

STANDARDS

POLICIES



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APRIL 25, 2024

FINAL 2024 TITLE IX REGULATIONS:
ACTION ITEMS FOR COLLEGES AND UNIVERSITIES

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2024 TITLE IX REGULATIONS

- Compliance required by **August 1, 2024**
- Today's goal: An overview
 - Focus: Practical changes for Title IX personnel at institutions of higher education





2024 TITLE IX REGULATIONS – MORE RESPONSIBILITIES

- Comprehensive requirements to address all sex discrimination
- Expanded jurisdiction
 - Hostile environment in educational program or activity --> jurisdiction



2024 TITLE IX REGULATIONS – MORE RESPONSIBILITIES

(CONT'D)

- Title IX Coordinator as compliance manager
- Responding to reports (not just complaints) of **sex discrimination** (not just harassment)
- Monitoring for barriers to reporting
- Overseeing robust training requirements
- Documenting, documenting, documenting!!

2024 TITLE IX REGULATIONS – MORE FLEXIBILITY

THE GOOD NEWS: NOT EVERY CONCERN TRIGGERS THE GRIEVANCE PROCEDURES

- Ability to address reports with actions other than investigations
 - Remedial actions
 - Supportive measures
 - Informal resolution



2024 TITLE IX REGULATIONS – MORE FLEXIBILITY (CONT'D)

MORE GOOD NEWS: FLEXIBILITY WITHIN YOUR GRIEVANCE PROCEDURES

- Schools have options:
 - Different grievance procedures for employees vs. students
 - Different grievance procedures for harassment vs. discrimination
 - Informal resolution



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KEY DEFINITIONS

SEX DISCRIMINATION (§ 106.10)

“Discrimination **on the basis of sex** includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.”



SEX-BASED HARASSMENT (§ 106.2)

- Quid pro quo harassment
- Hostile environment harassment
- Specific Offenses – sexual assault (e.g., rape, sodomy, sexual assault with an object, or fondling), dating violence, domestic violence, stalking
- Consent – continued flexibility to define consent



HOSTILE ENVIRONMENT (§ 106.2)

"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.e., creates a hostile environment). Whether a hostile environment has been created is a **fact-specific inquiry** that includes consideration of the following:

- i. The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
- ii. The type, frequency, and duration of the conduct;
- 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;
- iv. The location of the conduct and the context in which the conduct occurred; and
- v. Other sex-based harassment in the recipient's education program or activity"



RETALIATION (§ 106.2)

“Retaliation means intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an 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”

“Peer retaliation means retaliation by a student against another student.”



PREGNANCY OR RELATED CONDITIONS (§ 106.2)

“Pregnancy or related conditions means:

1. Pregnancy, childbirth, termination of pregnancy, or lactation;
2. Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
3. Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.”



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REQUIREMENTS FOR COMPLIANCE

DUTY TO ADDRESS SEX DISCRIMINATION (§ 106.44)

“A RECIPIENT WITH KNOWLEDGE OF CONDUCT THAT REASONABLY MAY CONSTITUTE SEX DISCRIMINATION IN ITS EDUCATION PROGRAM OR ACTIVITY MUST RESPOND PROMPTLY AND EFFECTIVELY.” (§ 106.44)

Duty triggered by notice to:

- Title IX Coordinator
- Non-confidential employees with authority to take corrective action or responsibility for administrative leadership, teaching, or advising
- Other non-confidential employees

Confidential employees do not need to notify the Title IX Coordinator

NOTICE OF NONDISCRIMINATION (§ 106.8(C))

- § 106.8(c) provides the required components of your Notice of Nondiscrimination
- Best practice to review this section closely and ensure that your Notice lines up
- Short-form notice permitted for publication requirements – website, each handbook, catalog, announcement, bulletin, and application form





ADDITIONAL RESPONSIBILITIES OF THE TITLE IX COORDINATOR

- Recordkeeping
- Monitoring for barriers to reporting and taking steps reasonably calculated to address such barriers
- Overseeing training
- Responding to reports (not just complaints) of sex discrimination
- Responding to notifications of student pregnancy and related conditions



RESPONSIBILITIES – ANNUAL TRAINING FOR TITLE IX TEAM

- Title IX Coordinators and designees
- Investigators, decisionmakers, others responsible for implementing grievance procedures
- Individuals with authority to modify or terminate supportive measures



RESPONSIBILITIES – ANNUAL TRAINING FOR ALL EMPLOYEES

- Scope of conduct that constitutes sex discrimination, including sex-based harassment
- Notification requirements for pregnancy and related conditions
- Notification requirements for sex discrimination



Sexual Harassment Complaint Form

Complaint Form, I certify that this application is
and contains no willful falsifications
missions may disqualify
t current

RESPONDING TO REPORTS OF SEX DISCRIMINATION

- Reports vs. Complaints
- Supportive Measures – offer **and** coordinate
- Informal Resolution – option to respond to reports or complaints (if offered)
- Grievance Procedures

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GRIEVANCE PROCEDURES



THE COMPLAINT (§ 106.2)

- Oral or written
- Objectively understood as a request to investigate and make a determination about alleged discrimination
- Complainants can also include former students and employees

§ 106.45 AND § 106.46

- **All** grievance procedures must meet requirements of § 106.45
- **Only** matters of sex-based harassment involving students also must be processed per § 106.46.
 - What about student-employees?
- **Can** merge into one compliant process **or** establish multiple
- **Note:** Don't forget about your 2020 procedures!



2024 TITLE IX REGULATIONS: OVERVIEW

Grievance Procedures Comparison Chart

	§106.45 [all other complaints]	§106.46 [sex-based harassment complaints involving ("postsecondary") student]
EVALUATION	<ul style="list-style-type: none"> Dismissal (optional), with appeal opportunity - §106.45(d) Supportive measures - §106.44(f)(1)(ii) <i>Informal resolution?</i> - §106.44(k) 	<ul style="list-style-type: none"> Written dismissal (optional), with appeal opportunity - §106.45(d); §106.46(d); §106.46(i)(3) Supportive measures - §106.44(f)(1)(ii) <i>Informal resolution?</i> - §106.44(k)
Grievance Procedures		
INVESTIGATION	<ul style="list-style-type: none"> Notice of allegation(s) - §106.45(c) Gather, review, and determine relevance for evidence - §106.45(f)(3) Opportunity to access relevant and permissible evidence - §106.45(f)(4) <ul style="list-style-type: none"> Evidence option Description option Reasonable opportunity to respond - §106.45(f)(4)(ii) Credibility questioning - §106.45(g) <ul style="list-style-type: none"> "process that enables the decisionmaker to question parties and witnesses to adequately assess [...] credibility to the extent credibility is both in dispute and 	<ul style="list-style-type: none"> Written notice of: <ul style="list-style-type: none"> allegation(s) - §106.46(c) meetings and proceedings - §106.46(e)(1) extensions - §106.46(e)(5) May allow advisor/other participation - §106.46(e)(2)/(3) Opportunity to access relevant and permissible evidence - §106.46(e)(6) <ul style="list-style-type: none"> Evidence option Investigative report option Reasonable opportunity to respond - §106.46(e)(6)(ii) Credibility questioning - §106.46(f) <ul style="list-style-type: none"> Hearing option <ul style="list-style-type: none"> Advisor or decisionmaker Follow-up meetings option
DETERMINATION	<ul style="list-style-type: none"> POE standard [with narrow exception] - §106.45(h)(1) Written determination, with rationale and any applicable appeal information - §106.45(h)(2) 	<ul style="list-style-type: none"> POE standard [with narrow exception] - §106.45(h)(1) Written determination, with description of allegations; applicable policies/procedures; evaluation of evidence; determination; sanctions/remedies; and appeal process - §106.46(h)
APPEAL	<ul style="list-style-type: none"> Same as offered for other comparable proceedings, as applicable - §106.45(i) 	<ul style="list-style-type: none"> Required - §106.46(i)

EVALUATION

§106.45

[ALL OTHER COMPLAINTS]

- Dismissal (optional), with appeal opportunity - §106.45(d)
- Supportive measures - §106.44(f)(1)(ii)
- *Informal resolution?* - §106.44(k)

§106.46

[SEX-BASED HARASSMENT COMPLAINTS INVOLVING (“POSTSECONDARY”) STUDENT]

- Written dismissal (optional), with appeal opportunity - §106.45(d); §106.46(d); §106.46(i)(3)
- Supportive measures - §106.44(f)(1)(ii)
- *Informal resolution?* - §106.44(k)

INVESTIGATION

§106.45

- Notice of allegation(s) - §106.45(c)
- Gather, review, and determine relevance for evidence - §106.45(f)(3)
- Opportunity to access relevant and permissible evidence - §106.45(f)(4)
 - Evidence option
 - Description option
- Reasonable opportunity to respond - §106.45(f)(4)(ii)
- Credibility questioning - §106.45(g)
 - “process that enables the decisionmaker to question parties and witnesses to adequately assess [. . .] credibility to the extent credibility is both in dispute and relevant”

§106.46

- Written notice of:
 - allegation(s) - §106.46(c)
 - meetings and proceedings - §106.46(e)(1)
 - extension(s) - §106.46(e)(5)
- May allow advisor/other participation - §106.46(e)(2)/(3)
- Opportunity to access relevant and permissible evidence - §106.46(e)(6)
 - Evidence option
 - Investigative report option
- Reasonable opportunity to respond - §106.46(e)(6)(ii)
- Credibility questioning - §106.46(f)
 - Hearing option
 - Advisor or decisionmaker
 - Follow-up meetings option

DETERMINATION

§106.45

[ALL OTHER COMPLAINTS]

- POE standard [with narrow exception] - §106.45(h)(1)
- Written determination, with rationale and any applicable appeal information - §106.45(h)(2)

§106.46

[SEX-BASED HARASSMENT COMPLAINTS INVOLVING (“POSTSECONDARY”) STUDENT]

- POE standard [with narrow exception] - §106.45(h)(1)
- Written determination, with description of allegations; applicable policies/procedures; evaluation of evidence; determination; sanctions/remedies; and appeal process - §106.46(h)

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BOWDITCH IS HERE TO HELP!

SAVE THE DATE – MAY 16

- Monthly “Compliance Check-ins”
- May’s topic: Title IX Coordinator Responsibilities

WHAT DO YOU WANT TO HEAR ABOUT IN JUNE, JULY, AUGUST?



BOWDITCH IS HERE TO HELP! (CONT'D)

TEMPLATES

- Policies & procedures
- Checklists
- Training

CUSTOMIZED COMPLIANCE SOLUTIONS

- How to integrate Title IX compliance into existing processes
- Which approach is right for your institution?

Have questions?

Use the Q&A feature to ask your question. We will leave the webinar running for a few extra minutes to allow time to submit your questions.

We will then follow up after the webinar to help answer your questions.



QUESTIONS



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