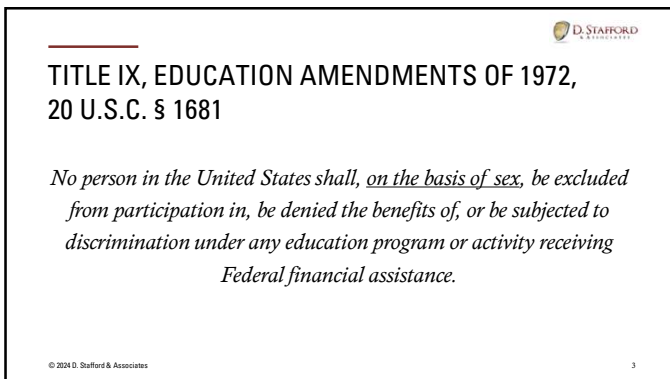




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OVERVIEW OF THE 2024 TITLE IX REGULATIONS



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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 (FEPPRA 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

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NOT DEFINED

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§ 106.2 – DEFINITIONS: PARTIES

Complainant	Respondent	Party
<ul style="list-style-type: none"> A student or employee, or Non-student/employee who was participating/attempting to participate at the time of the alleged sex discrimination 	<ul style="list-style-type: none"> A person who is alleged to have violated the recipient's prohibition on sex discrimination 	<ul style="list-style-type: none"> 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

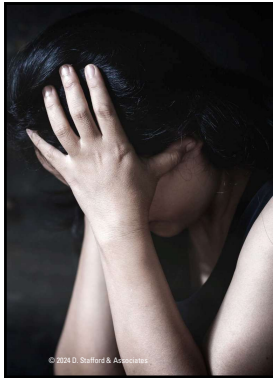
Dating violence

Domestic violence

Stalking

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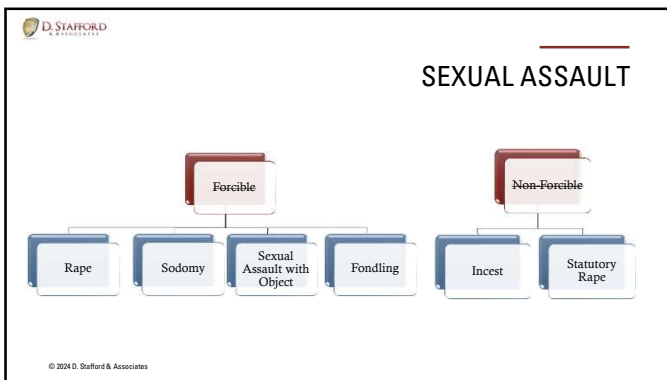
SEXUAL ASSAULT

“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”

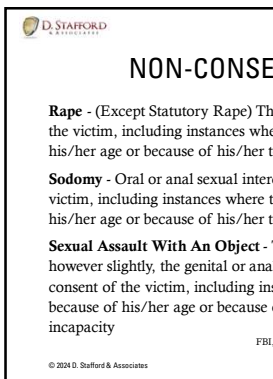
§ 106.2

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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**

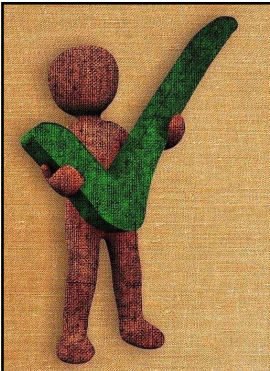
Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to—


- (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

```

graph TD
    A[Adopt] --> B[Publish]
    B --> C[Implement]
        
```

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§ 106.8(c) – NOTIFICATION OF NONDISCRIMINATION

<p>Who [§ 106.8(c)]</p> <ul style="list-style-type: none"> • Students • Parents, guardians, legal reps (K-12) • Employees • Applicants for admission or employment • Unions and professional organizations 	<p>What [§ 106.8(c)(1)(i)]</p> <ul style="list-style-type: none"> • 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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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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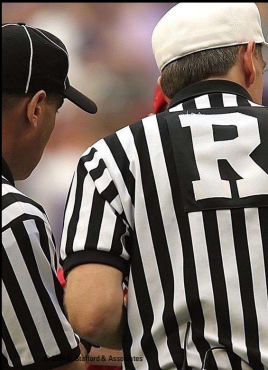



§ 106.40(b)(4-5) – COMPARABLE TREATMENT AND CERTIFICATIONS

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

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

↓

2020 Regulations

Officials with Authority to institute corrective measures

↓

2024 Regulations

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

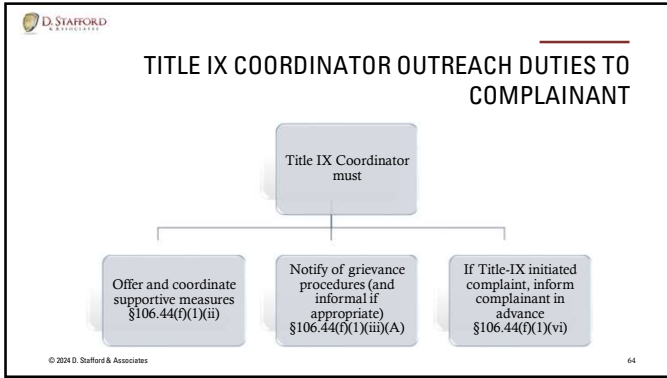
106.44(d)(2)(ii)

Title IX Coordinator has responsibilities

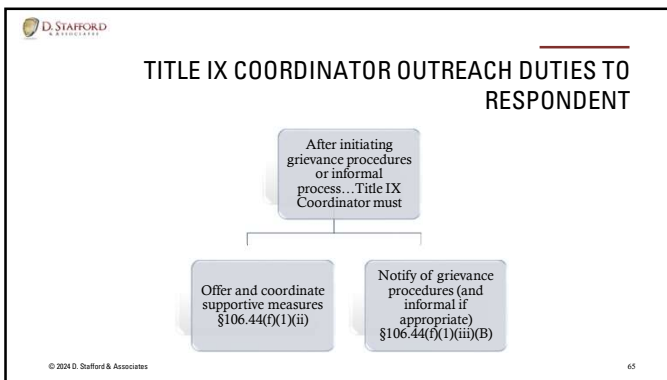
106.44(d)(2)(iii)

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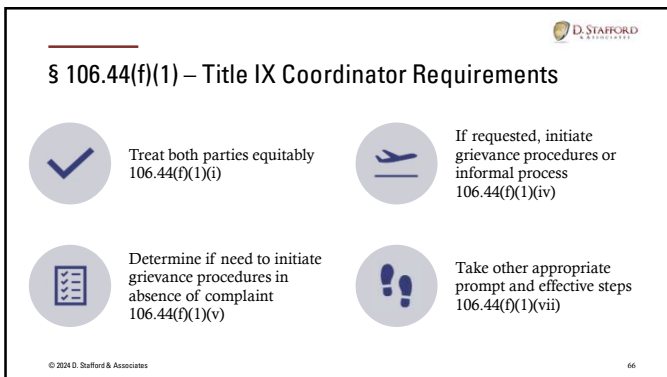
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§ 106.44(f)(1)(v) – TITLE IX-INITIATED COMPLAINTS

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

§ 106.2

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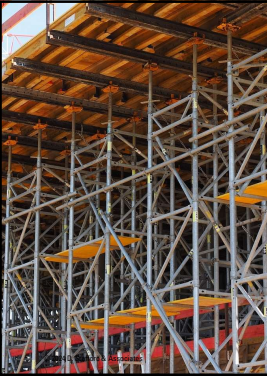


§ 106.44(g)(1) – SUPPORTIVE MEASURE EXAMPLES

- _____ 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	Sex-based harassment
<ul style="list-style-type: none"> • Complainant • Parent or other • Title IX Coordinator • Any student or employee • Other person participating 	<ul style="list-style-type: none"> • 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

Unable to identify respondent

Respondent is not participating or employed

May dismiss if..

Complainant voluntarily withdraws complaint

Conduct, if proven, would not constitute sex discrimination

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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

Complaint

↓

Notice

↓

Investigate

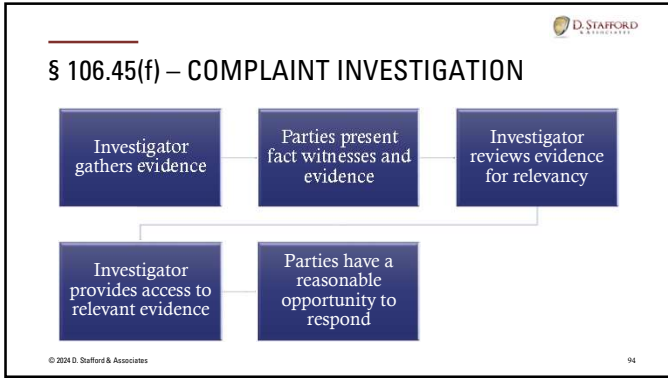
↓

Written Determination

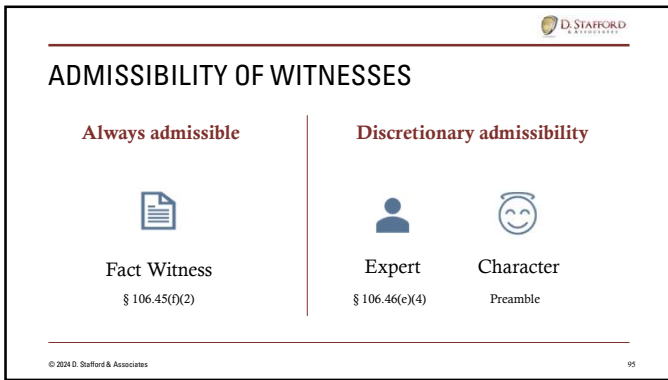
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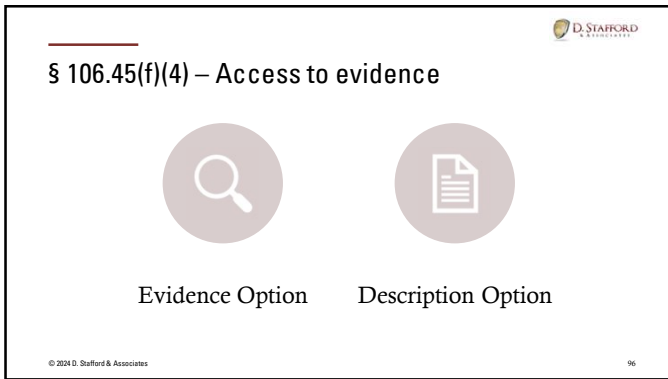
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§ 106.45(g)-(h) – DECISIONMAKERS

(g). Question parties and witnesses to assess credibility

(h)(1) Determine whether sex discrimination occurred

(h)(2) Notify parties of outcome in writing

(h)(3) If occurred, provide remedies, sanctions and prevent future acts

(h)(5) No discipline for false statement based solely on determination

(i) Offer appeal if offer in all other comparable proceedings

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§ 106.45(h)(1) – STANDARD OF PROOF

Preponderance of the evidence

➔

Unless use clear and convincing in all other proceedings then MAY

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WRITTEN DETERMINATION

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 applicable

§ 106.45(h)(2)

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FINAL POLICY NOTES ON § 106.45

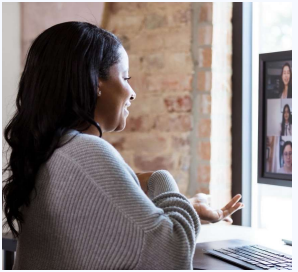
- Written Policy/Procedures
- Single-investigator model is an option
- Informal resolution option before or after complaint
- If harassment - range of supportive measures
- If harassment - list of sanctions

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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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§ 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) <small>not required to be in writing</small>	§106.46(c) <small>required to be in writing</small>
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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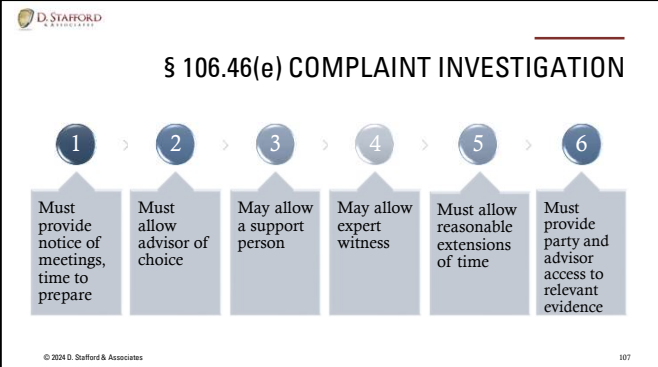
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§ 106.46 TWEAKS

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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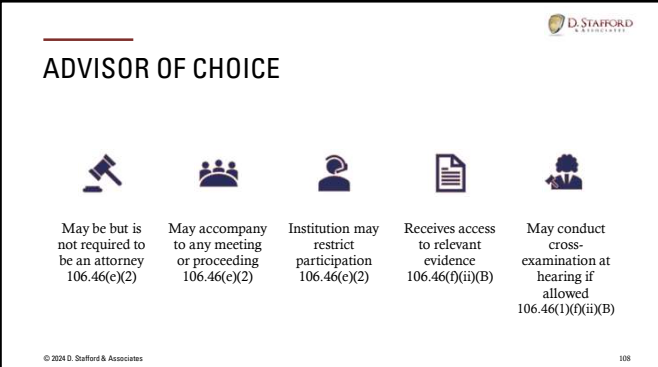
§ 106.46(e) COMPLAINT INVESTIGATION

- 1 >
- 2 >
- 3 >
- 4 >
- 5 >
- 6






Must provide notice of meetings, time to prepare	Must allow advisor of choice	May allow a support person	May allow expert witness	Must allow reasonable extensions of time	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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SUBPART E: EMPLOYMENT



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§ 106.51-61 – EMPLOYMENT

§ 106.7 Effect of employment opportunities	§ 106.51 Employment	§ 106.52 Employment criteria	§ 106.53 Recruitment	§ 106.54 Compensation
§ 106.55 Job classification and structure	§ 106.56 Fringe benefits	§ 106.57 Marital or parental status	§ 106.58 Effect of other laws	§ 106.59 Advertising
	§ 106.60 Pre-employment inquiries	§ 106.61 Sex as a bona-fide occupational qualification		

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§ 106.57 – PARENTAL, FAMILY, OR MARITAL STATUS; PREGNANCY OR RELATED CONDITIONS (EMPLOYMENT)

No policies, practices, procedures, or take any employment action concerning parental, family or marital status	No policies, practices, procedures, or take any employment action based on head of household or principal wage earner	Must not discriminate on the basis of current, potential, or past pregnancy or related conditions
Comparable treatment to other temporary medical conditions	Voluntary leaves of absence	Lactation time and space

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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



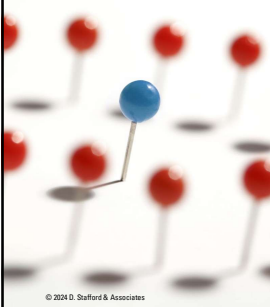
Other

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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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