



2024 TITLE IX REGULATIONS



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A NOTE ON TRAINING



**This is not legal advice,
consult your lawyer!**

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FEDERAL LAW

Statutes

20 U.S.C.D.
§ 1681-1689

Regulatory Guidance

34 C.F.R. § 106

Sub-Regulatory Guidance

DCLs
Preamble to Regs
Executive Orders
OCR Website

Case Law

Circuit courts
District courts

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STATUTES

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TITLE IX, EDUCATION AMENDMENTS OF 1972, 20 U.S.C. § 1681

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

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§ 1681(a) – EXCEPTIONS

- Admission policies
- Institutions changing from single-sex status
- Religious institutions
- Military services or merchant marines
- Public traditional single-sex institutions

- Social fraternities or sororities
- Voluntary youth organizations
- Boy or girl conferences
- Father-son/mother-daughter activities
- “Beauty” pageants
- Housing

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REGULATIONS



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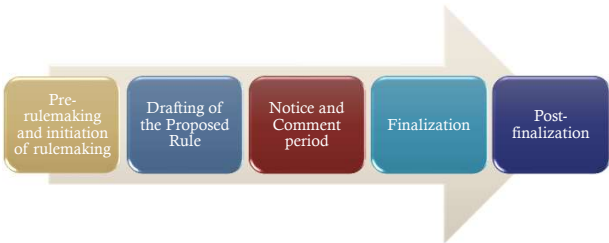
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REGULATORY PROCESS



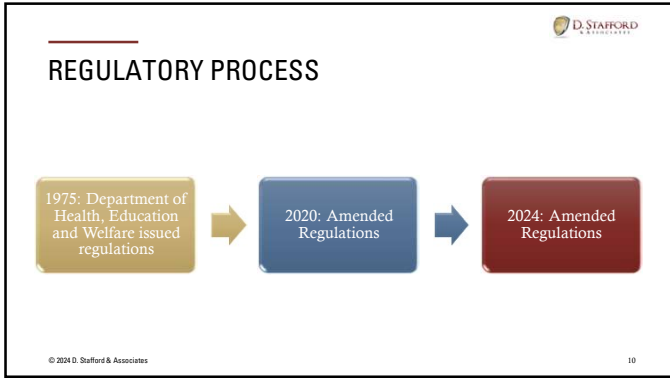
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graph LR; A[Pre-rulemaking and initiation of rulemaking] --> B[Drafting of the Proposed Rule]; B --> C[Notice and Comment period]; C --> D[Finalization]; D --> E[Post-finalization]
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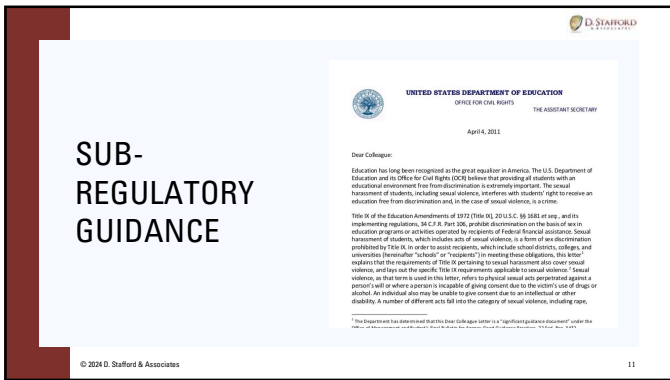
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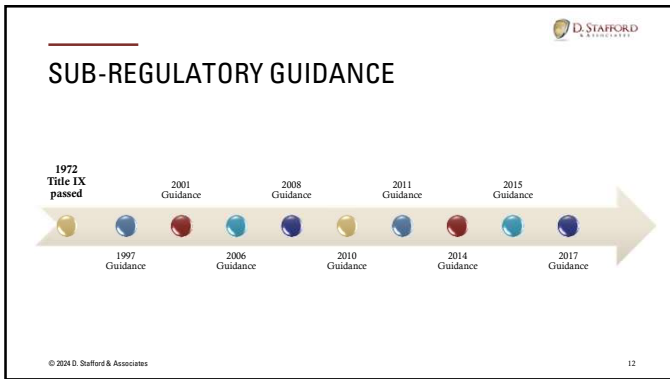
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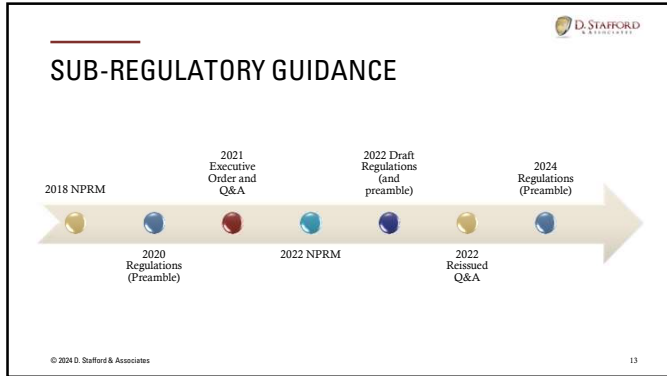
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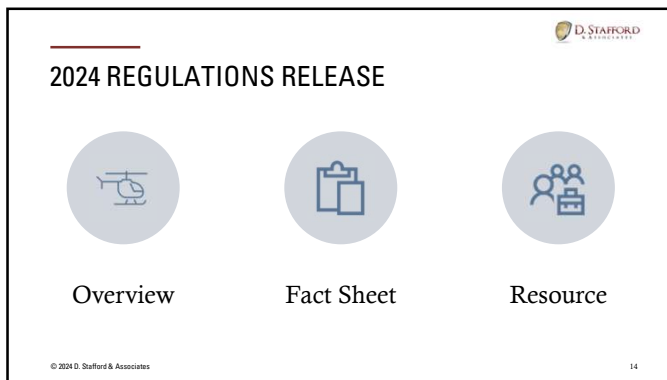
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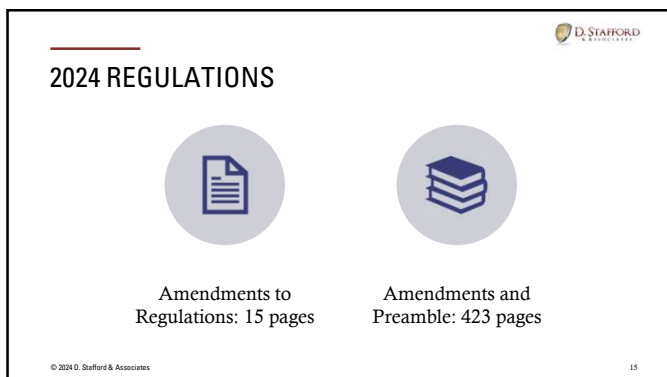
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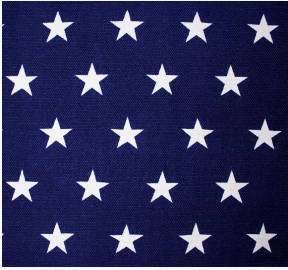
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STATE LAWS



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STATE LAWS AND THE REGULATIONS

§ 106.6(b) *Effect of State or local law or other requirements. 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.*

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OVERVIEW OF THE
2024 TITLE IX
REGULATIONS



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Sex Discrimination

Sex-Based Harassment

- Sexual Assault
- Dating/Domestic Violence
- Stalking
- Hostile Environment
- Quid Pro Quo

Sex Discrimination

- Sex stereotypes
- Sex characteristics
- Pregnancy or related conditions
- Sexual orientation
- Gender identity

Applies in . . .

Admission, Employment, Educational Programs, and Activities

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MISCONCEPTIONS

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IMPLEMENTATION DATE: AUGUST 1, 2024



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TECHNICAL ASSISTANCE FROM THE DEPARTMENT

Office for Civil Rights (To assist with compliance)
<https://ocrcas.ed.gov/contact-ocr>

Student Privacy Policy Office (FERPA Questions)
<https://studentprivacy.ed.gov/?src=fpco>

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FIRST AMENDMENT

§ 106.6(d) Constitutional protections.
Nothing in this part requires a recipient to:
(1) Restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution

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34 C.F.R. § 106 – SUBPARTS

Subpart A: Introduction (106.1 – 106.9)
Subpart B: Coverage (106.11 – 106.18)
Subpart C: Admission and Recruitment (106.21 – 106.24)
Subpart D: Education Programs/Activities (106.31 – 106.46)
Subpart E: Employment (106.51 – 106.62)
Subpart F: Retaliation (106.71 – 106.72)
Subpart G: Procedures (106.81 – 106.82)

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DEFINITIONS



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§ 106.2 - DEFINITIONS

Admission	Applicant	Party
Postsecondary institution	Pregnancy or related conditions	Program or activity
Recipient	Student	Student with a disability

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§ 106.2 - DEFINITIONS

Complaint	Complainant	Confidential employee	Disciplinary sanctions
Peer retaliation	Sex-based Harassment	Relevant	Remedies
Respondent	Retaliation	Supportive measures	

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NOT DEFINED

Credibility

Consent

Employee

Sex Discrimination

Sexual assault (but link)

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§ 106.2 – DEFINITIONS: PARTIES

Complainant	Respondent	Party
- A student or employee, <u>or</u> - Non-student/employee who was participating/attempting to participate at the time of the alleged sex discrimination	A person who is alleged to have violated the recipient's prohibition on sex discrimination	A complainant or respondent

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SEX-BASED HARASSMENT DEFINITIONS

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§ 106.2 – SEX-BASED HARASSMENT

Sex-based harassment prohibited by this part is 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, that is:

- 1. Quid pro quo*
- 2. Hostile Environment*
- 3. Specific offenses*

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QUID PRO QUO HARASSMENT

“An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the 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.”

§ 106.2

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QUID PRO QUO NOTES



Unwelcome



Explicit and implicit



Aid, benefit, or service



Employee, agent, or other person

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

§ 106.2

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UNPACKING HOSTILE ENVIRONMENT

Unwelcome Sex-based Totality of Circumstances

Subjective and Objective Severe or Pervasive Limits or Denies

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HOSTILE ENVIRONMENT “FACT-SPECIFIC INQUIRY”

Degree affected educational access Type, frequency, duration Parties' ages, roles, previous interactions, other factors Location and context in which occurred Other sex-based harassment in educational setting

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HOSTILE ENVIRONMENT NOTES




Jurisdiction Beyond Sexual Harassment

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SPECIFIC OFFENSES





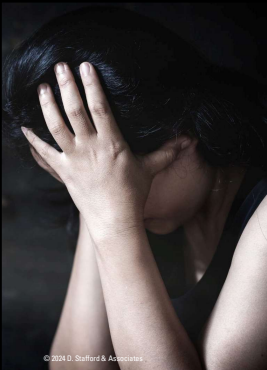

Sexual assault Dating violence

Domestic violence Stalking

§ 106.2

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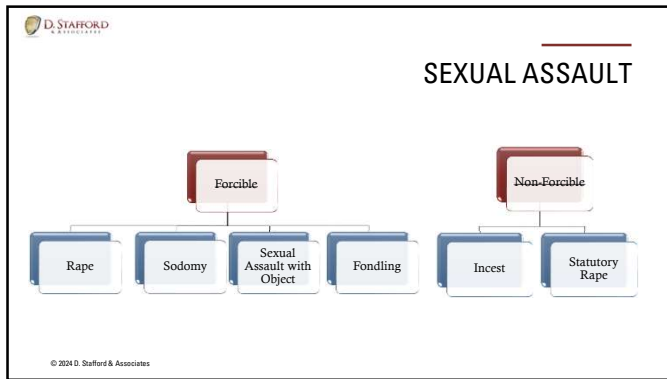
SEXUAL ASSAULT

“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

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NON-CONSENSUAL SEXUAL PENETRATION

Rape - (Except Statutory Rape) The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

Sodomy - Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

Sexual Assault With An Object - To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

FBI, Uniform Crime Reporting Program: National Incident-Based Reporting System (2018)

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NON-CONSENSUAL SEXUAL TOUCHING

Fondling - The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

FBI, Uniform Crime Reporting Program: National Incident-Based Reporting System (2018)

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INCEST AND STATUTORY RAPE

Incest - Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

Statutory Rape - Nonforcible sexual intercourse with a person who is under the statutory age of consent

FBI, Uniform Crime Reporting Program: National Incident-Based Reporting System (2018)

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DATING VIOLENCE

Dating violence means violence committed by a person:

- (A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (1) The length of the relationship;
 - (2) The type of relationship; and
 - (3) The frequency of interaction between the persons involved in the relationship

§ 106.2

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DOMESTIC VIOLENCE

Domestic violence meaning felony or misdemeanor crimes committed by a person who:

- (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;
- (B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (C) Shares a child in common with the victim; or
- (D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction

§ 106.2

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STALKING

Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

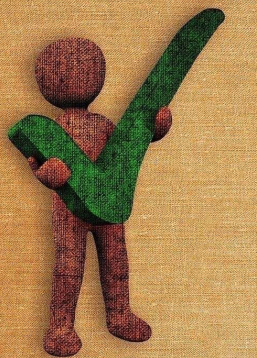
- (A) Fear for the person's safety or the safety of others; or
- (B) Suffer substantial emotional distress.

§ 106.2

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NOTE ON CONSENT

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

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TITLE IX
COORDINATOR
AND NOTICE OF
POLICIES



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§ 106.8(a)(1)-(a)(2) – DESIGNATION OF COORDINATOR

Designate	“Designate and authorize” at least one employee
Delegate	May delegate “specific duties”
But...	One person must retain “ultimate oversight”

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§ 106.8(b)(1) – NONDISCRIMINATION POLICY

Adopt

↓

Publish

↓

Implement



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§ 106.8(b)(2) – GRIEVANCE PROCEDURES

Adopt

↓

Publish

↓

Implement



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§ 106.8(c) – NOTIFICATION OF NONDISCRIMINATION

Who [§ 106.8(c)]

- Students
- Parents, guardians, legal reps (K-12)
- Employees
- Applicants for admission or employment
- Unions and professional organizations

What [§ 106.8(c)(1)(i)]

- Does not discriminate
- Inquiries to Title IX or OCR
- Name **or** title, office, email, telephone
- How to locate policy and procedures
- How to report or make a complaint

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§ 106.8(c)(2) – PUBLICATIONS



- Website
- Each handbook, catalog, announcement, bulletin and application form for recruitment
- One sentence option
- Cannot say people are treated differently on the basis of sex

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§ 106.8(d)(1) ALL EMPLOYEE TRAINING REQUIREMENTS

“promptly upon hiring or change of position that alters duties under Title IX and annually thereafter”



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ALL EMPLOYEE TRAINING

Prohibit Sex Discrimination

Prohibited Conduct

Duty to provide contact info to pregnant students

Duty to report or provide contact info

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§106.8(d)(2)-(4) – TRAINING PERSONS WHO ARE RESPONSIBLE FOR IMPLEMENTING PROCEDURES

- Title IX Coordinator and Designees
- Investigators
- Decisionmakers (including appeals of determination and dismissal)
- Informal Resolution Facilitator
- Person with authority to modify/terminate Supportive Measures
- Others?

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§106.8(e) – STUDENTS WITH DISABILITIES

- An individual with a disability, as defined in the Rehabilitation Act of 1973 or a child with a disability, as defined in the Individuals with Disabilities Education Act
- The Title IX Coordinator may consult, as appropriate, with the individual or office designated to support students with disabilities to determine compliance with disability law.

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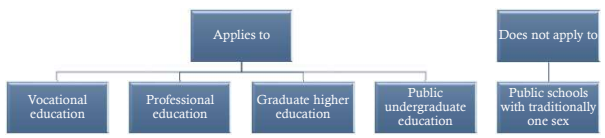
SUBPART C: ADMISSION & RECRUITMENT



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§ 106.15 – ADMISSIONS (EXCEPTIONS AND COVERAGE)



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Discrimination and Admissions

- Subpart B (Exceptions):** Undergraduate private institutions can discriminate
- Subpart C (Admissions):** Everyone else cannot discriminate in admissions
- Subpart D (Programs or Activities):** Once they are in, discrimination is prohibited, except, again with admissions...

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§ 106.21 & § 106.23 – ADMISSION & RECRUITMENT

No limits or proportions	No ranking separately	Testing cannot have adverse effect
Pregnancy	Parenting or marital status	Recruitment from single-sex high schools
Can ask gender but...		

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§ 106.31(b) – SPECIFIC PROHIBITIONS

	
Aid, Benefit, or Service Requirement or Condition Provide or deny Right or privilege Advantage or opportunity	Academic, Extracurricular, Research, Occupational Training Eligibility for instate tuition Rules of behavior, sanctions

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§ 106.37 – FINANCIAL ASSISTANCE

		
§ 106.37(a) – Can't discriminate in financial assistance	§ 106.37(b) Exceptions to rule that can't have single-sex scholarships	§ 106.37(c) – Athletic scholarships allocated proportionally based on participation numbers

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§ 106.31(b)(4) – EQUITY IN DISCIPLINE

Rules of Behavior

Sanctions

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TITLE IX'S COVERAGE OF SEX DISCRIMINATION



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§ 106.10 – SCOPE

“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.”

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§ 106.11 – APPLICATION

- Sex discrimination in education program or activity
- Sex-based hostile environment even when some contributing conduct occurred off campus
- Could be broadened by “disciplinary authority”

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§ 106.12 – EDUCATIONAL INSTITUTIONS CONTROLLED BY RELIGIOUS ORGANIZATIONS

May submit in writing seeking assurance of the exemption

Must identify the provision and explain how it conflicts with a specific tenet

Not required to seek assurance

May raise its exemption at any time

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§ 106.31(a)(2) – EDUCATION PROGRAMS OR ACTIVITIES

(1) *Except as provided elsewhere...no person, on the basis of sex...*

(2) *in the limited circumstances...this part permits different treatment ...on the basis of sex, ...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 Adopting a policy or engaging in a practice that prevents a person from participating...consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.*

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"EXCEPT AS PERMITTED BY..."



Religious exemption

Military and merchant marine educational institutions

Fraternities and sororities

YMCA/YWCA/Girl Scouts/Boy Scouts/Camp Fire Girls

Voluntary youth service organization

Undergraduate private admissions

Sex-separate housing

Sex-separate athletic teams

§ 106.31(a)(2) & § 106.31(a)(3)

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PERMISSIBLE DIFFERENT TREATMENT CAN'T CAUSE MORE THAN "DE MINIMIS HARM"



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§ 106.40 – PARENTAL, FAMILY, OR MARITAL STATUS; PREGNANCY OR RELATED CONDITIONS (STUDENTS)

No policies, practices, or procedures treating a student's current, potential, or past parental, family, or marital status differently § 106.40(a)

No discrimination against students on the basis of pregnancy or related conditions § 106.40(b)(1)

Responsibility to provide Title IX Coordinator's contact and other information § 106.40(b)(2)

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§ 106.40(b)(3) – SPECIFIC ACTIONS

Information about the institution's obligations

Reasonable modifications

Provide voluntary access to separate and comparable portion of program or activity

Voluntary leaves of absence

Lactation space

Limitation on supporting documentation

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§ 106.40(b)(4-5) – COMPARABLE TREATMENT AND CERTIFICATIONS

Must treat in the same manner and under the same policies as any other temporary medical conditions

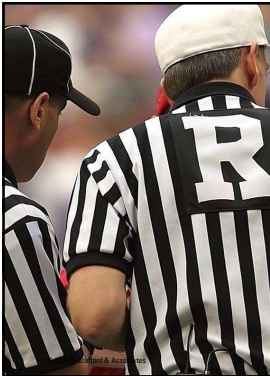
Must not require a certification from a healthcare provider or any other person that the student is physically able to participate

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§ 106.41(a) – ATHLETICS

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

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§ 106.44 RESPONSE TO SEX DISCRIMINATION

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§ 106.44 – RESPONSE

§ 106.44(a) General

§ 106.44(b) Barriers to reporting

§ 106.44(c) Notification requirements

§ 106.44(d) Confidential employee requirements

§ 106.44(e) Public awareness events

§ 106.44(f) Title IX Coordinator requirements

§ 106.44(g) Supportive measures

§ 106.44(h) Emergency removal

§ 106.44(i) Administrative leave

§ 106.44(j) Prohibited disclosures of PII

§ 106.44(k) Discretion to offer informal resolution

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§ 106.44(a) – GENERAL (RESPONSE)

If knowledge of conduct that reasonably may constitute sex discrimination

Promptly

Effectively

Compliantly

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§ 106.44(c)(2)(ii) – NOTIFICATION REQUIREMENT

(A) Notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX...

OR

(A) Provide the contact information of the Title IX Coordinator and information about how to make a complaint of sex discrimination...

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REPORTING REQUIREMENTS

2001 Guidance

2020 Regulations

2024 Regulations

Responsible Employees: Employee with authority to take action; given the duty of reporting misconduct; or student would reasonably believe has this authority

Officials with Authority to institute corrective measures

Employees with authority to take corrective action or responsibility for administrative leadership, teaching, or advising. (BUT ALL NON-CONFIDENTIAL MUST DO SOMETHING!)

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§ 106.44(c)(2) – NOTIFICATION REQUIREMENTS

Type of Employee	Notify Title IX	Provide Title IX contact and how make complaint
Confidential Employee	No	Yes (and more!)
Category 1: Employee with ability to institute corrective measures OR responsible for administrative leadership, teaching, or advising	Yes	
Category 2: All other employees	Either or (SCHOOL DECIDES)	

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STUDENT EMPLOYEE REPORTING REQUIREMENTS

"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 reporting requirements]..."

§ 106.44(c)(3)

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§ 106.2 – CONFIDENTIAL EMPLOYEES DEFINED



Privileged
(in role)



Designated
(when providing services)



Human-subjects research
on sex discrimination

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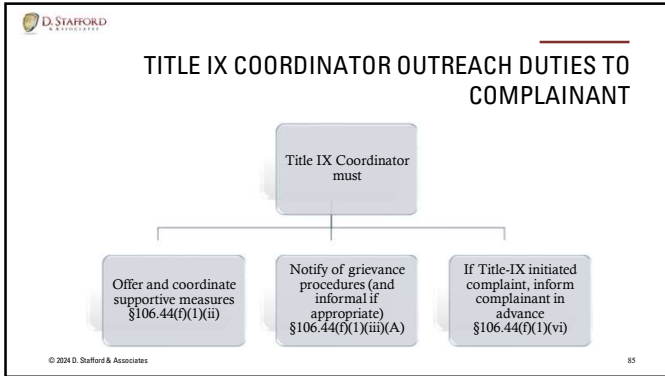
§ 106.44(d) – CONFIDENTIAL EMPLOYEE REQUIREMENTS

Recipient must notify all participants of contact information for confidential employees
106.44(d)(1)

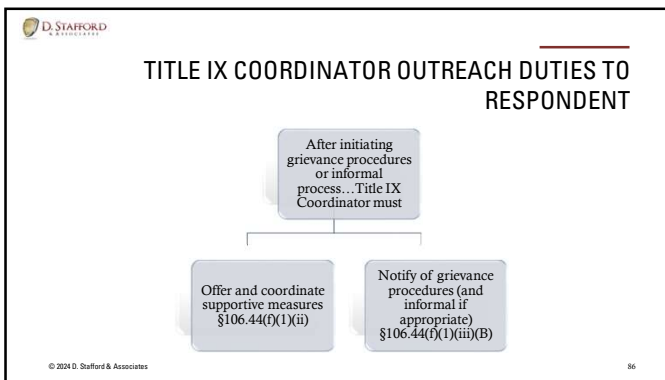
When confidential employee receives a report must explain...
106.44(d)(2)

- Status as confidential
106.44(d)(2)(i)
- How to contact Title IX and make complaint
106.44(d)(2)(ii)
- Title IX Coordinator has responsibilities
106.44(d)(2)(iii)

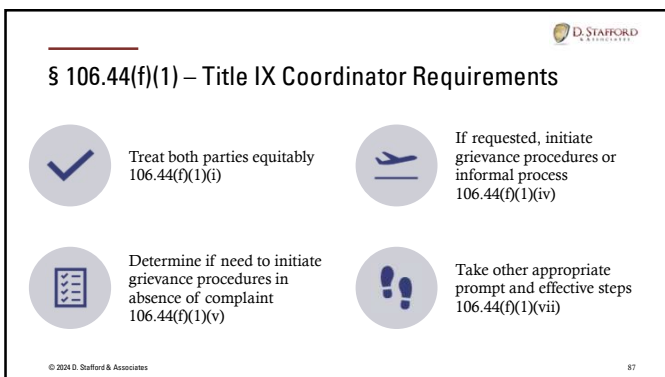
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§ 106.44(f)(1)(v) – TITLE IX-INITIATED COMPLAINTS

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

(A) To make this fact-specific determination, the Title IX Coordinator must consider, at a minimum, the following factors:

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EIGHT FACTORS TO CONSIDER

Complainant's request	Safety concerns	Risk of additional acts	Severity of allegation
Age and relationship	Scope and pattern	Evidence	Alternatives to resolve

§ 106.44(f)(1)(v)(A)

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THRESHOLD DETERMINATION

If, after considering these and other relevant factors, the Title IX Coordinator determines the conduct as alleged...

presents an imminent and serious threat to the health or safety of the complainant or other person, OR

prevents the recipient from ensuring equal access...to its education program or activity

the Title IX Coordinator may initiate a complaint

§ 106.44(f)(1)(B)

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§ 106.2 – SUPPORTIVE MEASURES DEFINITION

Individualized

Offered as appropriate

Reasonably available

Without unreasonably burdening

Not for punitive or disciplinary reasons

Without fee or charge

Complainant or respondent

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SUPPORTIVE MEASURE GOALS

Restore or preserve party access to program or activity

Provide support during process

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§ 106.44(g)(1) – SUPPORTIVE MEASURE EXAMPLES

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, extracurricular or other

Training and education

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106.44(g)(2) – SUPPORTIVE MEASURES EXPLAINED

- Must not unreasonably burden either party
- Must be designed to
 - protect safety of parties or
 - safety of educational environment or
- Provide support during grievance procedures or informal process
- Must not be imposed for punitive or disciplinary reasons

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OTHER CONSIDERATIONS FOR SUPPORTIVE MEASURES

§106.44(g)(3) May modify, terminate, or continue at conclusion of grievance procedures or informal process.

§106.44(g)(4) Must provide timely opportunity to challenge supportive measure decision

§106.44(g)(5) Must not disclose unless need to provide measure, restore/preserve access or exception applies

§106.44(g)(6)(ii) Title IX may consult with disability office when implementing

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LEAVE OPTIONS




Emergency removal

Administrative leave

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§ 106.44(h) – EMERGENCY REMOVAL

- Imminent and serious threat to the health or safety of any persons
- Arises from the allegations
- Provide notice and opportunity to challenge immediately following the removal
- Cannot modify any rights under IDEA, Section 504, or the ADA

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§ 106.44(k) – INFORMAL RESOLUTION

- Allowed for employee/student in postsecondary
- Discretion to offer or decline
- Voluntary for parties
- Provide notice
- Facilitator must not be investigator or decisionmaker
- Can include restrictions

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§ 106.44(k)(3) – INFORMAL NOTICE

Allegations	Requirements	Right to withdraw
Cannot initiate or resume grievance procedures once final	Potential terms	Information that will be maintained

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ADDITIONAL RESPONSE REQUIREMENTS

Monitor for Barriers to reporting
§ 106.44(b)(1)

Take steps to Remove Barriers
§ 106.44(b)(1)

Response to disclosures at Public Awareness Events
§ 106.44(e)

Prohibited Disclosures of PII
§ 106.44(j)

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§ 106.45 GRIEVANCE PROCEDURES FOR SEX DISCRIMINATION

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§ 106.45 – GRIEVANCE PROCEDURES

§ 106.45(a)(1) General

§ 106.45(a)(2) Complaint

§ 106.45(b) Basic requirements for grievance procedures

§ 106.45(c) Notice of allegations

§ 106.45(d) Dismissal of a complaint

§ 106.45(e) Consolidation of complaints

§ 106.45(f) Complaint investigation

§ 106.45(g) Questioning parties and witnesses

§ 106.45(h) Determination whether sex discrimination occurred

§ 106.45(i) Appeals

§ 106.45(j) Additional provisions

§ 106.45(k) Informal resolution

§ 106.45(l) Provisions limited to sex-based harassment complaints

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§ 106.45(a)(2) – COMPLAINT

Sex discrimination other than sex-based harassment

- Complainant
- Parent or other
- Title IX Coordinator
- Any student or employee
- Other person participating

Sex-based harassment

- Complainant
- Parent or other legal representative
- Title IX Coordinator

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§ 106.45(b) – BASIC REQUIREMENTS FOR GRIEVANCE PROCEDURES

- Treat complainants and respondents equitably
- Free of bias and conflict of interest
- Presumption of not responsible
- Reasonably prompt timeframes with extensions for good cause
- Reasonable steps to protect privacy
- Objective evaluation of all evidence that is relevant
- Exclude certain evidence as impermissible
- Articulate consistent principles for applying grievance procedures

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TITLE IX PERSONNEL

The decisionmaker may be the same person as the Title IX Coordinator or investigator.

§ 106.459b)(2)
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§ 106.45(c)(2) – Additional Allegations

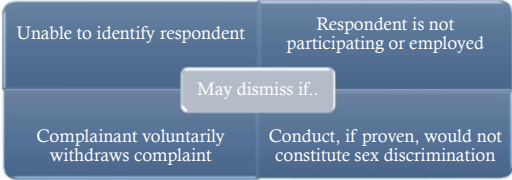


If decided to investigate additional allegations, must provide notice of to parties whose identities are known.

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§ 106.45(d)(1)(i-iv) – DISMISSAL OF A COMPLAINT

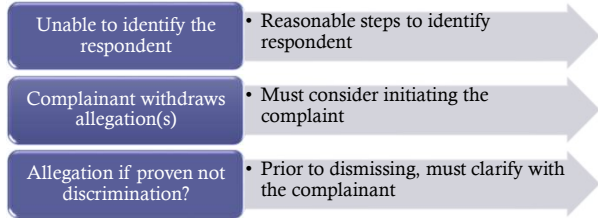


May dismiss if..

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DUTIES BEFORE DISMISSAL



Unable to identify the respondent • Reasonable steps to identify respondent

Complainant withdraws allegation(s) • Must consider initiating the complaint

Allegation if proven not discrimination? • Prior to dismissing, must clarify with the complainant

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ADDITIONAL DISMISSAL NOTES





Notice



Appeal



Support



Stop

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§ 106.45(e) – CONSOLIDATION OF COMPLAINTS



Multiple respondents

More than one complainant against one or more respondent

One party against another party

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§ 106.45(b)(7) – RELEVANT AND NOT OTHERWISE IMPERMISSIBLE EVIDENCE





Privileged information



Physician/psychologist records



Complainant's sexual interest or prior sexual conduct

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PROTECTING THE PRIVACY OF PERSONS

§ 106.44(j)

- Must not disclose personally identifiable information obtained except...
 - With prior written consent
 - To carry out the purposes of this part

§ 106.45(b)(5)

- Take reasonable steps to protect the privacy of the parties and witnesses
- Steps cannot restrict the ability of the parties to:
 - Obtain and present evidence, including by speaking to witnesses
 - Consult with their family members, confidential resources, or advisors
 - Otherwise prepare for or participate in the grievance procedures

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PROTECTING THE PRIVACY OF INFORMATION

§ 106.44(k)(3)

- Before the initiation of an informal process, provide notice that explains...
 - What information will maintain
 - How the institution could disclose for use in grievance procedures

§ 106.45(f)(4)(iii)

- Take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence solely through the grievance procedures

§ 106.46(e)(6)(iii)

- Parties' and their advisors' unauthorized disclosure

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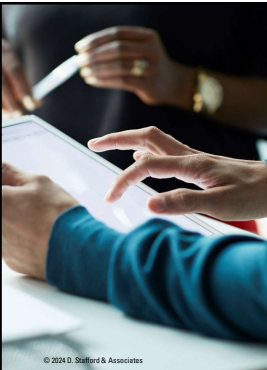


MINIMUM REQUIREMENTS UNDER § 106.45



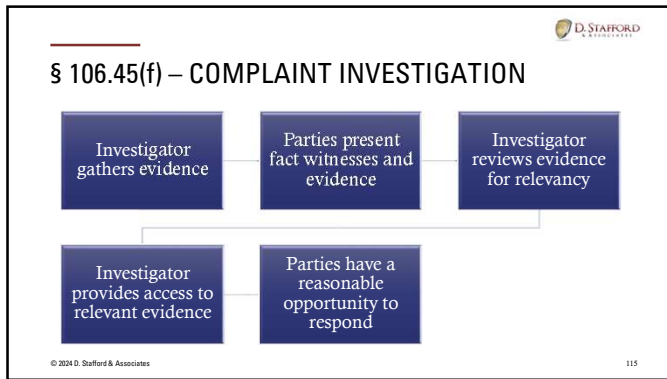
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graph TD
    A[Complaint] --> B[Notice]
    B --> C[Investigate]
    C --> D[Written Determination]
          
```

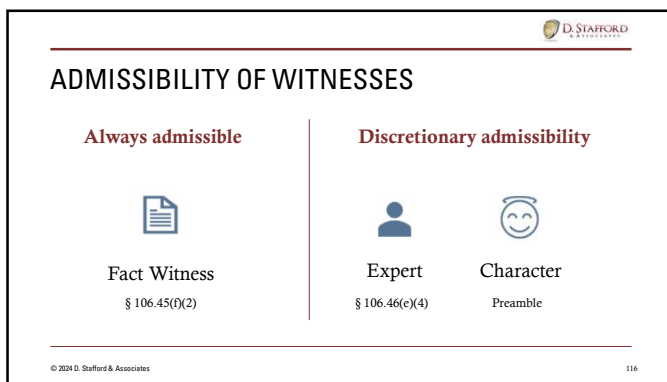


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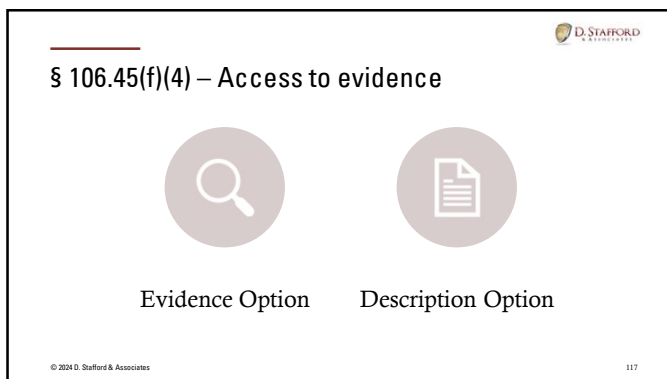
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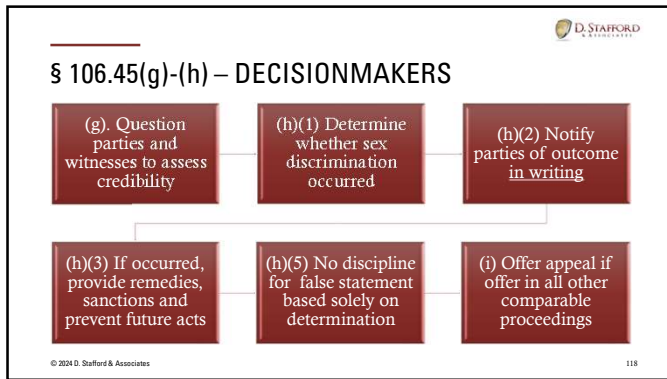
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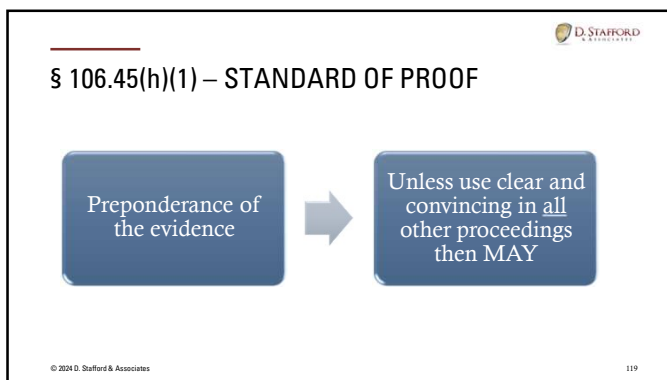
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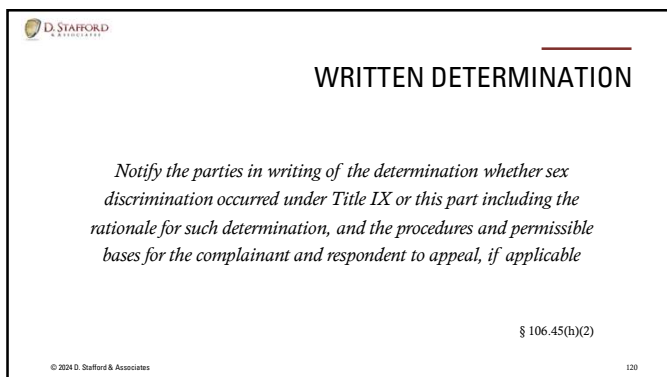
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FINAL POLICY NOTES ON § 106.45

- Written Policy/Procedures
- Single-investigator model is an option
- Informal resolution option before or after complaint
- If harassment - range of supportive measures
- If harassment - list of sanctions

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**§ 106.46
GRIEVANCE
PROCEDURES
SEX-BASED
HARASSMENT
INVOLVING
STUDENTS**



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**§ 106.46 – SEX-BASED HARASSMENT
INVOLVING STUDENTS**

§ 106.46(a) General	§ 106.46(g) Live hearing procedures
§ 106.46(b) Student employees	§ 106.46(h) Written determination
§ 106.46(c) Written notice of allegations	§ 106.46(i) Appeals
§ 106.46(d) Dismissal of a complaint	§ 106.46(j) Informal resolution
§ 106.46(e) Complaint investigation	
§ 106.46(f) Questioning parties and witnesses	

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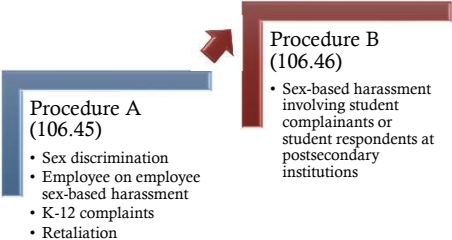
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§ 106.46(b) – STUDENT EMPLOYEES

“When a complainant or a respondent is both a student and an employee...must make a fact-specific inquiry to determine whether the requirements of this section apply.”

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TWO GRIEVANCE PROCEDURES

Procedure A (106.45)

- Sex discrimination
- Employee on employee sex-based harassment
- K-12 complaints
- Retaliation

Procedure B (106.46)

- Sex-based harassment involving student complainants or student respondents at postsecondary institutions

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COMPARING NOTICE

	§106.45(c) not required to be in writing	§106.46(c) required to be in writing
Grievance Procedures	YES	YES
"Sufficient information" (parties, conduct, date, location)	YES	YES
Statement that retaliation prohibited	YES	YES
Access to relevant evidence	YES	YES
Respondent is presumed not responsible		YES
Right to advisor of choice		YES
Prohibition on false statements		YES

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§ 106.46 TWEAKS

AMENDED NOTICE: Must be in writing §106.46(c)(2)	NOTICE: May reasonably delay providing notice if safety concern §106.46(c)(3)
DISMISSAL: Written simultaneous notice of dismissal of a complaint §106.46(d)(1)	DISMISSAL: Obtain complainant's voluntary withdrawal in writing §106.46(d)(2)

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§ 106.46(e) COMPLAINT INVESTIGATION

1 >
 2 >
 3 >
 4 >
 5 >
 6

1 Must provide notice of meetings, time to prepare	2 Must allow advisor of choice	3 May allow a support person	4 May allow expert witness	5 Must allow reasonable extensions of time	6 Must provide party and advisor access to relevant evidence
--	--	--	--	--	--

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ADVISOR OF CHOICE







May be but is not required to be an attorney 106.46(e)(2)	May accompany to any meeting or proceeding 106.46(e)(2)	Institution may restrict participation 106.46(e)(2)	Receives access to relevant evidence 106.46(f)(ii)(B)	May conduct cross-examination at hearing if allowed 106.46(1)(f)(ii)(B)
--	--	--	--	--

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§ 106.46(e)(6)(i) – Access to evidence



Evidence Option



Investigative Report Option

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REVIEW AND RESPOND TO EVIDENCE

A postsecondary institution must provide the parties with a reasonable opportunity to review and respond to the evidence or the investigative report...

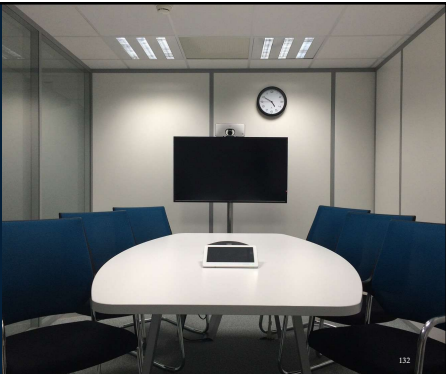
§ 106.46(e)(6)(ii)

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ASSESSING CREDIBILITY

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§ 106.46(f)(1) – PROCESS FOR QUESTIONING PARTIES AND WITNESSES

Decisionmaker Questions

Party-proposed Questions

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FORMATS FOR CREDIBILITY ASSESSMENT



Individual meetings
§106.46(f)(1)(i)



Hearing with decisionmaker asking proposed questions
§106.46(f)(1)(ii)(A)



Hearing with cross-examination by advisors
§106.46(f)(1)(ii)(B)

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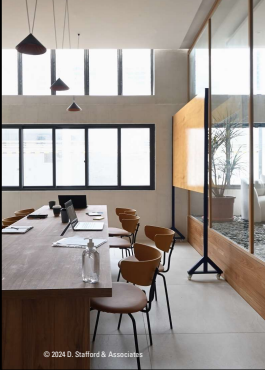



§ 106.46(f)(1)(i) – INDIVIDUAL MEETINGS

- Must hold individual meetings with the complainant, respondent, and any witnesses
- The investigator or decisionmaker may ask relevant and permissible questions
- Each party may propose relevant and permissible questions to be asked by the investigator or decisionmaker
- Provide each party with the recording or transcript with an opportunity to propose follow-up questions
- There could be several rounds of meetings

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§ 106.46(f)(1)(ii) – HEARING OPTION

- The decisionmaker may ask relevant and permissible questions
- Each party may propose relevant and permissible questions to be asked by the decisionmaker
- No questions may be asked directly by a party
- If the institution uses advisor-conducted questioning and a party does not have an advisor, the institution must provide one without charge (cannot be a confidential employee)

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LIVE HEARING

The decisionmaker must determine whether a proposed question is relevant ... prior to the question being posed and must explain any decision to exclude a question as not relevant or otherwise impermissible.

... must not permit questions that are unclear or harassing

... must give a party an opportunity to clarify or revise a question that ... is unclear or harassing

... may also adopt and apply other reasonable rules regarding decorum, provided they apply equally to the parties.

§ 106.46(f)(3)

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§ 106.46(g) – LIVE HEARING PROCEDURES




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 **REFUSAL TO RESPOND TO QUESTIONS**

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 to respond to such questions.

§ 106.46(f)(4)

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 **§ 106.46(g) – LIVE HEARING PROCEDURES**



Audio



Video



Transcript

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 **SANCTIONS AND REMEDIES**



Disciplinary Sanctions
“consequences ... following a determination”



Remedies
“Restore or preserve access”

§ 106.2

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 **§ 106.46(h) – DETERMINATION REGARDING RESPONSIBILITY**

Description of alleged sex-based harassment

Policies and procedures used to evaluate allegations

Evaluation of evidence and determination

Disciplinary sanctions or remedies if sex-based harassment occurred

Appeal procedures

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 **§ 106.46(i) – APPEALS**

Must offer the parties an appeal from a determination whether sex-based harassment occurred and from a ... dismissal of a complaint or any allegation therein, on the following bases:

Procedural irregularity that would change the determination of whether sex-based harassment occurred	New evidence that would change the outcome of the matter and that was not reasonably available at the time the determination of whether sex-based harassment occurred or dismissal was made	Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that would change the outcome
--	---	--

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 **§ 106.47 – 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.

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§ 106.60 – PRE-EMPLOYMENT INQUIRIES

- Must not make a pre-employment inquiry as to marital status, including whether an applicant is “Miss or Mrs.”
- May ask an applicant to self-identify their sex, but only if this is asked of all applicants and if the response is not used as a basis for discrimination

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**SUBPART F:
RETALIATION**



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§ 106.2 – RETALIATION DEFINITION

Retaliation means intimidation, threats, coercion, or discrimination against any person 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...

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WHO CAN RETALIATE?


Recipient


Student


Employee

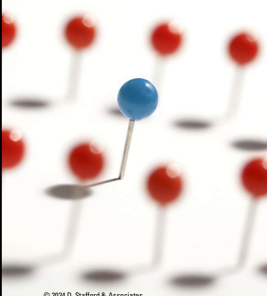

Other

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§ 106.2 – PEER RETALIATION



Peer retaliation means retaliation by a student against another student.

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§ 106.71 – RETALIATION

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 ... the recipient is obligated to comply with § 106.44. Upon receiving a complaint alleging retaliation, a recipient must initiate its grievance procedures under § 106.45, or, ... an informal resolution

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RETALIATION NOTES

Interference clause

Participation clause

Employee participation

Consolidated complaints

False statements and retaliation

Adverse Action

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§106.8(f) – RECORDKEEPING (7 YEARS)


Process and Outcome for Complaints


Actions taken for Reports


Materials upon request for training

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POLICY CONSIDERATIONS

- Student conduct codes
- Employee handbooks
- Non-discrimination policies and procedures
- Incidents occurring before August 1, 2024

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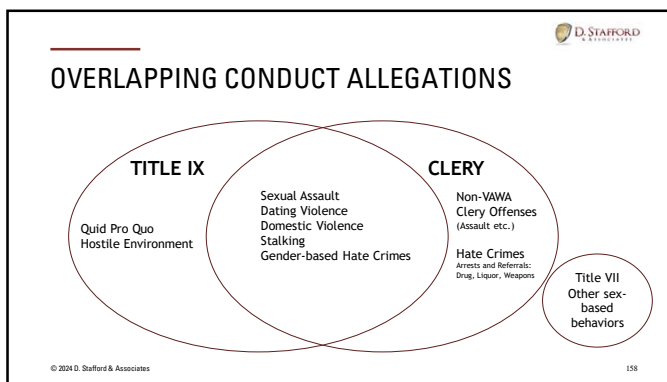
CLERY ACT
(VAWA)
PROCEDURAL
REQUIREMENTS



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34 C.F.R. § 668.46(c) – VAWA OFFENSES

Rape

Fondling

Incest

Statutory Rape

Dating Violence

Domestic Violence

Stalking

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§ 668.46 – RESPONSE REQUIREMENTS FOR VAWA OFFENSES

Procedures victims of VAWA Offenses should follow

↓

Procedures an institution will follow when offense reported

↓

*and make sure it is all in **WRITING**.*

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§ 668.46(b)(11)vii) – WRITTEN EXPLANATION OF STUDENT OR EMPLOYEE'S RIGHTS

When a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options, as described in paragraphs (b)(11)(i) through (vi) of this section. . .

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§ 668.46(b)(11)(ii) – WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

- 1. The importance of preserving evidence** that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order
 - Not required but recommended: Where to obtain forensic exams, contact info, does not require police report and can have exam now, decide later
- 2. How and to whom the alleged offense should be reported**
 - List any person or organization that can assist the victim
 - Recommended: Also include community organizations

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§ 668.46(b)(11)(ii) – WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

3. Notification of the victim's option to

- Notify proper law enforcement authorities, including on-campus and local police
- Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses
- Decline to notify such authorities

4. The rights of victims and the institution's responsibilities for

- Orders of protection
- "No contact" orders
- Restraining orders
- Similar lawful orders issued by a criminal, civil, tribal, or institutional

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§ 668.46(b)(11)(ii) – WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

5. To students AND employees about existing

- Counseling, health, mental health services
- Victim Advocacy
- Legal Assistance
- Visa and Immigration Assistance
- Student Financial Aid
- Other services available for victims

6. Options for, available assistance in, and how to request changes to (if requested and reasonably available)

- Academic, living, transportation, working

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§ 668.46(b)(11)(ii) – WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

7. Confidentiality

- Publicly available recordkeeping has no personally identifying information about the victim (not required for respondent but best practice in most cases)
- Accommodations and protective measures are confidential (to the extent they can be without impairing the ability to provide them)

8. Disciplinary Procedures

- An explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as required

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RESPONSE TO "KNOWLEDGE"

Title IX	Clery Act
- Respond "promptly and effectively" - Offer and/or implement supportive measures - Notify of grievance procedures and informal process if applicable - Take other appropriate steps	- Written explanation of victim's rights and options - Assess for Timely Warning Notice or Emergency Notification

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CLERY ACT REQUIREMENTS FOR DISCIPLINARY PROCEEDINGS



Anticipated timelines ("reasonably prompt")



Decision-making process



How to and options for filing a school complaint (with contact info)



How school determines which process to use



Who makes decisions



Include employee procedures



Use procedures regardless of Clery geography

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§ 668.46(k)(2)(iii-iv) – ADVISORS

- Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice*
- Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties*

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INFORMAL RESOLUTIONS

Title IX • Can offer, but may not require • Can decline even if the parties request • Party may withdraw up to a point	Clery Act • Written information about procedures the institution will follow for VAWA offenses (does not differentiate between formal vs informal)
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GRIEVANCE PROCEDURES FOR COMPLAINTS

Title IX • Prompt and equitable • Laundry list of items...	Clery Act • Prompt, fair and impartial investigation and resolution • Anticipated timeframes • List <u>all</u> possible sanctions for each offense (employees and students) • Consistent with policy and transparent • Not required to list all protective measures
--	--

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WRITTEN DETERMINATION

Title IX • 106.45 Procedures • Result (include any sanctions and rationale for results and sanction) • Appeals procedures • Any change to the result • When such results become final • 106.46 Procedures • Information about policies and procedures used • Evaluation of relevant evidence	Clery Act • Result (include any sanctions and rationale for results and sanction) • Appeals procedures • Any change to the result • When such results become final
--	--

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§ 668.46(k)(2)(iii-iv) – BIAS FREE AND TRAINING FOR “OFFICIALS”

Annual training on the issues related to dating violence, domestic violence, sexual assault and stalking and on how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability

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APPEALS

Title IX • Must offer both parties an appeal • Based on specific grounds	Clery Act • Not required (but must provide notice if allowed along with appeal procedures) • Simultaneous written decision describing result, sanction, any changes to the result, when it becomes final
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