising

## Notify Title IX Coordinator or Provide Reporting Information

- All other employees who are not confidential employees

\*Do not apply to an employee who has personally been subject to possible sexual discrimination.

§106.44(c)

# Notification Requirements

Employees with authority to institute corrective measures



Employees with administrative leadership, teaching, or advising responsibilities

All other non-confidential employees



# Confidential Employees

## Who is a Confidential Employee?

1

An employee whose communications are privileged or confidential under state/federal law

2

An employee designated as confidential by the school

3

Researchers conducting IRB approved human research

\*The employee's confidential status is limited to information received about sex discrimination in connection with providing those services/conducting research.

§106.44(d)



# Confidential Employees

## What Must a Confidential Employee Explain?

**1** They are confidential employees and not required to notify TIX Coordinator

**2** How to contact TIX Coordinator

**3** That the TIX Coordinator may be able to offer and coordinate supportive measures

§106.44(d)

# Confidential Employee – Public Awareness Event Exception

- School not obligated to respond to information that was provided by someone at a *Take Back the Night* event or its equivalent unless;
- Imminent and serious threat to the health or safety of any person.

# Title IX Coordinator Responsibilities

## TIXC must:

- 106.8: Retain ultimate oversight over compliance responsibilities; if there are more than one TIXC, one must be designated as the one with ultimate oversight
- 106.8(d): Be trained
- 106.8(f): Maintain records of -
  - Resolution/outcome for all complaints of sex discrimination
  - Reports received of conduct that could be sex discrimination and actions taken
  - Training materials - make available upon request (no longer needs to be posted!)
- **106.40(b)(3): Take specified actions following notice of student's pregnancy or related condition**
- 106.44(b): Monitor for barriers to reporting AND reasonably address
- **106.44(f) - Notice requirements for TIXC**

## TIXC may:

- 106.8(e): Consult with disability support
- 106.44(e): Public awareness events - TIXC is NOT required to use information gathered from such an event to respond as they normally would unless there is an immediate and serious threat to the community
- 106.45(b)(2) - TIXC may be the decisionmaker in the grievance process



# Title IX Coordinator Responsibilities

## Notice Requirements for a TIX Coordinator



- Treat complainant and respondent equitably
  - Notify complainant of grievance procedures
  - If complaint made, notify respondent of grievance procedures
  - Offer/coordinate supportive measures
  - If complaint made, initiate grievance or IR procedures
  - If no complaint made, determine whether to initiate a complaint
  - Take other “appropriate prompt and effective” action to ensure that sex discrimination does not occur or recur (including remedies for the complainant)
- \* If TIXC reasonably determines that the alleged conduct could not constitute sex discrimination under TIX, then these requirements do not apply

§106.44(f)

# Pregnancy or Related Conditions

- Definition of pregnancy or related conditions:
  - Pregnancy, childbirth, termination of pregnancy, or lactation
  - Medical conditions related to [above]
  - Recovery from [above]

§106.2

- Notice requirement re: pregnancy or related conditions - when an employee learns of a student's pregnancy or related condition, the employee must provide the TIXC's contact info and inform them that the TIXC can coordinate specific actions to prevent sex discrimination and ensure student's equal access

§106.40

# Pregnancy or Related Conditions

After receiving notice, a TIXC must:

- Notify the student of the school's obligations re: pregnancy and related conditions
- Provide the student with voluntary reasonable accommodations to policies/practices/procedures
- Allow voluntary access to separate and comparable portion of program or activity
- Allow voluntary leave of absence (and reinstate to same academic/extracurricular status as pre-leave)
- Ensure availability of lactation space
- Comparable treatment to other temporary medical conditions
- Very limited situations where a certification to participate is permissible

§106.40

# Pregnancy or Related Conditions

## §106.21 - Admissions

- Treat pregnancy or related conditions the same as it treats a temporary disability or physical condition under the same policies
- Must not adopt any policy, practice, or procedure concerning the current, past, future, or potential parental, family or marital status that treats persons differently on basis of sex
- Must not make pre-admission inquiry into marital status (including Miss/Mrs. designation)

## §106.57 - Employment

- Cannot discriminate against employees/applicants for employment on basis of current, potential, or past pregnancy or related conditions
- Comparable treatment to other temporary medical conditions
- Voluntary leaves of absence\*
- Access to lactation time and space

# Training Requirements

## Who?

- All employees;
- Investigators, decisionmakers, appellate reviewers, and anyone else responsible for implementing grievance procedures or providing or terminating supportive measures;
- Informal resolution facilitators; and
- TIX Coordinators and designees

## When?

- "Promptly upon hiring" or "change in position that alters duties under Title IX;" and
- "Annually thereafter"

§106.8(d)



# Training Requirements

"All employees"

- School's obligation to address sex discrimination in education program or activity
- The scope of conduct that constitutes sex discrimination, including sex-based harassment
- Notification requirements re: student pregnancy
- Notification requirements re: sex discrimination

§106.8(d)

# Training Requirements

	All Employees	Grievance Process	How to Serve Impartially	Meaning & Application of Term Relevant	Informal Resolution Process	TIX Coordinator Duties & Obligations	Record Keeping Systems	Training
All Employees	X							
Anyone implementing grievance process / deciding supportive measures	X	X	X	X				
Informal Resolution Facilitators	X		X		X			
TIX Coordinators and Designees	X	X	X	X	X	X	X	X

§106.8(d)(1)-(4)

# Training Requirements

What must schools do with training records?

- Keep them for seven years
- Make them available for inspection upon request - no more required online posting



§106.8(f)

# Supportive Measures

"[I]ndividualized measures offered as appropriate...without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to

- (1) Restore or preserve that party's access to the recipient's education program or activity ...; or
- (2) Provide supportive during the recipient's grievance procedures . . . or during the informal resolution process..."

§106.2

# Supportive Measures

## Factors to Consider

- Ages of the parties involved
- The nature of the allegations and their continued effect on the complainant or the respondent
- Whether the parties continue to act directly in the school's education program or activity
- Whether steps have been taken to mitigate the harm from the parties' interactions, such as implementation of a protective order

Preamble, p. 484

# Supportive Measures

Supportive measures can now burden both complainants and respondents, but neither party can be unreasonably burdened

- The fact that a measure is burdensome does not determine whether it is a supportive measure or a disciplinary measure.
- The Department expects schools to engage in a fact-specific inquiry to determine whether supportive measures constitute a reasonable burden on parties.



§106.44(g)(2)

# Supportive Measures

Parties must have an opportunity to challenge the supportive measures:

- Decisionmaker cannot be the same person who implemented the measures;
- The parties can seek modification or reversal of the school's decision to provide, deny, modify, or terminate supportive measures;
- If the circumstances that impact a party change materially after the appeal, the school must provide another opportunity to challenge; and
- Can only challenge supportive measures that are applicable to them.

§106.44(g)(4)

# Initiating The Grievance Process

Who is a complainant?

- A student or employee who is alleged to have experienced sex discrimination; or
- Third-parties participating or attempting to participate in the school's education or program activity at the time of the alleged sex discrimination.

§106.2



# Initiating the Grievance Process

## 2020 Regulations

- Formal Complaint
  - Signed, written, formal request



## 2024 Regulations

- Complaint
  - Oral or written request;
  - No magic words



§106.40; Preamble, p. 36

# Initiating Grievance Process (Unwilling Complainant)

## Factors to consider

Complainant's  
request not to  
proceed

Complainant's  
reasonable  
safety  
concerns

Risk that  
additional sex  
discrimination  
occurs

Severity of  
alleged sex  
discrimination

Age and  
relationship of  
parties

Scope of  
alleged sex  
discrimination

Availability of  
evidence

Whether  
school could  
end sex  
discrimination  
within its  
grievance  
procedures

# Initiating The Grievance Process (Unwilling Complainant)

The TIX Coordinator must determine whether the conduct as alleged

- Presents an imminent and serious threat to the health or safety of a person; or
- Prevents the school from ensuring equal access to an education program or activity.

If either are present, the TIX Coordinator may initiate a complaint.

§106.44(f)(v)(B)

If initiating, notify complainant and address reasonable safety concerns.

§106.44(f)(vi)



**Questions?**



# The Grievance Process

# The Grievance Process: Overview

§106.45	§106.46
Applies to sex discrimination complaints that are not sex-based harassment <u>and</u> sex-based harassment complaints without a student party	Applies to sex-based harassment complaints involving a student party (either complainant or respondent)
Must comply with procedural requirements of §106.45	Must comply with §106.45 <u>and</u> §106.46

Note: Grievance procedures for both sections must be in writing.

Note: If a party is a student-employee then the recipient must consider whether the party's primary relationship to the institution is to receive an education and if the alleged sex-based harassment occurred while the party was performing employment-related work.

# Dismissals: §§106.45(d) and 106.46(d)

- Recipient may dismiss a complaint for sex discrimination if:
  1. Recipient is not able to identify respondent after taking reasonable steps to do so;
  2. Respondent is no longer enrolled or employed by the recipient;
  3. Complainant voluntarily withdraws any/all allegations [in writing if under §106.46(d)] and the TIXC declines to initiate themselves; or
  4. Recipient determines that even if proven, conduct is not sex discrimination
- Notice required to complainant (and respondent if already notified of allegations) re: basis for dismissal and appeal rights [in writing if under §106.46(d)]

# Grievance Process §106.45: Snapshot

- Basic requirements §106.45(b)(1)-(8)
- Single investigator model okay §106.45(b)(2)
- Respondents presumed not responsible §106.45 (b)(3)
- Reasonable timeframes for major stages of the grievance procedures §106.45 (b)(4)
- Requirement to evaluate relevant evidence §106.45(b)(6)
- Notice of allegations §106.45(c)
- Dismissal of sex discrimination complaint §106.45(d)
- Provision of evidence to parties §106.45(f)(4)
- Credibility of Assessments §106.45(g)
- Standard of evidence §106.45(h)(1)
- Notice of outcome to parties §106.45(h)(2)
- Sanctions and Remedies §106.45(h)(3)
- False statements §106.45(h)(5)
- Additional provisions §106.45 (j)



# **The Grievance Process: §106.45(b)(2)**

**The decisionmaker may be the same person as the TIXC or investigator. Single investigator model is back to being an option.**



# The Grievance Process: §106.45

## General Requirements for Procedures

- When a sex discrimination complaint alleges a recipient's policy/practice discriminates on basis of sex – recipient ≠ respondent
- TIXC, investigator, and decisionmaker must be free from conflict of interest/bias
- Presumption of non-responsibility until a determination is made
- Recipient required to take reasonable steps to protect privacy of witnesses and parties, without restricting parties' ability to present evidence, speak with witnesses, consult with advisors/family/confidential resources, or otherwise prepare for grievance process

# The Grievance Process: §106.45

## Reasonably Prompt Timeframes

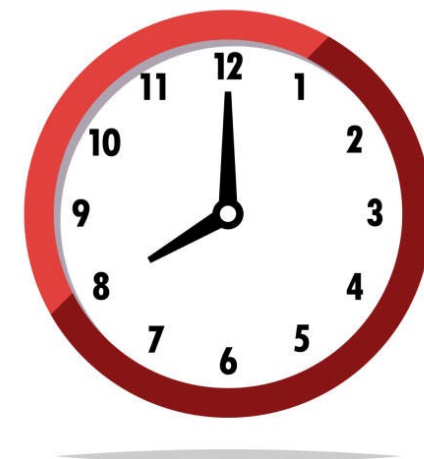
“Establish reasonably prompt timeframes for the major stages of the grievance procedures, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay.”

§106.45 (b)(4)

## Major Stages:

1. Evaluation/dismissal determinations
2. Investigation
3. Determination
4. Appeal (if any)

**Note:** Under §106.46, must provide written notice of extensions.



# The Grievance Process: §106.45

## Notices of Allegations

- Notices of allegations must include:
  - Recipient's grievance procedures, including §106.46-related procedures (if applicable) and informal resolution process;
  - Sufficient information to allow parties to respond, including conduct alleged and dates/times of alleged incidents;
  - Statement on prohibition of retaliation; and
  - Statement that parties are entitled to equal opportunity to access relevant, not impermissible evidence
- If investigation reveals additional allegations of sex discrimination, recipient must provide amended Notice.

§106.45(c)

# The Grievance Process: §106.45

## Complaint Investigation §106.45(f)

Burden on recipient –  
not on the parties

Parties have equal  
opportunity to present  
evidence

Recipient must review  
all evidence  
(relevant, not  
impermissible)

Recipient to provide  
access to all rel.  
evidence or description  
of evidence to parties

Parties must have  
reasonable  
opportunity to respond  
to evidence

Recipient must take  
steps to prevent  
unauthorized  
disclosure

# The Grievance Process: §106.45

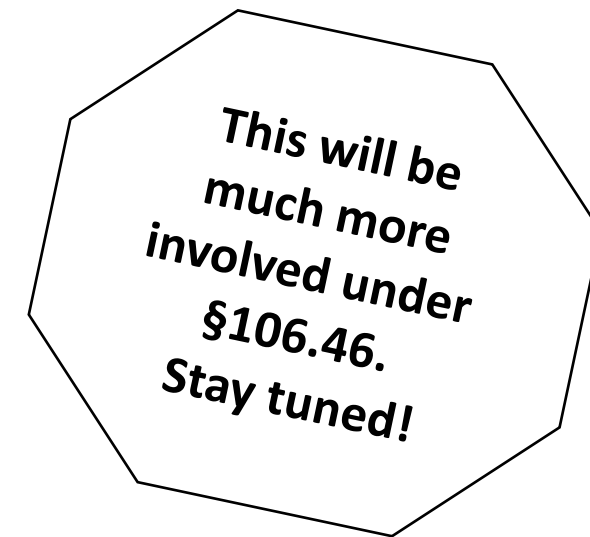
## Objective Evaluation of All Relevant Evidence §106.45(b)(6) and (b)(7)

- Require objective evaluation of all relevant evidence – both inculpatory and exculpatory.
  - Relevant: related to the allegations of sex discrimination; "evidence is relevant when it may aid a decisionmaker in determining whether the sex discrimination occurred" §106.2.
- Exclude the following types of evidence:
  - Evidence protected by privilege (unless privilege waived)
  - Medical records unless party/witness provides written consent to their use
  - Information re: complainant's sexual interests or prior sexual conduct, unless used to prove (1) someone other than respondent committed the alleged conduct, or (2) offered to prove consent by showing prior sexual conduct with the respondent

# The Grievance Process: §106.45

## Questioning and Credibility Assessment §106.45 (g)

"A recipient must provide a process that enables the decisionmaker to adequately assess the credibility of the parties and witnesses to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination."



# The Grievance Process: §106.45

## Standard of Proof, Notice of Outcome



- Notify parties in writing of the determination, rationale for determination, and permissible bases for appeal (if applicable).
- If determination is sex discrimination occurred, TIXC is responsible for implementing remedies, coordinating disciplinary sanctions on respondent, and notifying complainant of disciplinary sanctions.
- False statement: recipient **cannot** discipline any party/witness for making a false statement based solely on the determination of whether sex discrimination occurred.

§106.45(c)



# The Grievance Process: §106.45

## Appeals

- Recipient must provide appeal processes:
  - For dismissal of the complaint; and
  - That are the same as it offers in all comparable proceedings, if any, including proceedings related to discrimination complaints.

§106.45(i)

# The Grievance Process: §106.46

## Reminders:

- §106.46 applies to sex-based harassment complaints with a student complainant and/or student respondent
- §106.46 requires all the procedures of §106.45, plus what is covered in this section.

# The Grievance Process: §106.46

## Notice of Allegations

- Written notice of allegations must include:
  - Everything required under §106.45(c); and
  - Respondent is presumed not responsible;
  - Parties may have advisor of choice who may be an attorney;
  - Parties are entitled to equal opportunity to access relevant, not impermissible evidence or investigative report; and
  - If applicable, recipient's code of conduct prohibits knowingly making false statements or submitting false information during grievance procedure.
- If investigation reveals additional allegations of sex-based harassment, recipient must provide amended Notice.



§106.46(c)

# The Grievance Process: §106.46

## Complaint Investigation

- Everything in §106.45(f) and the following:
  - Written notice to parties of date/time/location/participants/purpose of all meetings with sufficient time for party to prepare;
  - Provide both parties same opportunities to be accompanied by advisor and apply same restrictions to advisors' participation to both parties;
  - Provide both parties same opportunities to be accompanied by someone other than advisor (i.e., case manager, support person) during any meeting;
  - Recipient has discretion re: whether parties are permitted to present expert witnesses;
  - Must allow for reasonable extension of timeframes for good cause (with written notice to parties re: delays); AND ...

§106.46(e)

# The Grievance Process: §106.46

## Complaint Investigation, cont'd

- Equal opportunity to access relevant, not impermissible evidence OR written investigative report;
- Reasonable opportunity to review and respond to the evidence/investigative report prior to the determination; and
  - If recipient conducts live hearings, then review must be before hearing, but response could be prior, during, or both prior and during hearing
- Reasonable steps to prevent and address parties' and advisors' unauthorized disclosure of information and evidence obtained solely through grievance process.

§106.46(e)

# The Grievance Process: §106.46

Live Hearing is not required.



# The Grievance Process: §106.46

## Questioning & Credibility Assessments §106.46(f)

### OPTION 1: NO LIVE HEARING

- Allow investigator/decisionmaker to ask questions during individual meetings with party/witness;
- Allow each party to propose questions they want asked of other party/witness;
- Have those questions asked by investigator/decisionmaker during individual meetings and follow-up meetings; and
- Provide each party with an audio/audiovisual recording or transcript with enough time for party to propose more follow-up questions.

### OPTION 2: LIVE HEARING

- Allow each party to propose questions they want asked of other party/witness and have decisionmaker ask the relevant questions; OR
- Allow each party's advisor to ask party/witness relevant questions.
  - If a party does not have an advisor, the recipient must provide an advisor without charge for purpose of questioning.
  - Recipient-appointed advisor cannot be a confidential employee.

# The Grievance Process: §106.46

## Decisionmaker Evaluating Questions §106.46(f)(3)

- Decisionmaker must determine whether a proposed question is relevant and not impermissible before question is posed and must explain any decision to exclude.
  - Unclear or harassing questions are not permitted, but decisionmaker must give party an opportunity to clarify/revise question.
  - Recipient may adopt reasonable rules of decorum.
- 

## Refusal to Respond to Questions §106.46(f)(4)

- Decisionmaker may choose to place less/no weight upon statements by a party/witness who refuses to respond to questions deemed relevant, not impermissible.
- Decisionmaker may not draw inference that sex-based harassment occurred solely on party/witness's refusal to respond.



# The Grievance Process: §106.46

## Written Determination

- Determination must be written and provided to parties simultaneously.
- Written determination must include:
  - Description of alleged sex-based harassment;
  - Information about policies and procedures used;
  - Decisionmaker's evaluation of relevant, not impermissible evidence and determination whether sex-based harassment occurred;
  - Sanctions and remedies, if applicable; and
  - Information on appeals process.

§106.46(h)

# The Grievance Process: §106.46

## Appeals

- Appeals process must be offered on the following bases:
  - Procedural irregularity that would change the outcome;
  - New evidence that would change the outcome and was not reasonably available when determination/dismissal was made; and
  - TIXC, investigator, or decisionmaker had a conflict of interest or bias.
- Additional bases for appeals can be offered equally to all parties.
- Parties must be provided:
  - Notice of appeal;
  - Reasonable opportunity to make a statement in support or opposing the appeal; and
  - Notice of the result of the appeal and the rationale for the result.

§106.46(i)

# Informal Resolution: §106.44(k)

“[A] recipient has discretion to determine whether it is appropriate to offer an informal resolution process when it receives information about conduct that reasonably may constitute sex discrimination under Title IX or this part when a complaint of sex discrimination is made and may decline to offer informal resolution despite one or more of the parties’ wishes.”

§106.44(k)(ii)

# Informal Resolution: §106.44(k)

Most significant changes:

- Formal complaint is no longer required;
- Prohibition against informal resolution by employee against a student is eliminated; and
- Additional notice requirements regarding potential outcomes, resolution agreement binding only on parties, and record-keeping.

§106.44(k)



# Miscellaneous

# Retaliation (§106.71)



# Retaliation

- Schools must prohibit retaliation, **including peer retaliation**, and must respond to conduct that may reasonably constitute retaliation **using the same procedures it uses for other forms of sex discrimination**.
  - The identity of any individual who has made a report or complaint is generally confidential.
- **Who is protected?**
  - Any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing related to the Title IX regulations.

# Retaliation

- **What constitutes retaliation?**
  - Intimidation
  - Threats
  - Coercion
  - Discrimination
  - 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.
- **The exercise of rights protected under the First Amendment and charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX proceeding do NOT constitute retaliation.**



# Preemption

- Title IX preempts State or local laws that are in conflict with the regulations
- A State law that requires discrimination on the basis of sexual orientation or gender identity would "generally" be preempted by Title IX
- No preemption of federal Due Process or First Amendment rights
- But State laws protecting free speech are preempted to extent they conflict with the regulations



# Questions?

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