

BOWDITCH

ATTORNEYS



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TITLE IX REGULATIONS COMPLIANCE CHECK-IN: GRIEVANCE PROCEDURES

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UPCOMING COMPLIANCE CHECK-INS

JULY 16

11:00AM ET

COMPLIANCE CHECK-IN #3:

**PREGNANCY AND
RELATED CONDITIONS**

AUGUST 22

11:00AM ET

COMPLIANCE CHECK-IN #4:

**TITLE IX IMPLEMENTATION
CHALLENGES**

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ROADMAP FOR TODAY'S CHECK-IN

BOWDITCH

- OVERVIEW
- GRIEVANCE PROCEDURES DECISION POINTS
- BEST PRACTICES AND COMPLIANCE STRATEGIES
- POLLS & CHAT
- Q&A

BRIEF OVERVIEW

- **Expanded role for Title IX Coordinator**, including training and responding to reports of pregnancy and related conditions
 - §106.8 (TIXC and designees, training, etc.); §106.40 (pregnancy and related conditions); and §106.44 (responding to reports of sex discrimination)
- **Expanded jurisdiction:** prohibited conduct, definition of complainant, expectation to apply policies consistent with disciplinary authority
 - § 106.2 (definitions); § 106.11 (application); and § 106.31 (*de minimis* harm standard)
- **Expanded flexibility in grievance procedures**
 - § 106.45 (all complaints) and § 106.46 (sex-based harassment complaints involving students)

REASSURANCE

- **Overall structure of your Title IX policies and procedures may remain largely the same**
 - Similar themes as the 2020 Title IX regulations
- **For example:**
 - Supportive measures – only minor changes
 - Option to use informal resolution – now in more cases
 - Same general structure of grievance process (evaluation, investigation, determination, appeal)
 - Same key campus partners – disability services, Dean of Students, HR, faculty (?), unions

DECISION POINT: POLICY

HOW YOUR EMPLOYEES WILL PROVIDE YOUR
TITLE IX COORDINATOR WITH INFORMATION
ABOUT CONDUCT THAT REASONABLY MAY
CONSTITUTE SEX DISCRIMINATION?
[§106.44(C)]

CHAT TIME





POLL TIME

GRIEVANCE PROCEDURES: GENERAL REQUIREMENTS

- §106.45 - Minimum Requirements for **All** Complaints
- §106.46 - Requirements For Sex-Based Harassment Complaints Involving Students

BEST PRACTICES

FLEXIBILITIES IN §106.45 REFLECT THE REALITIES OF K-12 SCHOOLS AND WOULD GENERALLY **NOT** BE BEST PRACTICES IN HIGHER EDUCATION

Examples:

- (Written) Notice of Dismissal [§106.46(d)]
- (Written) Notice of Allegations [§106.46(c)]
- (Written) Notice of Meetings and Extensions [§106.46(e)(1), (5)]
- Advisors [§106.46(e)(2)]
- Comprehensive Written Determination [§106.46(h)]
- Grounds for Appeals [§106.46(i)]



BEST PRACTICES

MAXIMIZING AND ADDING FLEXIBILITY INTO GRIEVANCE PROCEDURES

- Dismissal of complaints permitted [§106.45(d)]
- Consolidation of complaints permitted when arising out of same facts or circumstances [§106.45(e)]
- Informal Resolution permitted [§106.44(k)]





DECISION POINT: TIMEFRAMES

§106.45(B)(4): INSTITUTION MUST “ESTABLISH TIMEFRAMES FOR THE MAJOR STAGES OF THE GRIEVANCE PROCEDURES” AND PROVIDE A PROCESS FOR REASONABLE EXTENSIONS ON A CASE-BY-CASE BASIS FOR GOOD CAUSE

- Evaluation
- Investigation
- Determination
 - Note: MA law requires informing parties in writing of result within 7 business days of final determination "unless good cause for additional time is shown."
- Appeal



DECISION POINT: EVIDENCE

- No more “directly-related” evidence!
 - After August 1, all evidence is either relevant and not otherwise impermissible or not.
 - Expert witnesses? [§106.46(e)]
- For all complaints, the parties must be granted access to all relevant and not otherwise impermissible evidence upon request.

POLL TIME



DECISION POINT: RESPONSES TO EVIDENCE

CONSIDER HOW THE PARTIES WILL
HAVE AN OPPORTUNITY TO
RESPOND TO THE EVIDENCE
GATHERED DURING THE
INVESTIGATION.

POLL TIME

DECISION POINT: TESTING CREDIBILITY

CONSIDER WHETHER AND WHEN YOU WILL HAVE A LIVE HEARING

- For matters that **do not** involve a student **and** sex-based harassment, the regulations permit a **single-investigator model**, as long as the process complies with §106.45.
- For matters that **do** involve a student **and** sex-based harassment, §106.46(f) requires questioning that “enables the decisionmaker [who may be the investigator] to question parties and witnesses to adequately assess [. . .] credibility” through one of the methods below:
 - Option: **Live hearing** with questioning by parties’ advisors and/or by the decisionmaker
 - Option: **Individual follow-up meetings** held by decisionmaker, with questions submitted by parties, transcripts/record of meetings shared for review by the parties, and opportunity for the parties to submit additional questions

POLL TIME



CHAT TIME

DECISION POINT: LIVE HEARINGS

- Investigator as decision-maker provides flexibility
- **Compliant hearing options to consider:**
 - Live hearings for only sex-based harassment complaints involving student parties
 - Live hearings for all complaints involving student parties
 - Live hearings for all complaints involving sex-based harassment
 - Live hearings for all complaints



DECISION POINT: INFORMAL RESOLUTION

- You do not need to have a complaint to start the informal resolution process
- Informal resolution can be a tool to effectively respond to increase in reports
- Ensure your informal resolution process conforms to the requirements of §106.44(k)

POLL TIME



QUESTIONS?

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