AN INTRODUCTION TO THE 2024 TITLE IX RULE

TITLE IX SOLUTIONS, LLC

APRIL 25, 2024

TITLE IX SOLUTIONS

SPEAKERS



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EXECUTIVE DIRECTOR

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THIS IS JUST THE BEGINNING

Title IX Solutions offers comprehensive trainings and services to help you navigate the Title IX Regulations with confidence.

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TWO-DAY LIVE VIRTUAL TRAININGS

- JUNE 10 - 11, 2024
- JULY 23 - 24, 2024

POLICY DEVELOPMENT SERVICES

Contact Adrienne Mathis at
adrienne@titleixsolutions.com

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WEBINAR OVERVIEW

Please download the two PDF documents provided in the chat:

- 2024 amendments to the Title IX Regulations (pages 1505-1561 of the Unofficial Version of the Final Regulations)
- Title IX Solutions “Highlights and Excerpts” Document

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§ 106.2 DEFINITIONS

NOTABLE TERMS

- Complainant
- Complaint
- Confidential Employee
- Party
- Peer Retaliation
- Relevant
- Respondent
- Supportive Measures

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§ 106.2 DEFINITIONS

NOTABLE TERMS

Pregnancy and related conditions

(1) Pregnancy, childbirth, termination of pregnancy, or lactation;

(2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

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§ 106.2 DEFINITIONS

NOTABLE TERMS

Sex-based harassment

(1) Quid pro quo harassment

(2) 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:

- The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
- The type, frequency, and duration of the conduct;
- The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct and the context in which the conduct occurred; and
- Other sex-based harassment in the recipient's education program or activity;

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§ 106.2 DEFINITIONS

NOTABLE TERMS

Sex-based harassment (continued)

(3) Specific Offenses

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking



A particular definition of consent is not required.

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§ 106.6 EFFECT OF OTHER REQUIREMENTS AND PRESERVATION OF RIGHTS

"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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§106.8 DESIGNATION OF COORDINATOR & NONDISCRIMINATION POLICY

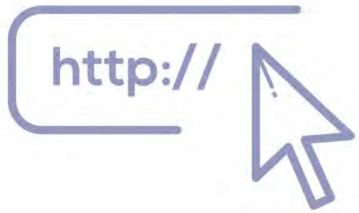
GENERAL TAKEAWAYS



If more than one Title IX Coordinator, the school must designate one Coordinator to retain ultimate oversight



Notice of Nondiscrimination must be on the website and in each handbook, catalog, announcement, bulletin, and application form

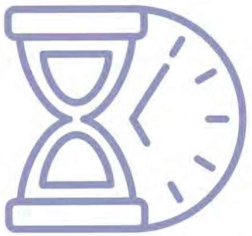


Brief statement prohibiting sex discrimination and referring reports and questions to the Title IX Coordinator followed by a hyperlink to the school website is acceptable

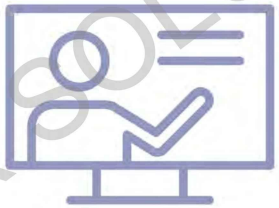
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§106.8 TRAINING

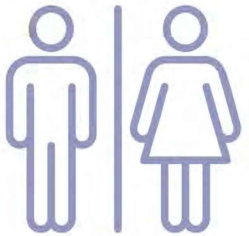
TRAINING TAKEAWAYS



Training must be provided promptly upon hiring or change of position



Annual training is required



Training must not rely on sex stereotypes

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§106.8 TRAINING

TRAINING TAKEAWAYS (CONTINUED)

ALL EMPLOYEES

- School's obligation to address sex discrimination
- Scope of conduct that constitutes sex discrimination, including the definition of sex-based harassment
- All applicable notification and information requirements

INVESTIGATORS, DECISIONMAKERS, AND OTHERS WITH AUTHORITY

- "All employee" training requirements, plus:
  - School's obligations under 106.44
  - Grievance procedures under 106.45 and 106.46 (if applicable)
  - How to serve impartially
  - Meaning and application of "relevant" evidence

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§106.8 TRAINING

TRAINING TAKEAWAYS (CONTINUED)

INFORMAL RESOLUTION FACILITATORS

- "All employee" training requirements, plus:
  - Informal resolution rules and practices
  - How to serve impartially

TITLE IX COORDINATORS AND DESIGNEES

- All previously referenced training requirements, plus:
  - Specific responsibilities associated with the role
  - School's recordkeeping system
  - Additional training as necessary to coordinate school's compliance with Title IX

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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
- GENDER IDENTITY

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§ 106.11 APPLICATION

- Applies to every recipient and to all sex discrimination occurring under a recipient's education program or activity in the United States.

- Applies to conduct that occurs under a recipient's education program or activity
  - Includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by a postsecondary institution, and conduct that is subject to the recipient's disciplinary authority.

- A recipient has an obligation to address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States.

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§ 106.40 PARENTAL, FAMILY OR MARITAL STATUS

PREGNANCY OR RELATED CONDITIONS

KEY TAKEAWAYS

- Nondiscrimination
- Responsibility to provide Title IX Coordinator information
- Specific actions to prevent discrimination and ensure equal access
  - Responsibility to provide information about recipient obligations
  - Reasonable modifications
  - Voluntary access to separate and comparable portion of program or activity
  - Voluntary leaves of absence
  - Lactation space
  - Limitation on supporting documentation
- Comparable treatment to other temporary medical conditions
- Certification to participate

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§ 106.44 RECIPIENT'S RESPONSE TO SEX DISCRIMINATION

KEY TAKEAWAYS



Must respond promptly and effectively



Title IX Coordinator must **monitor for barriers** to reporting and take steps to address such barriers

NOTIFICATION REQUIREMENTS

K-12 Schools:

All employees who are not confidential employees are to notify the Title IX Coordinator of sex discrimination

All other recipients:

- Non-confidential employees with authority to institute correct measures or has responsibility of administrative leadership, teaching, or advising are to notify Title IX Coordinator of sex discrimination
- Non-confidential employees without the above authority or responsibilities are to notify Title IX Coordinator of sex discrimination OR provide contact information of the Title IX Coordinator and how to make a complaint

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§ 106.44 RECIPIENT'S RESPONSE TO SEX DISCRIMINATION

CONFIDENTAL EMPLOYEES

- Notification of how to contact confidential employees
- Confidential employees are required to explain their status as confidential (and therefore not required to):
  - Notify the Title IX Coordinator of the conduct that may constitute sex discrimination
- Confidential employees should:
  - Explain how to contact the Title IX Coordinator and how to make a complaint
  - Inform that the Title IX Coordinator may be able to offer and coordinate supportive measures as well as initiate the informal resolution process or an investigation

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PUBLIC AWARENESS EVENTS

§ 106.44 RECIPIENT'S RESPONSE TO SEX DISCRIMINATION

TITLE IX COORDINATOR

- Make fact-specific determinations as to whether to:
  - Initiate a complaint of sex discrimination or sex-based harassment in the absence of a complaint, withdrawal of any or all allegations, or in the absence of a termination of an informal resolution process

- Regardless of whether a complaint is initiated, take other appropriate prompt and effective steps, in addition to steps necessary to effectuate the remedies provided to an individual complainant, if any, to ensure that sex discrimination does not continue or recur within the recipient's education program or activity

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§ 106.44 RECIPIENT'S RESPONSE TO SEX DISCRIMINATION

SUPPORTIVE MEASURES

- Complainant and respondent are provided an opportunity to challenge the school's decision to provide, deny, modify or terminate supportive measures to an impartial employee

STUDENTS WITH DISABILITIES

K-12

Title IX Coordinator must consult with one or more members of the IEP team in implementation of supportive measures

POST-SECONDARY

Title IX Coordinator may consult with the individual or office designated to support students with disabilities in implementation of supportive measures

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§ 106.44 RECIPIENT'S RESPONSE TO SEX DISCRIMINATION

DISCRETION TO OFFER INFORMAL RESOLUTION (IN SOME CIRCUMSTANCES)

- Cannot be offered if:
  - The complaint includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student

- Title IX Coordinator is to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity

- Title IX Coordinator may decline to offer informal resolution despite one or more of the parties' wishes.

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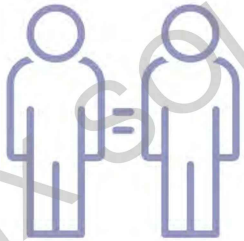
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§ 106.45 GRIEVANCE PROCEDURES FOR COMPLAINTS OF SEX DISCRIMINATION

HIGHLIGHTS



Complaints of sex discrimination (no longer "formal complaints")



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



Establish reasonably prompt timeframes for the major stages of the grievance process (e.g. investigation, determination, appeal)

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§ 106.45 GRIEVANCE PROCEDURES FOR COMPLAINTS OF SEX DISCRIMINATION

HIGHLIGHTS

NOTICE OF ALLEGATIONS

DISMISSAL OF A COMPLAINT

- A school may dismiss a complaint of sex discrimination

COMPLAINT INVESTIGATION

- Equal opportunity to access and respond to relevant and not otherwise impermissible evidence or an accurate description of the evidence.
- School must take reasonable steps to prevent and address parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures

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§ 106.45 GRIEVANCE PROCEDURES FOR COMPLAINTS OF SEX DISCRIMINATION

HIGHLIGHTS



Questioning parties and witnesses to aid in evaluating allegations and assessing credibility



Determination whether sex discrimination occurred

- Use preponderance of the evidence standard of proof unless the recipient uses clear and convincing evidence standard of proof in all other comparable proceedings



Appeals



Informal Resolutions



Provisions limited to sex-based harassment complaints

- Describe range of supportive measures
- List or describe a range of possible disciplinary sanctions

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§ 106.45

Applies to all complaints of sex discrimination

Includes complaints involving:

- Sex discrimination and sex-based harassment in the K-12 environment
  - Employee, students, and third-parties
- Sex discrimination and sex-based harassment in postsecondary institutions
  - Employees and third-parties
- Sex discrimination in postsecondary institutions
  - Students

§ 106.46

Applies to complaints of:

- Sex-based harassment
- Postsecondary institutions
- Involving students (complainant or respondent)

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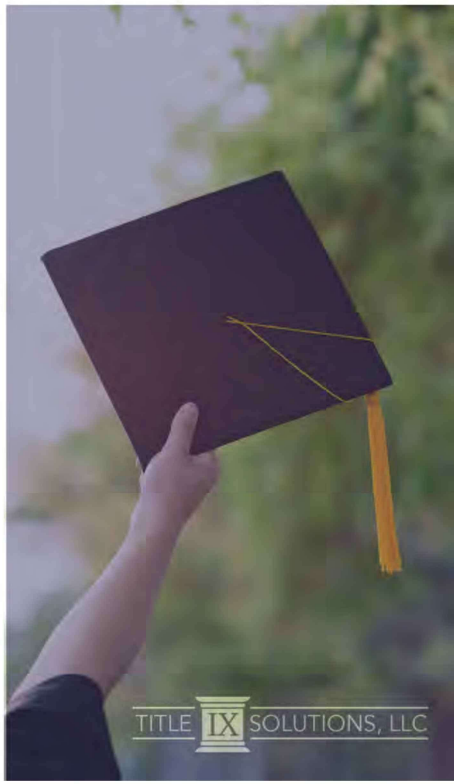
§106.46 GRIEVANCE PROCEDURES FOR COMPLAINTS OF SEX-BASED HARASSMENT INVOLVING STUDENT COMPLAINANTS OR STUDENT RESPONDENTS

POST SECONDARY INSTITUTIONS

KEY TAKEAWAYS

- Student employees
- Complaint investigation
  - Right to an advisor
  - Provide the parties with the same opportunities, if any, to have persons other than the advisor of the parties' choice present during meetings
  - Opportunity to review and respond to the evidence or investigative report
  - If a live hearing is conducted, this opportunity must be in advance of the live hearing; it is at the postsecondary institution's discretion whether to provide this opportunity to respond prior to the live hearing, during the live hearing, or both prior to and during the live hearing

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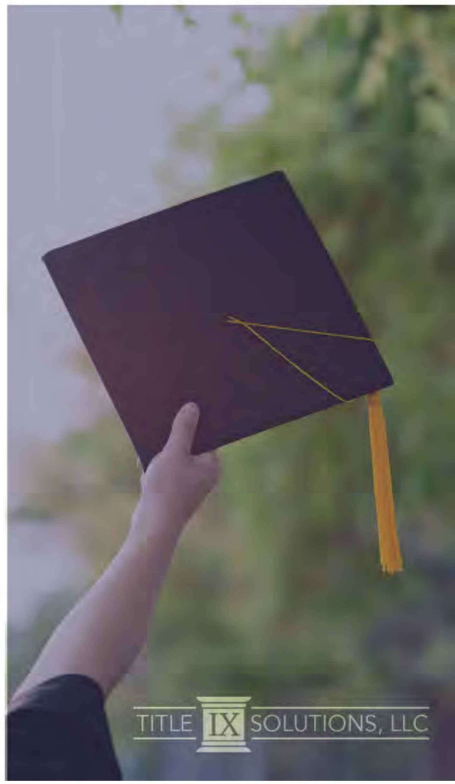
§106.46 GRIEVANCE PROCEDURES FOR COMPLAINTS OF SEX-BASED HARASSMENT INVOLVING STUDENT COMPLAINANTS OR STUDENT RESPONDENTS

POST SECONDARY INSTITUTIONS

KEY TAKEAWAYS

- Questioning parties and witnesses to aid in evaluating allegations and assessing credibility
  - Live hearings or individual meetings between the investigator or decisionmaker and a party or witness
- In live hearings, parties may propose questions to be asked by the decisionmaker or questioning conducted by advisors
  - If a postsecondary institution permits advisor-conducted questioning and a party does not have an advisor to ask questions on their behalf, the postsecondary institution must provide the party with an advisor of the postsecondary institution's choice

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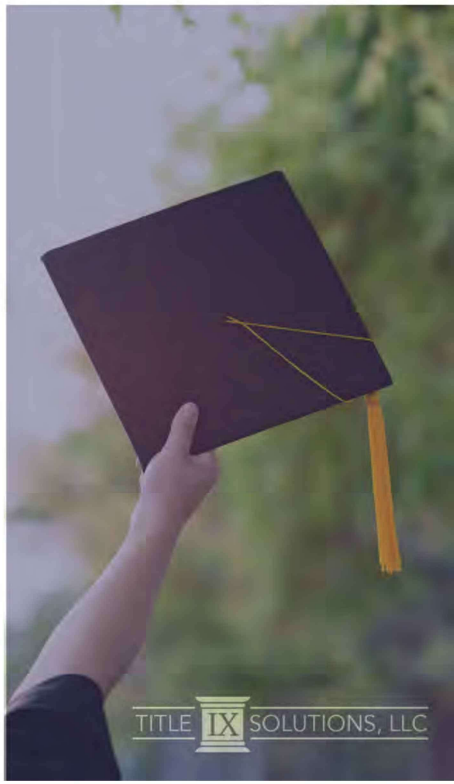
§106.46 GRIEVANCE PROCEDURES FOR COMPLAINTS OF SEX-BASED HARASSMENT INVOLVING STUDENT COMPLAINANTS OR STUDENT RESPONDENTS

POST SECONDARY INSTITUTIONS

KEY TAKEAWAYS

- Evaluating questions
  - Relevance determinations
  - Unclear or harassing questions are not permitted
  - Additional rules of decorum may be adopted and applied equally to both parties
- Live hearing procedures
  - May be conducted in-person or with technological assistance
- Written determination
- Appeals
- Informal resolution

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NAVIGATING THE NEW TITLE IX REGULATIONS WITH CONFIDENCE:

A TWO-DAY VIRTUAL TRAINING INTENSIVE FOR HIGHER ED

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READY TO DIVE INTO THE NEW REGULATIONS?

JOIN US!

JUNE 10-11, 2024

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QUESTIONS?

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