

**59<sup>TH</sup> ANNUAL CONFERENCE OF THE**  
**NEW YORK STATE ASSOCIATION OF SCHOOL PERSONNEL ADMINISTRATORS**



**Title IX and Sexual Harassment Prevention Training**  
**Preventing Discrimination & Conducting Investigations**

October 24, 2024



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# Agenda

## Today's Training & Review

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### **Part 1: 9:00 to 10:30**

#### **▶ Title IX Defined – Legal Rules and Requirements**

- I. Title IX Harassment Defined**
- II. Rules and Obligations**
- III. Title IX Specific Terms**
- IV. Title VII and Title IX Intersections**

### **Part 2: 10:45 – 12:00**

#### **▶ Title IX – Implementation and Practice Recommendations**

- I. Investigation of Complaints-Legal Obligations and Requirements**
- II. Practical Considerations**
- III. Best Practices**
- IV. Conclusions and Discussions**

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# Title IX Harassment Defined

# What is Title IX Sex Based Harassment<sup>1</sup>

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- ▶ On July 12, 2022, the Department of Education published a notice of proposed rule making to update the regulations under Title IX from the previous August, 2020 rules adopted by the prior administration.
- ▶ The proposed rules would reinstate many of the requirements under Title IX repealed and/or replaced by the August 2020 rules, while also adding new requirements
- ▶ On April 29, 2024, the Final Rules to update the Department of Education's Title IX Regulations under Part 106 were published to the Federal Register
- ▶ The new Title IX Regulations took effect on August 1, 2024

*See Appendix for OCR/DOE Guidance Documents*

1. <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf> (*Application of Bostock*)  
<https://www.govinfo.gov/content/pkg/FR-2024-04-29/pdf/2024-07915.pdf> (*2024 Title IX Rule*)

# What is Title IX Sex Based Harassment<sup>1</sup>

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▶ Under Part 106, 34 CFR 106.2 Definitions – “Sex Based Harassment” is a form of sex discrimination and means ***sexual harassment or other harassment on the basis of sex***

▶ “Sex Based Harassment” includes the following:

1) 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;

*\*NOTICE - There is NO threshold requirement that Quid Pro Quo harassment limit or prevent a complainant's ability to access the educational institution, only that it occurred*

1. <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf> (*Application of Bostock*)  
<https://www.govinfo.gov/content/pkg/FR-2024-04-29/pdf/2024-07915.pdf> (*2024 Title IX Rule*)

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▶ “Sex Based Harassment” includes the following:

## (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:

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

1. <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf> (*Application of Bostock*)  
<https://www.govinfo.gov/content/pkg/FR-2024-04-29/pdf/2024-07915.pdf> (*2024 Title IX Rule*)

# What is Title IX Sex Based Harassment<sup>1</sup>

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▶ “Sex Based Harassment” includes the following:

## (3) Specific offenses.\*

- (i) 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;
- (ii) Dating violence meaning 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;
- (iii) 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; or
- (iv) 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.

*\*\*NOTICE - There is NO threshold requirement that Specific Offenses covered as harassment limit or prevent a complainant's ability to access the educational institution, only that they occurred*

1. <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf> (*Application of Bostock*)  
<https://www.govinfo.gov/content/pkg/FR-2024-04-29/pdf/2024-07915.pdf> (*2024 Title IX Rule*)

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- ▶ Title IX's prohibition on sex-based harassment also clarifies through the August 2024 updated rules that sex discrimination includes discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. (§ 106.10).
- ▶ Title IX therefore prohibits policies and procedures that disproportionately affect students or employees on the basis of sex, even if those policies and procedures appear neutral
- ▶ Title IX requires schools to adopt policies and procedures that are important for the prevention and correction of sex-based discrimination.

1. <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf> (*Application of Bostock*)  
<https://www.govinfo.gov/content/pkg/FR-2024-04-29/pdf/2024-07915.pdf> (*2024 Title IX Rule*)

# What is Title IX Sex Based Harassment<sup>1</sup>

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- ▶ Under Part 106, 34 CFR 106.11 Application - For any recipient institution or program, Title IX applies to prohibit all sex discrimination occurring under a recipient's education program or activity in the United States. For purposes of Title IX, 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.***
- ▶ Under the 2024 regulations, 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.***
- ▶ Additionally, the Definition of a School's "Program or Activity" under section 106.2 has been broadened to encompass any program or activity over which a recipient may exercise any control, including disciplinary control

1. <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf> (*Application of Bostock*)  
<https://www.govinfo.gov/content/pkg/FR-2024-04-29/pdf/2024-07915.pdf> (*2024 Title IX Rule*)

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- ▶ Title IX's regulations as amended on April 19, 2024, make clear that sex-based discrimination covered by Title IX includes expansive categories of discrimination on the basis of sex
- ▶ Regulations have significant overlap under federal law with the definitions of discrimination under New York State Law
- ▶ Sexual harassment was previously defined under **34 C.F.R. §106.30** as conduct that occurred on the basis of sex that prevents a complainant's right of equal access to the educational institution and fall under one or more of three categories – this section has been repealed and revised in the August 2024 Regulations

1. <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf> (*Application of Bostock*)  
<https://www.govinfo.gov/content/pkg/FR-2024-04-29/pdf/2024-07915.pdf> (*2024 Title IX Rule*)

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## ▶ Notice of Interpretation – June 22, 2021

DOE provided notice that enforcement of Title IX with respect to discrimination based on sexual orientation and gender identity would rely on the Supreme Court's decision in *Bostock v. Clayton County*, 140 S. Ct. 1731, 590 U.S. 644 (2020)

Almost immediately, a coalition of states brought suit to enjoin the enforcement of this notice of interpretation. On July 15, 2022, a federal court barred enforcement of this NOI in 20 states

On June 11, 2024, in a separate lawsuit, a Federal Court in Texas granted the State's request to "vacate" and "enjoin" the enforcement of the NOI in the State

1. <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf> (*Application of Bostock*)  
<https://www.govinfo.gov/content/pkg/FR-2024-04-29/pdf/2024-07915.pdf> (*2024 Title IX Rule*)

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## ▶ Litigation over New Title IX Rules

As of September, 2024, the following disclaimer appears on OCR's guidance documents regarding the new August 2024 Regulations

As of July 31, 2024, pursuant to Federal court orders, the Department is currently enjoined from enforcing the 2024 Final Rule in the states of Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming; the Department is also currently enjoined from enforcing the 2024 Final Rule at the schools on the list located at <https://www2.ed.gov/about/offices/list/ocr/docs/list-of-schools-enjoined-from-2024-t9-rule.pdf> Per Court order, this list of schools may be supplemented in the future. The Final Rule and this resource do not currently apply in those states and schools. Pending further court orders, the Department's Title IX Regulations, as amended in 2020 (2020 Title IX Final Rule) remain in effect in those states and schools.

1. <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf> (*Application of Bostock*)  
<https://www.govinfo.gov/content/pkg/FR-2024-04-29/pdf/2024-07915.pdf> (*2024 Title IX Rule*)

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## ▶ Related New Notice of Proposed Rule Making – April 13, 2023

DOE provided notice for new Rules to amend Title IX regarding eligibility for male and female athletic teams under Title IX.

The proposed regulation would permit a school to use criteria that would limit or deny a student's eligibility to participate on a male or female team consistent with their gender identity if those criteria are substantially related to the achievement of an important educational objective. The proposed regulation would require a school to take into account differences in grade and education level, level of competition, and sports. The proposed regulation would also require a school to minimize harms to students whose participation on teams consistent with their gender identity would be limited or denied.

1. <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf> (*Application of Bostock*)  
<https://www.govinfo.gov/content/pkg/FR-2024-04-29/pdf/2024-07915.pdf> (*2024 Title IX Rule*)

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## ► COMPARE Updated Final Rules (eff August 1, 2024)

Under Section 106.31 Education Programs or Activities

(1) Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance.

(2) In the limited circumstances in which Title IX or this part permits different treatment or separation on the basis of sex, a recipient 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 by 20 U.S.C. 1681(a)(1) through (9) and the corresponding regulations §§ 106.12 through 106.15, 20 U.S.C. 1686 and its corresponding regulation § 106.32(b)(1), or § 106.41(b).

***Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.***

1. <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf> (*Application of Bostock*)  
<https://www.govinfo.gov/content/pkg/FR-2024-04-29/pdf/2024-07915.pdf> (*2024 Title IX Rule*)

# Why is Title IX Harassment a Concern?

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- ▶ While sexual harassment is a concern for schools generally, it could be of particular concern in STEM areas or other programs where there are historically and/or frequently small numbers of female students in such courses or programs of study. Small numbers increase the potential that female students may become targets of harassment.
- ▶ Gender-based harassment as a form of sex discrimination as prohibited under New York State Law
- ▶ Harassing conduct based on sex or sex stereotypes may or may not still be barred under Title IX, even if the harassment is not sexual in nature, but it is still prohibited under New York State Law.
- ▶ Examples include:
  - ▶ A student harassing a fellow student by altering his/her lab results because of his/her sex.
  - ▶ A student harassing another student and refusing to be his/her lab partner in a physics class or CTE class because s/he thinks s/he will not be able to handle the work seriously because of his/her sex.
  - ▶ A teacher refusing to assign a partner to work with a female students because the teacher thinks the female student cannot/will not be able to handle the work seriously because of her sex

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# Rules and Obligations

## Title IX Notice and Policy Requirements

# Title IX – Notice and Policy Requirements

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Schools are required to comply with and make available the following procedural requirements, which are important for the prevention and correction of sex discrimination, in accordance with complaint procedures required to be adopted under 34 CFR § 106.8(c) and 106.45.

- ▶ Designate a **person to coordinate the school's compliance with Title IX** and notify all students and employees of the name or title and contact information for this person;
- ▶ Publish a **notice of nondiscrimination**; *See Appendix for OCR and NYS proposed Notices*
- ▶ Adopt and publish **grievance procedures** providing for the prompt and equitable resolution of sex discrimination complaints; *See Appendix*
- ▶ Provide support measures and remedies to persons alleged to be victimized by sexual harassment;
- ▶ Resolve allegations of sexual harassment promptly and accurately under a fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment;
- ▶ Prohibit retaliation; and
- ▶ Effectively implement remedies for victims

# Title IX – Notice and Policy Requirements

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## Required Title IX Policy components:

- Designate and authorize a Title IX Coordinator
- Description of the role of the Title IX Coordinator.
- Definition of sexual harassment for purposes of Title IX and a description of when a Formal Complaint can be filed.
- Process for responding to a “Formal Complaint” (grievance process) that complies with Title IX regulations, including appeals for both the charging party and respondent.

# Title IX – Notice and Policy Requirements

## Required Title IX Components, Section 106.8 – Designation of Coordinator, Policy, Notice, Training, Record Keeping

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### (a) Title IX Coordinator

(1) Each recipient must designate and authorize at least one employee, referred to herein as a Title IX Coordinator, to coordinate its efforts to comply with its responsibilities under Title IX and this part. If a recipient has more than one Title IX Coordinator, it must designate one of its Title IX Coordinators to retain ultimate oversight over those responsibilities and ensure the recipient's consistent compliance with its responsibilities under Title IX and this part.

(2) Delegation to designees. As appropriate, a recipient may delegate, or permit a Title IX Coordinator to delegate, specific duties to one or more designees.

# Title IX – Notice and Policy Requirements

Required Title IX Components, Section 106.8 – Designation of Coordinator, Policy, Notice, Training, Record Keeping

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(b) Adoption, publication, and implementation of nondiscrimination policy and grievance procedures.

(1) Nondiscrimination policy. Each recipient must adopt, publish, and implement a policy stating that the recipient does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX including in admission and employment. (applies to applications as well)

(2) Grievance procedures. A recipient must adopt, publish, and implement grievance procedures consistent with the requirements of § 106.45, and if applicable § 106.46, that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in the recipient's education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or this part.

# Title IX – Notice and Policy Requirements

## Required Title IX Components, Section 106.8 – Designation of Coordinator, Policy, Notice, Training, Record Keeping

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### (c) Notice of nondiscrimination

A recipient must provide a notice of nondiscrimination to students; parents, guardians, or other authorized legal representatives of elementary school and secondary school students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the recipient.

*See Appendix for Model Notice and Posting*

# New York's Sexual Harassment Prevention Law -- Recent Updates

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Effective June, 2023, New York State's Department of Labor, in consultation with the Division of Human Rights, released model documents<sup>1</sup>

A New York Employer's Policy, Policy Notice, and complaint forms must be at least equivalent with the Model Form examples published by New York State

The Policy must, among other things, including the following:

- include a complaint form
- include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties
- inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially
- clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue
- clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful

1. See <https://www.ny.gov/combating-sexual-harassment-workplace/sexual-harassment-prevention-model-policy-and-training>

2. See Also Appendix Reproduction of NYS Forms

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# Rules and Obligations Title IX Publications and Notices

And Required Notices and Publications Under  
New York Labor Law 201-g and Executive Law 296 et seq

# Title IX – Notice and Policy Requirements

## Required Content of a Notice of nondiscrimination- Section 106.8(c)(1)

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The notice of nondiscrimination must include the following elements:

- (A) A statement that the recipient does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and this part, including in admission (unless subpart C of this part does not apply) and employment;
- (B) A statement that inquiries about the application of Title IX and this part to the recipient may be referred to the recipient's Title IX Coordinator, the Office for Civil Rights, or both;
- (C) The name or title, office address, email address, and telephone number of the recipient's Title IX Coordinator;
- (D) How to locate the recipient's nondiscrimination policy under paragraph (b)(1) of this section; and the recipient's grievance procedures under paragraph (b)(2) of this section; and
- (E) How to report information about conduct that may constitute sex discrimination under Title IX; and how to make a complaint of sex discrimination under this part.

# Title IX – Notice of Nondiscrimination

- ▶ Schools are required to publish a notice of nondiscrimination in the following ways. (34 C.F.R. § 106.9);

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- ▶ The notice must be widely distributed to students, employees, AND prospective students and employees, and other relevant individuals.
- ▶ The notice must state that inquiries concerning the application of Title IX may be referred to the school's Title IX coordinator or to the federal Office for Civil Rights with information on how to contact the Title IX coordinator.
- ▶ Notices must be in writing provided to all employees under NY LL 201-g

# Title IX - Publication and Procedures

- ▶ Designate at least one Title IX Coordinator - 34 CFR 106.8(a)
  - ▶ **Coordinator MUST be an employee of recipient** – See DOE OCR Policy Guidance Portal, Office for Civil Rights Issues New Resource to Help Education Institutions Implement the Title IX Final Regulations - Part 2 (Jan. 15, 2021)<sup>1</sup>
  - ▶ “Each recipient must designate and authorize at least one employee, referred to herein as a Title IX Coordinator, to coordinate its efforts to comply with its responsibilities under Title IX and this part. If a recipient has more than one Title IX Coordinator, it must designate one of its Title IX Coordinators to retain ultimate oversight over those responsibilities and ensure the recipient's consistent compliance with its responsibilities under Title IX and this part.’”<sup>1</sup>
- ▶ Provide that any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the
- ▶ Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator

# Title IX – Procedures – Coordinator’s Duties

## 34 CFR 106.44 (b) and (c)

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### ► Response to Sex Discrimination –

(b) Barriers to Reporting - The School District must require its Title IX Coordinator to:

(1) Monitor the recipient's education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX or this part; and

(2) Take steps reasonably calculated to address such barriers.

(c) Notification requirements. ***(1) An elementary school or secondary school recipient must require all of its employees who are not confidential employees to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX or this part.***

# Title IX – Procedures – Coordinator’s Duties

## 34 CFR 106.44 (f)

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### ► Title IX Coordinator Requirements

The Title IX Coordinator is responsible for coordinating the school district’s compliance with its obligations under Title IX

- (1) When notified of conduct that reasonably may constitute sex discrimination, to take prompt action to end the discrimination and remedy the effects
- (2) Notify complainants of the complaint process and informal resolutions if available – Informal resolution is NOT an option for complaints from adults regarding children
- (3) If a complaint is made, initiate the complaint process procedures
- (4) In the absence of a complaint or withdrawal of allegations, and in the absence of the termination of an informal resolution process, determine whether to initiate a complainant on behalf of the school district for sex discrimination
- (5) To make fact specific determinations where appropriate

# Title IX – Procedures – Training Requirements

## 34 CFR 106.08(d)

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The school district must ensure that the persons described in paragraphs (d)(1) through (4) of this section receive training related to their duties under Title IX promptly upon hiring or change of position that alters their duties under Title IX or this part, ***and annually thereafter***. This training must not rely on sex stereotypes.

▶ (1) All employees. All employees must be trained on:

- (i) The recipient's obligation to address sex discrimination in its education program or activity;
- (ii) The scope of conduct that constitutes sex discrimination under Title IX and this part, including the definition of sex-based harassment; and
- (iii) All applicable notification and information requirements

1. <https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-part2-20210115.pdf>

# Title IX – Procedures – Training Requirements

## 34 CFR 106.08(d)

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- ▶ (2) Investigators, decisionmakers, and other persons who are responsible for implementing the recipient's grievance procedures or have the authority to modify or terminate supportive measures.

In addition to the training requirements in paragraph (d)(1) of this section, all investigators, decisionmakers, and other persons who are responsible for implementing the recipient's grievance procedures or have the authority to modify or terminate supportive measures must be trained on the following topics to the extent related to their responsibilities:

- (i) The school district's Title IX obligations under § 106.44;
- (ii) The school district's grievance procedures;
- (iii) How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and
- (iv) The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under § 106.45.

1. <https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-part2-20210115.pdf>

# Title IX – Procedures – Training Requirements

## 34 CFR 106.08(d)

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### ▶ (3) Facilitators of informal resolution process.

In addition to the training requirements in paragraph (d)(1) of this section, all facilitators of an informal resolution process under § 106.44(k) must be trained on the rules and practices associated with the recipient's informal resolution process and on how to serve impartially, including by avoiding conflicts of interest and bias.

### ▶ (4) Title IX Coordinator and designees.

In addition to the training requirements in paragraphs (d)(1) through (3) of this section, the ***Title IX Coordinator and any designees*** under paragraph (a) of this section must be trained on their specific responsibilities under paragraph (a) of this section, responsibilities for providing Title IX information as required (§106.40(b)(3)), responsibilities regarding administering the school district's Title IX compliance and supportive measures (§106.44(f) and (g)), the school district's recordkeeping system and the requirements of the school district's compliance with Title IX, and any other training necessary to coordinate the recipient's compliance with Title IX.

1. <https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-part2-20210115.pdf>

# Title IX - Publication and Procedures

## 34 CFR § 106.8(c) (1) and (2)

- ▶ Each recipient must prominently display the **contact information** required to be listed for the Title IX Coordinator as part of the required policy, with the published notice of non discrimination being required to be placed on the school district's website and in each handbook, catalog, announcement, bulletin, and application form that it makes available to persons entitled to notice, or which are otherwise used in connection with the recruitment of students or employees.
- ▶ If necessary, due to the format or size of any publication, the school district may instead include in those publications a statement that the recipient prohibits sex discrimination in any education program or activity that it operates and that individuals may report concerns or questions to the Title IX Coordinator, **and provide the location of the notice on the recipient's website.**
- ▶ **Persons entitled to notification** of identity of Title IX Coordinator, include applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient.
- ▶ The notice to persons entitled to notice must also include the following information about the Title IX Coordinator: name **or title**, office address, electronic mail address, and telephone number.
- ▶ School's policy is also required to address the process for handling Formal Complaints made under Title IX, referred to as a "grievance process." – Similar under New York Law. Must identify the filing, forms, persons to file complaints to, and the overall process. (34 CFR § 106.8, NY Labor Law 201-g)

# Title IX - Publication and Procedures

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Current District policies that could address sexual harassment now:

- ▶ Policy prohibiting harassment of students under the Dignity for All Students Act
- ▶ Code of Conduct
- ▶ Policies proclaiming nondiscrimination against students
- ▶ Policy prohibiting sexual harassment of employees, interns, applicants for employment, and independent contractors under the NY Law.
- ▶ New York Required Sexual Harassment required policy
- ▶ Coordinate existing policies – to make certain that if a Formal Complaint is filed under the Title IX policy, it must be handled in accordance with the process under a New Unified Title IX and not under any other policy.
- ▶ Consider how principals, Dignity Act Coordinators, Human Resources personnel, and the Title IX Coordinator need to communicate among themselves regarding reports of sexual harassment.

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# Rules and Obligations

## Title IX Investigation Requirements

# Title IX—Investigation Requirements

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## Title IX Regulations require the following:

- ▶ **Respond promptly** when **any** school employee has notice of sexual harassment, including sexual assault
- ▶ Title IX extends to all aspects of a school's education program or activity and applies to any activity controlled or operated by the school, or any building owned or controlled by school
- ▶ If a survivor (accuser/complainant) **chooses** to participate in a grievance process, accusers cannot be inappropriately being asked about prior sexual history (also known as "rape shield" protections), and a survivor **is not** be required to divulge any medical, psychological, or similarly privileged records.
- ▶ A survivor never has to come face-to-face with the accused during a hearing, and an accused is never allowed to personally ask questions of a survivor.
- ▶ Survivors are protected against retaliation when they choose to report sexual misconduct
- ▶ A survivor is also entitled to supportive measures regardless of the outcome of the complaint
- ▶ Survivors are protected against bullying or harassment throughout the grievance (complaint and investigation) process

# Title IX—Investigation Requirements

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- ▶ Schools must take immediate and appropriate action to investigate or otherwise determine what happened.
- ▶ The inquiry must be prompt, thorough, and impartial.
- ▶ Procedures must provide equal opportunity for both Parties to appeal a determination and decision
- ▶ If harassment occurs, schools must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent it from happening again to the victim or to others.
- ▶ For Example:
  - ▶ If a student files a sexual harassment complaint with the school against her teacher and the school determines that a hostile environment has been created, it must take steps to end the harassment, eliminate the hostile environment, and prevent its recurrence. Potential remedies should include allowing the student to have a new class or teacher.
  - ▶ If a school is made aware that a particular teacher denigrates the answers that are provided by female students but not similar answers by male students and this causes a hostile environment, it must take steps to end the conduct, eliminate the hostile environment, and prevent its recurrence. This may include speaking with that teacher and providing appropriate training.

# Title IX—Investigation Requirements

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## Title IX can also apply in the context of Employment in the same manner as Title VII

- ▶ Schools may not discriminate on the basis of sex in employment or recruitment, including but not limited to hiring, promotion, consideration of and award of tenure, grants of leave, benefits, and selection and financial support for training. (34 C.F.R. § 106.51)
- ▶ Schools are prohibited from applying policies or employment actions concerning the marital, parental, or family status of employees or applicants that treat persons differently based on sex, or that are based on whether the employee or applicant is the head of household or principal wage earner. (34 C.F.R. § 106.57)
- ▶ A school cannot base a hiring or promotion decision for a teacher on stereotypes about a woman's ability to perform her job because she has/will have/may have children. (34 C.F.R. § 106.57)

1. <https://sites.ed.gov/titleix/policy/>

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# Title IX Specific Terms

## Definition of Harassment

### “Based on Sex”

# Title IX—Scope

## *The Reach of Title IX – Bostock and New Regulations*

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### Title IX in the context of Title VII case law – The Supreme Court’s Decision in *Bostock*

- ▶ Holding: an employer violates Title VII, which makes it unlawful to discriminate against an individual “because of” the individual's sex, by firing an individual for being homosexual or being a transgender person. So long as the plaintiff 's sex was one but-for cause of that decision, that is enough to trigger the law. *Citing Nassar*, 570 U.S. at 350, 133 S.Ct. 2517.
- ▶ Congress has moved in the opposite direction [of narrow liability], supplementing Title VII in 1991 to allow a plaintiff to prevail merely by showing that a protected trait like sex was a “motivating factor” in a defendant's challenged employment practice. Civil Rights Act of 1991, § 107, 105 Stat. 1075, codified at \*1740 42 U.S.C. § 2000e–2(m).
- ▶ “[D]iscrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second. Nor is there any such thing as a “canon of donut holes,” in which Congress's failure to speak directly to a specific case that falls within a more general statutory rule creates a tacit exception. Instead, when Congress chooses not to include any exceptions to a broad rule, courts apply the broad rule. And that is exactly how this Court has always approached Title VII.” *Id.*, 140 S.Ct. at 1747.
- ▶ “We do not hesitate to recognize today a necessary consequence of that legislative choice: An employer who fires an individual merely for being gay or transgender defies the law.” *Id.*

# Title IX—Scope

## *The Reach of Title IX – Bostock and New Regulations*

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Title IX in the context of Title VII case law – the resistance to *Bostock*<sup>1</sup>

- ▶ OCR Notice of Interpretation dated June 16, 2021 – Published to the Federal Register on June 22, 2021<sup>2</sup>
- ▶ “Department has determined that the interpretation of sex discrimination set out by the Supreme Court in *Bostock*—that discrimination “because of . . . sex” encompasses discrimination based on sexual orientation and gender identity—properly guides the Department’s interpretation of discrimination “on the basis of sex” under Title IX and leads to the conclusion that Title IX prohibits discrimination based on sexual orientation and gender identity.”

1. <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01194025-a5.pdf>, and <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html>
2. Enforcement of Title IX of the Education Amendments of 1972 With Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*, 86 Fed.Reg. 32367 (June 22, 2021)

# Title IX—Scope

## *The Reach of Title IX – Bostock and New Regulations*

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Title IX in the context of Title VII case law – the resistance to *Bostock*<sup>1</sup>

- ▶ OCR and DOJ release a joint notice flyer “Confronting Anti-LGBTQI+ Harassment in Schools” dated June 23, 2021<sup>1</sup>
  - ▶ Reiterated OCR’s determination regarding the withdrawal of the revised enforcement letter in the CIAC case that the “Revised Letter’s statement of OCR’s interpretation of Title IX and its implementing regulations should not be relied upon in this or any other matter.”
- ▶ OCR Releases “Questions and Answers on the Title IX Regulations on Sexual Harassment” dated July 20, 2021<sup>2</sup>
  - ▶ Provides comprehensive Q&A regarding all the requirements under Title IX from new regulations, including most recent interpretation on applicability to gender status, gender identity, etc in light of *Bostock*

1. <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>

2. <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>

# Title IX—Scope of Title IX

## *The Reach of Title IX – Bostock and New Regulations*

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Title IX and Gender Identity – the resistance to *Bostock*

- ▶ Competing decisions out of 4<sup>th</sup>, 7<sup>th</sup>, and 9<sup>th</sup> Circuits that Title IX covers transgender students vs. 11<sup>th</sup> Circuit that it does not
- ▶ Executive Order No. 13988, January 25, 2021

Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.

- ▶ Extended the holding of *Bostock v. Clayton County* to Title IX, reasoning that “laws that prohibit sex discrimination... prohibit discrimination on the basis of gender identity or sexual orientation,” the Executive Order directed federal agencies to implement anti-discrimination statutes consistent with the Biden Administration’s interpretation. The ED published a Notice of Interpretation and issued a Dear Educator Letter as a result
- ▶ The State of Tennessee v. United States Department of Education (July 2022) – 20 States brought suit and were granted a preliminary injunction barring enforcement of EO 13988 and application of Title IX to gender identity and sexual orientation

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# Title IX Revised Regulations Additional Expansion of Coverage for Sex-based Discrimination

# Title IX— New and Expansive Application

## Section 106.57 – Parental, Family, or marital status, pregnancy or related conditions

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(a) A recipient must not adopt or implement any policy, practice, or procedure, or take any employment action, on the basis of sex:

(1) Concerning the current, potential, or past parental, family, or marital status of an employee or applicant for employment, which treats persons differently; or

(2) That is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

1. <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>
2. <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>

# Title IX— New and Expansive Application

## Section 106.57 – Parental, Family, or marital status, pregnancy or related conditions

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### (b) Pregnancy or related conditions.

A recipient must not discriminate against any employee or applicant for employment on the basis of current, potential, or past pregnancy or related conditions.

### (c) Comparable treatment to other temporary medical conditions.

A recipient must treat pregnancy or related conditions as any other temporary medical conditions for all job-related purposes, including commencement, duration and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; and reinstatement; and under any fringe benefit offered to employees by virtue of employment.

1. <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>
2. <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>

# Title IX– New and Expansive Application

## Section 106.57 – Parental, Family, or marital status, pregnancy or related conditions

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### (d) Voluntary leaves of absence.

In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient must treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

1. <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>
2. <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>

# Title IX– New and Expansive Application

## Section 106.57 – Parental, Family, or marital status, pregnancy or related conditions

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### (e) Lactation time and space.

- (1) A recipient must provide reasonable break time for an employee to express breast milk or breastfeed as needed.
- (2) A recipient must ensure that an employee can access a lactation space, which must be a space other than a bathroom that is clean, shielded from view, free from intrusion from others, and may be used by an employee for expressing breast milk or breastfeeding as needed.

1. <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>
2. <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>

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# Title IX Specific Terms Prohibited Retaliation

# Title IX—Prohibited Retaliation

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## Title IX prohibits retaliation against any individual for:

- ▶ Opposing or reporting discrimination, complaining about discrimination, or participating in a discrimination investigation.
- ▶ Schools are prohibited from retaliating against an individual because the individual has asserted a right protected by Title IX; made a Title IX complaint or participated in a Title IX investigation, hearing, or proceeding; or protested sex discrimination. (34 C.F.R. §106.71; 34 C.F.R. §100.7(e))
- ▶ If a student files a complaint alleging that a school discriminated **on the basis of sex** concerning course work, grades, access to extra-curricular activities, etc, the school must ensure that the student is not subjected to retaliation.
- ▶ If an employee alleges that the school discriminates against individuals in its decisions concerning employment **on the basis of sex**, including but limited to tenure decisions; classroom or course assignments; approval of time off additional pay opportunities (advisors/coaches/professional development time) the school must ensure that the employee is not subjected to retaliation.

1. <https://sites.ed.gov/titleix/policy/>

# Title IX—Prohibited Retaliation

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## Title IX prohibitions on retaliation also include:

- ▶ 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 under Title IX or this part, 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, as appropriate, an informal resolution process under § 106.44(k). (34 CFR § 106.71)
- ▶ The recipient of a complaint must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Prior Language under 106.71(a) removed

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# Civil Rights Laws and Title IX Intersections

# What is Title VII Harassment

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## General Anti-Discrimination Civil Rights Laws

- ▶ Title VII of the Civil Rights Act of 1964 (Title VII):
  - ▶ Is the major federal law prohibiting discrimination in employment.
  - ▶ Title VII prohibits discrimination based on race, sex, color, religion, national origin, and retaliation.
- ▶ The Equal Pay Act of 1963 (EPA):
  - ▶ Protects men and women who perform substantially equal work from sex-based wage discrimination.
- ▶ The Age Discrimination In Employment Act of 1967 (ADEA):
  - ▶ Protects employees and job applicants who are 40 years of age or older from employment discrimination based on age.

# What is Title VII Harassment

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## SEX BASED HARASSMENT

- ▶ Title VII of the Civil Rights Act of 1964, as amended at 42 USC §2000e *et seq*
- ▶ New York Labor Law 201-g and New York State Executive Law §296 *et seq* (New York Human Rights Law)
- ▶ Prohibits unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature, all of which constitute “sexual harassment” when:
  1. Submission to such conduct is made explicitly or implicitly a condition of an individual’s employment (Quid Pro Quo)
  2. Submission to or rejection of such conduct is used as a basis for an employment decision affecting the employee (Quid Pro Quo plus); or
  3. The harassment has the purpose or effect of unreasonably interfering with the employee’s work performance or creating an environment which is intimidating, hostile or offensive to the employee (Hostile work environment)

# What is Title VII Harassment

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Unwelcome or offensive conduct in the workplace that constitutes Harassment under Title VII is a form of discrimination that is:

- ▶ Based on sex (including sexual orientation, pregnancy, and gender identity), race, color, national origin, religion, age, disability, and/or genetic information; AND
- ▶ Detrimental to an employee's work performance, professional advancement, and/or mental health, or conduct that denies or limits employment-based participation or benefits.

# What is Title VII Harassment

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TITLE VII does not prohibit all conduct of a sexual nature...it only forbids conduct which becomes a term or condition of employment.

## ▶ Unwelcomed Conduct:

- ▶ Acquiescence in sexual conduct may not mean that the conduct is welcome.
- ▶ The charging party need not have confronted her offending supervisor where she feared retaliation, so long as her actions and comments demonstrated that the conduct was unwelcome.
- ▶ Standard – Plaintiff can not prevail if s/he unreasonably refused to take advantage of corrective measures.

## ▶ Quid Pro Quo Conduct:

- ▶ Occurs when submission to unwelcome sexual conduct is made an explicit or implicit term or condition of an individual's employment.

<https://www.diversity.va.gov/training/files/eeo-employees.ppt>

# What is Title VII Harassment

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## Remedial Corrective Actions - *Fuller v. Oakland* (1995)

- ▶ Must be reasonably calibrated to stop the conduct, to correct the impact of the conduct, and to prevent the conduct from reoccurring
- ▶ Remedial and/or Corrective Action will be evaluated in the context of:
  - ▶ Severity of conduct
  - ▶ Pervasiveness of conduct
  - ▶ Likelihood for conduct to be repeated
  - ▶ Courts will 2nd guess you ... especially if the conduct did continue
- ▶ Poor or Failed corrective actions include
  - ▶ Ignore a complaint or problem
  - ▶ Deviate from or ignore your policy
  - ▶ Discuss with the violator over coffee
  - ▶ Put the victim and accused in a room to “sort it out”
  - ▶ **Punish/Retaliate** against the victim
  - ▶ Accept recantations blindly or half hearted investigations - “Oh, that’s just Joe”
  - ▶ Pass investigation “up the chain” without legal or follow-up

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# BREAK

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# Investigations of Complaints

## Legal Obligations and Requirements

# Investigation of Complaints

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Initial Referral and/or Complaint

Review of Policies & Procedures

Interview of Complainant

Requests for Documentary Evidence

Fact Witness Interviews

Interview of Accused

Final Evidentiary Follow-up

Preliminary Report, Party Reviews, and Questions

Final Decision & Outcome Letters

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# Title IX Specific Terms Grievance Process

# Title IX— Basic Requirements of Grievance Process

34 CFR § 106.45 (b)

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A recipient's grievance procedures must:

- (1) Treat complainants and respondents equitably;
- (2) Require that any person designated as a Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The decisionmaker may be the same person as the Title IX Coordinator or investigator;
- (3) Include a presumption that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of the recipient's grievance procedures for complaints of sex discrimination

# Title IX— Basic Requirements of Grievance Process

34 CFR § 106.45 (b)

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A recipient's grievance procedures must:

- 4) Establish reasonably prompt timeframes for the major stages of the grievance procedures, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay. Major stages include, for example, evaluation (i.e., the recipient's decision whether to dismiss or investigate a complaint of sex discrimination); investigation; determination; and appeal, if any;
- (5) Require the recipient to take reasonable steps to protect the privacy of the parties and witnesses during the pendency of a recipient's grievance procedures, provided that the steps do not restrict the ability of the parties to: obtain and present evidence, including by speaking to witnesses, subject to § 106.71; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures;
- (6) Require an objective evaluation of all evidence that is relevant, as defined in § 106.2, and not otherwise impermissible under paragraph (b)(7) of this section—including both inculpatory and exculpatory evidence—and provide that credibility determinations must not be based on a person's status as a complainant, respondent, or witness;

# Title IX— Basic Requirements of Grievance Process

## 34 CFR § 106.45 (b)

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### A recipient's grievance procedures must:

7) Exclude the following types of evidence, and questions seeking that evidence, as impermissible (i.e., must not be accessed or considered, except by the recipient to determine whether an exception in paragraphs (i) through (iii) applies; must not be disclosed; and must not otherwise be used), regardless of whether they are relevant:

(i) Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

(ii) A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the recipient obtains that party's or witness's voluntary, written consent for use in the recipient's grievance procedures; and

(iii) Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred; and

(8) If a recipient adopts grievance procedures that apply to the resolution of some, but not all, complaints articulate consistent principles for how the recipient will determine which procedures apply.

# Title IX– Notice of Allegations

34 CFR § 106.45 (c)

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## The Notice of Allegations

Recipients must Provide a Notice of Allegations to accused of potential charges of sexual harassment upon receipt of a formal complaint

- ▶ Notice must provide a copy of any grievance procedures with sufficient details and time for respondent to prepare for any interview.
- ▶ Sufficient information available at the time to allow the parties to respond to the allegations. Sufficient information includes the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination under Title IX or this part, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to the recipient.
- ▶ The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- ▶ A statement that retaliation is prohibited
- ▶ A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence as set out in paragraph (f)(4) of this section; and if the recipient provides a description of the evidence, the parties are entitled to an equal opportunity to access to the relevant and not otherwise impermissible evidence upon the request of any party.
- ▶ If NEW claims or allegations arise during course of the investigation, a NEW “Notice of Revised Allegations” must be issued to the accused for those allegations.

# Title IX— Notice of Allegations

34 CFR Sections 106.45 (c) versus 106.44(f)

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## **Prohibited disclosure of personally identifiable information.**

A recipient must not disclose personally identifiable information obtained in the course of complying with this part, except in the following circumstances:

- (1) When the recipient has obtained prior written consent from a person with the legal right to consent to the disclosure;
- (2) When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- (3) To carry out the purposes of this part, including action taken to address conduct that reasonably may constitute sex discrimination under Title IX in the recipient's education program or activity;
- (4) As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or other funding agreement; or
- (5) To the extent such disclosures are not otherwise in conflict with Title IX or this part, when required by State or local law or when permitted under FERPA, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99.

# Title IX– “Grievance” Process

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## 34 CFR § 106.45(d) – Grievance and Complaint Procedures:

### ▶ Dismissal of Complaints

If the district unable to identify a respondent;

Respondent is not participating in the educational program or is not employed;

The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the school district determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX or this part even if proven;

The school district determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination, provided, that prior to dismissing the complaint, the school must make reasonable efforts to clarify the allegations with the complainant

▶ Upon a dismissal, the recipient must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties and that a dismissal may be appealed

▶ Offer supportive measures to a complainant where appropriate

# Initial Referral and/or Complaint

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- ▶ Immediately upon receipt of Complaint, do the following:
  - ▶ Written Complaints-
    - ▶ Is it signed and/or dated?
    - ▶ Is it on District provided complaint form?
    - ▶ Outline the details, facts, allegations
    - ▶ Is there an alleged violation on the face of the complaint?
    - ▶ Conduct alleged – duration, severity, scope, relative employment positions of the accused vs the complainant?
  - ▶ Verbal Complaints-
    - ▶ Still have an obligation to investigate
    - ▶ Who received the complaint, when, how?
    - ▶ Have the recipient memorialize the nature of the complaint as completely and thoroughly as possible
    - ▶ See above regarding written complaints
- ▶ Outline any clearly identified issues, concerns, topics
- ▶ Create a potential witness list
- ▶ Create a list of documents to request
- ▶ IMMEDIATELY request to secure any potential video evidence before it is lost

# Notice of Allegations – Pre-Investigation

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## Written Notice of Allegations – Receipt of *FORMAL WRITTEN COMPLAINT*

- ▶ Upon receipt of a formal complaint, a recipient must provide the following written notice to the parties, INCLUDING the accused and the complainant:
- ▶ Notice of the recipient's grievance process that complies with this section, including any informal resolution process.
- ▶ Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.
- ▶ Sufficient details regarding the incident, if known, the describes the conduct allegedly constituting sexual harassment under § 106.30, and the date and location of the alleged incident, if known. IDENTITIES MAY NOT BE SUBJECT TO DISCLOSURE
- ▶ The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- ▶ The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence that is not otherwise protected.
- ▶ The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

# Review of Policies & Procedures

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## KNOW YOUR DISTRICT'S SEXUAL HARASSMENT/TITLE IX POLICIES

- ▶ Who is the appointed Title IX Coordinator?
- ▶ Interview and/or confirm District's standard procedures
- ▶ Confirm District's standard forms in use and reporting process
- ▶ Policy Definitions vs. Legal Definitions

Is the District's Policy broader than legal requirements

Sexual Harassment

Gender-based harassment

Hostile Work Environment

- ▶ Does the Policy define unacceptable conduct?

Conduct that applies to students and employees alike

Sexual and/or gender based harassment are likely treated the same

# Review of Policies & Procedures

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Does the Policy provide guidelines for determining what constitutes Sexual Harassment?

Not all unacceptable conduct with sexual connotations may constitute sexual harassment.

In many cases (other than quid pro quo situations where the alleged harasser offers academic or employment rewards or threatens punishment as an inducement for sexual favors), unacceptable behavior must be sufficiently severe, pervasive and objectively offensive to be considered sexual harassment.

If the behavior doesn't rise to the level of sexual harassment, but is found to be objectionable behavior, it may not constitute "Harassment" but could still be a violation of District Policies and/or the Code of Conduct as "harassment", i.e., unprofessional or inappropriate conduct.

# Review of Policies & Procedures

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- ▶ Does the Policy provide guidelines for determining what constitutes Sexual Harassment?
- ▶ In evaluating the totality of the circumstances and making a determination of whether conduct as alleged constitutes sexual harassment, the individual investigating the complaint should consider:
  1. the degree to which the conduct affected the ability of the student/employee to participate in or benefit from his or her education or altered the conditions of the student's learning environment or altered the conditions of the employee's working environment;
  2. the type, frequency and duration of the conduct;
  3. the identity of and relationship between the alleged harasser and the subject of the harassment (e.g., sexually based conduct by an authority figure is more likely to create a hostile environment than similar conduct by another student or a co-worker);
  4. the number of individuals involved;
  5. the age and sex of the alleged harasser and the subject of the harassment;
  6. the location of the incidents and context in which they occurred;
  7. other incidents at the school; and
  8. incidents of gender-based, but non-sexual harassment.

# Review of Policies & Procedures

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## Policy Guidelines for Investigating Complaints?

- Generally, reviews should begin within 5 working days of the initial complaint with the review be completed within 30 days, absent extenuating circumstances
- Requirement to investigate verbal complaints as well as written complaints
- Informal vs. Formal investigation procedures
- Rules regarding parental involvement for student complaints
- Requirements regarding notifications or outcome letters for complainants and accused
- Range of proscribed penalties and/or approved remedial actions
- Maintenance of complaint records

## Review the Code of Conduct

Review any other related “harassment” policies & applicable collective bargaining agreements for issues that may fall outside the scope of your Title IX Policy

# Interview of Complainant

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After review of the policy and complaint (memorialized verbal and written complaints), interview Complainant

Use an initial opening script, provide a copy of the written script to the interviewee (separate script for complainant, witness, accused)

Try to conduct the interview within 5 days of the initial complaint, the sooner the better

## Recommendations

- Recording interviews – yes or no?
- Union representatives – yes or no?
- Attorney's or outside district personal participating in the interview process – yes or no?
- Interview scripts to each interviewee - have them sign and date at the bottom as acknowledgement, and provide a copy for their records

# Interview of Complainant

## Written Complaints

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- ▶ Start the interview – ASK THESE TWO IMPORTANT QUESTIONS
  - Are you taking any medications today that would prevent you from understanding my questions and providing truthful and complete answers?
  - Are you suffering from any medical conditions
- ▶ With a WRITTEN complaint
  - Try to narrow down specific details of each and every allegation or incident – Who, What, Where, When, Why
  - Identify witnesses, date and time, location and circumstances, and the specific language used or conduct that occurred
- ▶ At the end, ask –  
IS THERE ANYTHING ELSE YOU WOULD LIKE TO ADD THAT I HAVE NOT ASKED YOU ABOUT

# Interview of Complainant

## Verbal Complaints

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▶ Start the interview – ASK THESE TWO IMPORTANT QUESTIONS

Are you taking any medications today that would prevent you from understanding my questions and providing truthful and complete answers?

Are you suffering from any medical conditions

▶ IF there was a VERBAL complaint

Detail the questions /responses by typing into a word document on laptop

Narrow the allegations – Who, What, Where, When, Why

Identify witnesses, date and time, location and circumstances, and the specific language used or conduct that occurred

▶ At the end, ask –

IS THERE ANYTHING ELSE YOU WOULD LIKE TO ADD THAT I HAVE NOT ASKED YOU ABOUT

▶ THEN

At a statement to the end of the notes:

**“The above notes are an accurate statement as to the events described and the undersigned swears they are true to the best of their recollection”**

Print out a copy of the notes from the interview, Ask the complainant to review the notes of the interview, sign and date the notes

# Initiation of a “Formal” Complaint

## Verbal Complaints

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For Verbal Complaints, if the complainant does not want to submit a written complaint, the lack of a written complaint requires a decision

The Title IX Coordinator can sign the written complaint on behalf of the District as the “complainant” ***if and only if*** the alleged conduct presents an imminent and serious threat to someone’s health or safety or prevents the recipient from ensuring equal access based on sex to its education program or activity. (§ 106.44(f)(1)(v)–(vi))

Any complaint of an improper sexual relationship between an adult employee and a student must be investigated as a serious threat to health or safety

Formal Complaint moves forward with potential “victim” as a witness

Normal process followed from investigation through conclusion

Does not prohibit use of “informal” process for resolving potential Title IX claim

# Requests for Documentary Evidence

Following interview of Complainant

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Immediately request and secure any video evidence as soon as possible to ensure retention

Request and review a copy of the personnel file/student file of complainant

Request and review a copy of the personnel file/student file of accused

Request and review a copy of the personnel file/student file of an critical fact witness

Where necessary, interview any administrator/supervisor not involved with the substance of the complaint regarding general work history of the complainant and the accused

Use the complaint to drive the document/evidence requests

# Fact Witness Interviews

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- ▶ Follow the same process as used with interviewing the complainant
- ▶ At the end, ask –  
IS THERE ANYTHING ELSE YOU WOULD LIKE TO ADD THAT  
I HAVE NOT ASKED YOU ABOUT

# Fact Witness Interviews

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- If the witness is lying or less than truthful, attempt to redirect them to provide truthful answers
- If necessary, suspend the interview and reschedule with a union representative present, provide notices of Weingarten & Garrity rights where necessary
- Request updated evidence as necessary based on interviews
- Conduct re-interviews for any discrepancies or clarifications between competing witness statements
- Review interview notes to drive any new or updated document/evidence requests
- Update any evidence summaries and timelines as needed

# Revised Notice of Allegations

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## Issue a New Written “Notice of Revised Allegations”

- ▶ Upon review of evidence, prior to interview of Respondent, review Notice of Allegations
- ▶ Updated facts from records, witness interviews
- ▶ Preserve records, videos, evidence for Respondent accused
- ▶ Provide new notice to both complainant and accused
- ▶ Should occur PRIOR to interview of accused
- ▶ Provide with sufficient time for accused to have a representative present as required under Title IX

# Interview of Accused

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- ▶ Should be the LAST interview conducted
- ▶ Consider using a companion to take notes so that you can concentrate on the interviewing and questioning
- ▶ Start the interview – ASK THESE TWO IMPORTANT QUESTIONS
  - ▶ Are you taking any medications today that would prevent you from understanding my questions and providing truthful and complete answers?
  - ▶ Are you suffering from any medical conditions
- ▶ Use an initial opening script, provide a copy of the written script to the accused
  - ▶ Weingarten Rights explicitly stated
  - ▶ Garrity Rights where necessary explicitly stated
  - ▶ CADET Rights where available explicitly stated
  - ▶ Any waiver of union representation should be in writing signed by the employee – Employee knowing and freely waives their right to union representation for an interview with the employer, and recognizes that anything the employee says during such interview can be use by the employer for disciplinary purposes

# Interview of Accused

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Ask specific questions about the facts and nature of the allegations, about who, what, where, when, why

If the accused denies any claims, ask them why someone would provide a different story from what the accused is stating

Press the accused on any inconsistencies

Present and review evidence with the Accused

Ask the accused about any evidence

- Review Video/Audio recordings
- Review documentary evidence
- Be specific in your factual questions

# Interview of Accused

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Regardless of Weingarten, Garrity, or CADET Rights, ASK EVERY QUESTION

Send a message to the accused about the nature of the allegations, strength of the District's facts and evidence

For the benefit of a union representative to advise the accused

End by EMPHASISING

- CONFIDENTIALITY
- NO RETALIATION
- NO COMMENTS/CONTACTS WITH THE COMPLAINANT ABOUT THE NATURE OF THE COMPLAINT OR ALLEGATIONS

# Final Evidentiary Follow-up

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Re-update any requests for evidence or records as necessary

Request updated evidence as necessary based on interviews

Conduct final round of re-interviews for any discrepancies or clarifications between competing witness statements and accused

Review interview notes to drive any new or updated document/evidence requests

Review final facts with Title IX Policy, other Board Policies, Code of Conduct, and Legal Standards

# Final Evidentiary Follow-up

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Create timeline of events and circumstances

Organize documents and evidence chronologically based on timeline

Notate timeline with supporting interview statements/evidence

Number and order any supporting documentation to be included in final report

Prepare draft Executive Summary (no more than 2 pages) of the what a preliminary review of the evidence shows relative to the claims

# Preliminary Draft Report & Conclusions

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- ▶ Should be marked CONFIDENTIAL and, where possible, ATTORNEY CLIENT PRIVILEGED
- ▶ Report Details and Specifics
  - ▶ Background – Initial referral and credentials
  - ▶ Executive Summary – Summary of Complaint & Findings
  - ▶ Investigation - Chronological Order of evidence
    - ▶ Initial Complaint
    - ▶ Statement of the Allegations
    - ▶ Applicable Board Policies
    - ▶ Interviews
    - ▶ Documentary Evidence and Records
    - ▶ Conclusions and Findings
    - ▶ Possible Recommendations for Outcomes

# Preliminary Draft Report & Conclusions

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Attach relevant and necessary documents, communications, as Appendices to the Final Report

Provide Draft Outcome letters for review by the District/Board of Education

Provide range of recommendations based on findings and conclusions

Superintendent and/or the Board of Education are the final decisions makers

Title IX Coordinator/Officer only makes recommendations, is NOT the decision maker in the process

## Final Decisions and Conclusions – 106.45(f)

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► Prior to completion of the investigative report, a school district **is not required** to provide either party the opportunity comment on the draft report. Rather, as part of the grievance process, the school district is required to:

- (1) Ensure that the burden is on the recipient—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred;
- (2) Provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible;
- (3) Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance, consistent with § 106.2 and with paragraph (b)(7) of this section;

## Final Decisions and Conclusions – 106.45(f)

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(4) Provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, consistent with § 106.2 and with paragraph (b)(7) of this section, in the following manner:

- (i) A school district must provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence. If the recipient provides a description of the evidence, it must further provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party;
- (ii) A school district must provide a reasonable opportunity to respond to the evidence or to the accurate description of the evidence described in paragraph (f)(4)(i) of this section; and
- (iii) A recipient must take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. For purposes of this paragraph, disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized

## Final Decisions and Conclusions – 106.45(f)

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### **Questioning parties and witnesses to aid in evaluating allegations and assessing credibility.**

For Questioning of Witnesses, this is a matter handled by the school district through the Title IX coordinator and decision maker.

**Parties ARE NOT afforded the right to question witnesses.**

Rather:

A recipient must provide a process that enables the *decisionmaker* to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.

## Final Decisions and Conclusions – 106.45(f)

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- ▶ Title IX Coordinator prepares a Final investigative report and recommendation for Decision Maker
- ▶ Investigative report must
  - fairly summarizes relevant evidence, responses;
  - Summarize the relevant District's policy;
  - Explain the basis for finding of responsibility or no responsibility; and
  - Make a recommendation as to the final outcome
- ▶ In school districts, the Title IX Coordinator may also be the Decisionmaker in so long as there is not a conflict of interest

## Final Decisions and Conclusions – 106.45(f)

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### Determination whether sex discrimination occurred

► Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the school district must

Use the **preponderance of the evidence standard** of proof to determine whether sex discrimination occurred, unless the recipient uses the clear and convincing evidence standard of proof in all other comparable proceedings, including proceedings relating to other discrimination complaints

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

Require the Title IX Coordinator to coordinate the provision and implementation of remedies to a complainant and other persons identified as having had equal access to the recipient's education program or activity **limited or denied** by sex discrimination

## Final Decisions and Conclusions – 106.45(f)

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### **Determination whether sex discrimination occurred**

▶ Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the school district must

Require the Title IX Coordinator to coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions, and

Require the Title IX Coordinator 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

Comply with any appeals procedures requirements prior to the imposition of any discipline

## Decision Makers and Outcome Letters

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- ▶ Issuance of Outcome Letters – No longer formally required under New Regulations
  - Districts must simply 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
- ▶ Notifications are approved by the school district's Final Decision Maker and who may be the Title IX Coordinator
- ▶ Could also mean the Superintendent or Board, or their Designee where appropriate

# Decision Makers and Appeals

## Federal Code and Rules

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### 34 CFR §106.45(i) - Appeals

Both Parties must have a right to appeal a determination regarding responsibility or dismissal of a formal complaint or any allegations. However, the standard for appeals that applies to secondary institutions no longer applies to school districts.

Rather, an appeal of a decision finding an accused respondent responsible for a violation of Title IX must be the same appeals process for a dismissal of a Title IX complaint, and a school district is only required to offer the Parties an appeal process that, at a minimum, ***is the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints.***

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# Practical Considerations

# Pitfalls and Obstacles

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“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.” 20 U.S.C. § 1681(a).

This provision, which is enforceable through an implied private right of action, was enacted to supplement the Civil Rights Act of 1964's bans on racial discrimination in the workplace and in universities. *Yusuf v. Vassar Coll.*, 35 F.3d 709, 714 (2d Cir. 1994).

As such, it is important to note that the relevant conclusions and findings here apply to this context as an employment matter, the analysis and evaluation under Title IV and Title IX would carry equal weight.

# Pitfalls and Obstacles

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- ▶ “The law doesn’t prohibit simple teasing, offhand comments, or isolated incidents that are not very serious. Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). A hostile work environment exists ‘[w]hen the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment’.” *Harris v. Forklift Systems, Inc*, 510 U.S. 17, 21 (1993).
- ▶ Conduct that is “merely offensive” and “not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond Title VII's purview.” *Id.*

# Pitfalls and Obstacles

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▶ Section 703(a) sets forth Title VII's core ***anti discrimination*** provision in the following terms:

“It shall be an unlawful employment practice for an employer—  
(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin;  
or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.”

*Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 62 (2006),  
*citing* 42 USC § 2000e–2(a).

# Pitfalls and Obstacles

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“The anti retaliation provision protects an individual not from all retaliation, but from retaliation that produces an injury or harm. ... Courts ... have used differing language to describe the level of seriousness to which this harm must rise before it becomes actionable retaliation. ... a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, ‘which in this context means it well might have ‘dissuaded a reasonable worker from making or supporting a charge of discrimination.’

...

The anti retaliation provision seeks to prevent employer interference with “unfettered access” to Title VII's remedial mechanisms. It does so by **prohibiting employer actions** that are likely ‘to deter victims of discrimination from complaining to the EEOC,’ the courts, and their employers.”

*Burlington Northern*, 548 U.S. at 62-63, *citing Robinson v Shell Oil Co.*, 519 U.S. 337, 346 (1997).

# Pitfalls and Obstacles

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Stated differently, while sexual harassment is typically based on pervasive and repeated objectively sexual or gender related conduct creating a hostile work environment or results in an adverse employment action, an isolated incident of harassment may be so severe as to rise to the level of creating an objectively hostile work environment.

Though Title IX (and Title VII) applies to the workplace, and generally to employees and workspaces over which the employer exercises managerial control, it does not apply to “non-employees” over which management has no control and where management does not approve or allow access or harassing conduct to take place

# Pitfalls and Obstacles

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Liability for retaliation is MUCH BROADER than liability for Harassment or Hostile Work Environment

You can have a finding of no Harassment, but still be liable for retaliation

Retaliation can be any adverse workplace action

- Undeserved negative evaluation
- Change in work assignment
- Change in work location
- Increased counseling memorandums

Supervisors and managers should be very wary of any work place decisions in close temporal proximity to a complaint

# Pitfalls and Obstacles

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## Harassment vs. harassment

Harassment - Constitutional or Statutory

harassment – Unprofessional conduct, Code of Conduct violations, workplace civility

Two very different standards, responsibilities, and outcomes

Handled as very different matters, different standards of proof, different outcomes and responsibilities

# Best Practices

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Regular Sexual Harassment & Hostile Work Environment Training for Supervisors and Staff – Legally required

Regular review of policies and procedures

KEEP SEPARATE “**H**arassment” and “**h**arassment”

Proper Training for Title IX Officers– Legally required

Standardized Reporting Forms – New York State Law

Clear procedures for investigating complaints– New York State Law

30 Day process from complaint to findings and outcome

# Additional Resources - Appendices

SUMMARY OF MAJOR PROVISIONS OF THE DEPARTMENT OF EDUCATION'S TITLE IX FINAL RULE RELEASED AUGUST, 2024

<https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/t9-final-rule-summary.pdf>

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OCR FACT SHEET REGARDING DEPARTMENT OF EDUCATION'S 2024 TITLE IX FINAL RULE AUGUST 2024

<https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/t9-final-rule-factsheet.pdf>

OCR RESOURCE RECOMMENDATIONS FOR DEPARTMENT OF EDUCATION'S 2024 TITLE IX POLICY, NOTICE, AND GRIEVANCE PROCEDURE REQUIREMENTS AUGUST 2024

<https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/resource-nondiscrimination-policies.pdf>

LETTER TO EDUCATORS ON TITLE IX'S 49TH ANNIVERSARY NOTICE OF LANGUAGE ASSISTANCE JUNE 23, 2021

JOINT DEPARTMENT OF JUSTICE AND DEPARTMENT EDUCATION NOTICE: CONFRONTING ANTI-LGBTQI+ HARASSMENT IN SCHOOLS, A RESOURCE FOR STUDENTS AND FAMILIES DATED JUNE 23, 2021

NEW YORK LABOR LAW 201-g: NEW YORK STATE SEXUAL HARASSMENT PREVENTION<sup>1</sup> MINIMUM POLICY STANDARDS<sup>2</sup>, MODEL POLICY<sup>3</sup>, MODEL PUBLIC NOTICE<sup>4</sup>, AND MODEL COMPLAINT FORM<sup>5</sup> SEPTEMBER 2023

1. <https://www.ny.gov/combating-sexual-harassment-workplace/sexual-harassment-prevention-model-policy-and-training>
2. <https://www.ny.gov/sites/default/files/atoms/files/MinimumStandardsforSexualHarassmentPreventionPolicies.pdf>
3. <https://www.ny.gov/sites/default/files/2024-08/SexualHarassmentModelPolicyUpdated.pdf>
4. [https://www.ny.gov/sites/default/files/atoms/files/sexualharassmentpreventionposter\\_English\\_handfill.pdf](https://www.ny.gov/sites/default/files/atoms/files/sexualharassmentpreventionposter_English_handfill.pdf)
5. <https://www.ny.gov/sites/default/files/2023-04/CombatHarassmentComplaintForm.docx>

NEW YORK LABOR LAW 201-g: NEW YORK STATE SEXUAL HARASSMENT PREVENTION FOR NEW YORK'S MODEL TRAINING DECKS AND SCRIPTS THAT COMPLY WITH NYS LABOR LAW SEPTEMBER 2023

<https://www.ny.gov/combating-sexual-harassment-workplace/sexual-harassment-prevention-model-policy-and-training>

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# THANK YOU

SUMMARY OF MAJOR PROVISIONS OF THE DEPARTMENT OF  
EDUCATION'S TITLE IX FINAL RULE

RELEASED AUGUST, 2024

<https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/t9-final-rule-summary.pdf>

## Brief Overview of Key Provisions of the Department of Education’s 2024 Title IX Final Rule\*

Provision	2024 Final Rule
<b><i>Definitions</i></b> <b>(§ 106.2)</b>	Adds and revises definitions, including complaint, complainant, respondent, and party; confidential employee; disciplinary sanctions; pregnancy or related conditions; relevant; remedies; retaliation and peer retaliation; sex-based harassment; and supportive measures.
<b><i>Effect of other requirements</i></b> <b>(§ 106.6)</b>	Clarifies that a recipient must comply with Title IX and the final regulations in the event of a conflict with State law or FERPA, and that Title IX and the final regulations do not override any legal right of a parent, guardian, or other authorized legal representative to act on behalf of a complainant, respondent, or other person.
<b><i>Administrative requirements</i></b> <b>(§ 106.8)</b>	Clarifies requirements for designating a Title IX Coordinator, adopting and publishing nondiscrimination policies and grievance procedures, and providing a notice of nondiscrimination. (§ 106.8(a)–(c)). Clarifies which individuals a recipient must train on Title IX and provides requirements for such training, which vary based on an individual’s role. (§ 106.8(d)). Requires a recipient to protect the rights of parties who are students with disabilities. (§ 106.8(e)). Clarifies which records a recipient must maintain for at least seven years. (§ 106.8(f)).
<b><i>Scope of sex discrimination</i></b> <b>(§§ 106.2, 106.10)</b>	Clarifies that sex discrimination includes discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. (§ 106.10). Also clarifies that sex-based harassment includes harassment on these bases and further clarifies when sex-based harassment creates a hostile environment. (§ 106.2).
<b><i>Application of Title IX</i></b> <b>(§ 106.11)</b>	Clarifies that Title IX applies to all sex discrimination occurring under a recipient’s education program or activity in the United States and provides additional detail about what conduct is covered. Also clarifies that 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.
<b><i>Sex separation and different treatment</i></b> <b>(§ 106.31(a)(2))</b>	Clarifies that a recipient must not separate or treat any person differently based on sex in a manner that subjects them to more than de minimis harm, except in the limited specified circumstances permitted by Title IX. Recognizes that preventing a person from participating in a recipient’s education program or activity consistent with their gender identity subjects that person to more than de minimis harm.
<b><i>Parental, family, or marital status; pregnancy or related conditions</i></b> <b>(§§ 106.21(c), 106.40, 106.57)</b>	Prohibits a recipient from treating students, employees, or applicants differently based on sex in connection with parental, family, or marital status. (§§ 106.21(c), 106.40, 106.57). Prohibits discrimination against students, employees, or applicants, based on pregnancy or related conditions, and requires recipients to take actions to prevent sex discrimination and ensure equal access to the recipient’s education program or activity, such as by providing reasonable modifications for students, reasonable break time for lactation for employees, and lactation space for students and employees. (§§ 106.40(b)(3) and 106.57(e)). Prohibits schools from requiring documentation from students to obtain reasonable modifications or other actions unless such documentation is necessary and reasonable.

\* The final regulations make amendments to 34 C.F.R. 106.1 et seq. For a more complete explanation of the final regulations, please see the Department’s 2024 Notice of Final Rule on Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, which is available [here](#).

	(§ 106.40(b)(3)(vi)). Clarifies a recipient’s obligations to inform students of rights related to pregnancy or related conditions. (§ 106.40(b)(2) and (b)(3)(i)).
<b>(§ 106.44)</b>	Sets out the steps a recipient must require its Title IX Coordinator to take when the recipient has knowledge of conduct that reasonably may constitute sex discrimination, including offering and coordinating supportive measures, when to initiate a complaint, and taking prompt and effective action to end sex discrimination and prevent its recurrence. This provision also permits a recipient to offer an informal resolution process except where a complaint includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student or if such a process would conflict with Federal, State, or local law. In addition, this provision prohibits a recipient from disclosing personally identifiable information obtained while complying with this part, except in limited circumstances.
<b><i>Grievance procedures for all sex discrimination complaints</i></b> <b>(§ 106.45)</b>	Requires grievance procedures for all sex discrimination complaints that include the following requirements: <ul style="list-style-type: none"> <li>• Equitable treatment of complainants and respondents. (§ 106.45(b)(1)).</li> <li>• Conflict-of-interest and bias-free Title IX Coordinators, investigators, and decisionmakers. (§ 106.45(b)(2)).</li> <li>• Presumption that the respondent is not responsible until a determination is made. (§ 106.45(b)(3)).</li> <li>• Reasonably prompt timeframes for all major stages. (§ 106.45(b)(4)).</li> <li>• Reasonable steps to protect privacy of parties and witnesses during the grievance procedures. (§ 106.45(b)(5)).</li> <li>• Objective evaluation of relevant evidence and the exclusion of impermissible evidence. (§ 106.45(b)(6)–(7)).</li> <li>• If a recipient adopts procedures that apply to the resolution of only some complaints, articulate principles for how the recipient will determine which procedures apply. (§ 106.45(b)(8)).</li> <li>• Notice of allegations to the parties. (§ 106.45(c)).</li> <li>• Permitted dismissals in certain circumstances so long as the recipient offers an appeal and, as appropriate, supportive measures, and takes other steps to ensure sex discrimination does not continue or recur. (§ 106.45(d)).</li> <li>• Permitted consolidation of complaints in certain circumstances. (§ 106.45(e)).</li> <li>• Burden on the recipient to gather evidence and decide what is relevant or impermissible. (§ 106.45(f)(1), (3)).</li> <li>• Equal opportunity for the parties to present fact witnesses and other evidence. (§ 106.45(f)(2)).</li> <li>• Equal opportunity for the parties to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence (and if the recipient provides access to a description, it must provide access to the underlying evidence upon the request of any party); a reasonable opportunity to respond; and a requirement that the recipient take reasonable steps to prevent and address unauthorized disclosures. (§ 106.45(f)(4)).</li> <li>• A process for assessing credibility when credibility is in dispute and relevant. (§ 106.45(g)).</li> <li>• Use of a preponderance of the evidence standard of proof to determine whether sex discrimination occurred, unless the clear and convincing evidence standard is used in all other comparable proceedings, in which case that standard may be used. (§ 106.45(h)).</li> <li>• If it is determined that sex discrimination occurred, remedies for the complainant or others; disciplinary sanctions for those found responsible; and other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur. (§ 106.45(h)(3)).</li> </ul>

	<ul style="list-style-type: none"> <li>• An appeal process that is at least the same as that offered in comparable proceedings. (§ 106.45(i)).</li> <li>• Equal application of any additional provisions to the parties. (§ 106.45(j)).</li> <li>• The option for parties to participate in informal resolution processes, if available. (§ 106.45(k)).</li> </ul>
<p><del><b>Additional requirements for grievance procedures for sex-based harassment complaints involving a postsecondary student (§ 106.46)</b></del></p>	<p><del>Requires a postsecondary institution's grievance procedures to include the § 106.45 requirements, as well as additional requirements for sex-based harassment complaints involving a student party that include the following:</del></p> <ul style="list-style-type: none"> <li><del>• Written notice to the parties of allegations, dismissal, delays, meetings, and proceedings. (§ 106.46(c)–(e)).</del></li> <li><del>• Equal opportunity for each party to have an advisor of the party's choice. (§ 106.46(e)(2)).</del></li> <li><del>• Equal opportunity to access the relevant and not otherwise impermissible evidence or an investigative written report (and if the institution provides access to an investigative report, it must provide access to the underlying evidence upon the request of any party); a reasonable opportunity to respond; and a requirement that the recipient take reasonable steps to prevent and address unauthorized disclosures. (§ 106.46(e)(6)).</del></li> <li><del>• A process for assessing credibility when credibility is in dispute and relevant, including questioning a party or witness during individual meetings or in a live hearing. (§ 106.46(f)).</del></li> <li><del>• Where a recipient opts to provide a live hearing, procedures for such a hearing. (§ 106.46(g)).</del></li> <li><del>• Written determination provided simultaneously to the parties. (§ 106.46(h)).</del></li> <li><del>• An opportunity to appeal a determination. (§ 106.46(i)).</del></li> </ul>
<p><b>Retaliation (§ 106.71)</b></p>	<p>Clarifies that a recipient must prohibit retaliation, including peer retaliation, and must respond to conduct that reasonably may constitute retaliation using the same procedures it uses for other forms of sex discrimination. (§ 106.71).</p>

## Summary of Key Provisions of the Department of Education’s 2024 Title IX Final Rule\*

**This chart summarizes the major provisions of the 2024 amendments and also summarizes how these provisions differ from the 2020 amendments. The 2020 amendments remain operative and binding until the new regulations go into effect on August 1, 2024.**

Issue	2024 Final Rule
<b><i>Clarifying Scope of Sex Discrimination</i></b> <b><i>(§ 106.10)</i></b>	The final regulations clarify that sex discrimination includes discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
<b><i>Defining Sex-Based Harassment</i></b> <b><i>(§ 106.2)</i></b>	<p>Sex-based harassment 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, when it takes the form of:</p> <ul style="list-style-type: none"> <li>• quid pro quo harassment (e.g., when an employee conditions a benefit on a person’s participation in unwelcome sexual conduct);</li> <li>• specific offenses (e.g., sexual assault, dating violence, domestic violence, and stalking); and/or</li> <li>• hostile environment harassment.</li> </ul> <p>The final regulations define hostile environment harassment as 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<sup>†</sup> education program or activity.</p> <p><i>The 2020 amendments,<sup>‡</sup> at § 106.30(a), cover sexual harassment, but do not address other forms of sex-based harassment and prohibit unwelcome sex-based conduct only if it is “so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.”</i></p>
<b><i>Addressing All Sex Discrimination Occurring Under the Recipient’s Program or Activity in the United States</i></b> <b><i>(§ 106.11)</i></b>	<p>Title IX requires a recipient to address all sex discrimination occurring under its education program or activity in the United States. Under the final regulations, conduct that occurs under a recipient’s education program or activity includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>• Conduct that occurs in any building owned or controlled by a student organization that is officially recognized by a postsecondary institution; and</li> <li>• Conduct that is subject to the recipient’s disciplinary authority.</li> </ul>

\* The final regulations make amendments to 34 C.F.R. 106.1 et seq. For a more complete explanation of the final regulations, please see the Department’s 2024 Notice of Final Rule on Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, which is available [here](#).

<sup>†</sup> A recipient is an elementary school, secondary school, postsecondary institution, or other entity that operates an education program or activity and receives Federal funds from the Department.

<sup>‡</sup> “2020 amendments” refers to provisions in the Title IX regulations that were amended in 2020.

	<p>Under the final regulations, a recipient is required to address a sex-based hostile environment in its education program or activity in the United States, 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.</p> <p><i>The 2020 amendments, at § 106.44(a) do not address a recipient’s obligation to address a sex-based hostile environment in its education program or activity in the United States, even where some conduct contributing to the hostile environment may have occurred outside of the recipient’s education program or activity, or outside of the United States.</i></p>
<p><b>Responding to Sex Discrimination (§ 106.44(a))</b></p>	<p>A recipient with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must respond promptly and effectively. (§ 106.44(a)(1)).</p> <p>A recipient must also take the actions outlined in § 106.44(b)–(k) to address sex discrimination in its education program or activity. (§ 106.44(a)(2)).</p> <p><i>The 2020 amendments, at §§ 106.30(a) and 106.44(a), require a recipient to respond only when it has “actual knowledge” of allegations of “sexual harassment,” and only in a manner that is not deliberately indifferent. The 2020 amendments provide that postsecondary institutions have “actual knowledge” when the Title IX Coordinator and employees with authority to institute corrective measures have notice of allegations of sexual harassment, while elementary schools and secondary schools have “actual knowledge” when any employee has notice of such allegations.</i></p>
<p><b>Ensuring Recipients Learn of Possible Sex Discrimination (§ 106.44(c))</b></p>	<p>The final regulations obligate a recipient to require certain employees to notify the Title IX Coordinator when the employees have information about conduct that reasonably may constitute sex discrimination. This ensures that a recipient learns of possible sex discrimination so it can operate its education program or activity free from prohibited sex discrimination as Title IX requires.</p> <ul style="list-style-type: none"> <li>• Any non-confidential employee at an elementary school or secondary school is obligated to notify the Title IX Coordinator. (§ 106.44(c)(1)). (Please note that elementary school and secondary school employees may have additional obligations under Federal, State, or local law to report sex-based misconduct.)</li> <li>• Any non-confidential employee at a postsecondary institution or other recipient who either has authority to take corrective action on behalf of the recipient or has responsibility for administrative leadership, teaching, or advising in the recipient’s education program or activity is obligated to notify the Title IX Coordinator. (§ 106.44(c)(2)(i)).</li> <li>• All other non-confidential employees at a postsecondary institution or other recipient are obligated to either notify the Title IX Coordinator or provide the contact information of the Title IX Coordinator and</li> </ul>

	<p>information about how to make a complaint of sex discrimination to any person who provides the employee with information about conduct that reasonably may constitute sex discrimination. (§ 106.44(c)(2)(ii)).</p> <p>Under the final regulations, a recipient must also require its Title IX Coordinator to monitor the recipient’s education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination and take steps reasonably calculated to address such barriers. (§ 106.44(b)).</p> <p><i>The 2020 amendments, at §§ 106.30(a) and 106.44(a), require a recipient to respond only when it has “actual knowledge” of allegations of “sexual harassment,” and only in a manner that is not deliberately indifferent. The 2020 amendments provide that postsecondary institutions have “actual knowledge” when the Title IX Coordinator and employees with authority to institute corrective measures have notice of allegations of sexual harassment, while elementary schools and secondary schools have “actual knowledge” when any employee has notice of such allegations.</i></p>
<p><b><i>Respecting Complainant Autonomy (§§ 106.2, 106.8(d), 106.44(c), (d), (f), 106.45(a)(2))</i></b></p>	<p>To ensure that a recipient’s education program or activity is free from sex discrimination while also respecting complainant autonomy, the final regulations require a recipient to provide clear information and training (§ 106.8(d)) on when their employees must notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination (§ 106.44(c)) and how students can seek confidential assistance (§ 106.44(d)) or make a complaint of sex discrimination requiring the recipient to initiate its grievance procedures. (§ 106.45(a)(2)).</p> <p>The final regulations identify three categories of confidential employees who are not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination. Instead, these employees must provide information to anyone who informs the confidential employee of conduct that reasonably may constitute sex discrimination about their status as confidential for purposes of Title IX, how to contact the Title IX Coordinator, how to make a complaint, and how the Title IX Coordinator can help. (§§ 106.2 and 106.44(d)).</p> <p>A complainant is also protected in their right to make a complaint about sex discrimination they experienced even if they have chosen to leave the recipient’s education program or activity as a result of that discrimination or for other reasons. (§§ 106.2 and 106.45(a)(2)).</p> <p>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, the Title IX Coordinator may initiate a complaint only if the conduct presents an imminent and serious threat to someone’s health or safety or prevents the recipient from ensuring equal access based on sex to its education program or activity. (§ 106.44(f)(1)(v)–(vi)).</p> <p>Together, these requirements in the final regulations ensure that:</p>

	<ul style="list-style-type: none"> <li>• Employees and students have information about the role of a recipient’s confidential employees and how to contact them.</li> <li>• Employees and students at elementary schools and secondary schools know that all non-confidential employees must notify the Title IX Coordinator of conduct that reasonably may constitute sex discrimination.</li> <li>• Employees and students at postsecondary institutions know that certain non-confidential employees have a duty to notify the Title IX Coordinator of conduct that reasonably may constitute sex discrimination and other employees, including confidential employees and certain non-confidential employees, must, at a minimum, explain to anyone who reports conduct that may reasonably constitute sex discrimination how to contact the recipient’s Title IX Coordinator and make a complaint.</li> <li>• Students (and parents, guardians, and other authorized legal representatives of elementary and secondary school students) know how to make a complaint to initiate a recipient’s grievance procedures, and also how to seek information about supportive measures and other resources without making a complaint.</li> <li>• A recipient knows to honor a complainant’s request not to proceed with a complaint investigation unless the Title IX Coordinator makes a fact-specific determination that the conduct as alleged presents an imminent and serious threat to the health or safety of a complainant or other person or prevents the recipient from ensuring equal access based on sex to its education program or activity.</li> </ul> <p><i>The 2020 amendments, at § 106.30(a), provide that the decision to file a complaint of sexual harassment is for the complainant or Title IX Coordinator to make, depending on the circumstances. The 2020 amendments do not permit former students or employees who are not participating or attempting to participate in the recipient’s education program or activity to file complaints of sexual harassment. The 2020 amendments do not address confidential employees.</i></p>
<p><b><i>Title IX Coordinator Response to Sex Discrimination (§ 106.44(f)–(g))</i></b></p>	<p>Under the final regulations, a recipient with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must respond promptly and effectively. The final regulations provide that a recipient must require its Title IX Coordinator (or a designee) to take the following actions upon being notified of conduct that reasonably may constitute sex discrimination:</p> <ul style="list-style-type: none"> <li>• Treat the complainant and respondent equitably. (§ 106.44(f)(1)(i)).</li> <li>• Offer and coordinate supportive measures, as appropriate, for the complainant. If the recipient has initiated grievance procedures or offered an informal resolution process to the respondent, offer and coordinate supportive measures as appropriate, for the respondent. (§ 106.44(f)(1)(ii)).</li> <li>• Notify the complainant, or if the complainant is unknown, the individual who reported the conduct, of the grievance procedures and the informal resolution process, if available and appropriate. (§ 106.44(f)(1)(iii)(A)).</li> <li>• If a complaint is made, notify the respondent of the grievance procedures and the informal resolution process, if available and appropriate. (§ 106.44(f)(1)(iii)(B)).</li> </ul>

	<ul style="list-style-type: none"> <li>• In response to a complaint, initiate the recipient’s grievance procedures or informal resolution process, if available and appropriate. (§ 106.44(f)(1)(iv)).</li> <li>• 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, make a fact-specific determination by considering, at a minimum, eight listed factors, and determining whether the conduct as alleged presents an imminent and serious threat to the health or safety of a complainant or other person or prevents the recipient from ensuring equal access based on sex to its education program or activity such that the Title IX Coordinator may initiate a complaint. (§ 106.44(f)(1)(v)).</li> <li>• If the Title IX Coordinator initiates a complaint, notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant’s safety or the safety of others. (§ 106.44(f)(1)(vi))</li> <li>• Regardless of whether a complaint is initiated, 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, in addition to providing remedies to an individual complainant. (§ 106.44(f)(1)(vii)).</li> </ul> <p>The final regulations require a recipient to offer and coordinate supportive measures for the parties as appropriate to restore or preserve each person’s access to the recipient’s education program or activity or provide support during the recipient’s grievance procedures or during the informal resolution process. Supportive measures cannot be unreasonably burdensome to a party and cannot be imposed for punitive or disciplinary reasons. Supportive measures may include, for example, counseling, extension of deadlines, restrictions on contact applied to one or more parties, and changes in class, work, or housing. (§ 106.44(g)).</p> <p><i>The 2020 amendments, at § 106.44(a), require a recipient to treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a grievance process that complies with § 106.45 before imposing disciplinary sanctions or other actions that are not supportive measures against a respondent.</i></p> <p><i>The 2020 amendments, at §§ 106.30(a) and 106.44(a), only require the Title IX Coordinator to contact the complainant regarding supportive measures.</i></p> <p><i>The 2020 amendments, at § 106.30(a), permit the Title IX Coordinator to file a formal complaint.</i></p> <p><i>The 2020 amendments, at § 106.45(b)(9), permit an informal resolution process only if a formal complaint alleging sexual harassment has been filed.</i></p>
<p><b><i>Informal Resolution</i></b> <b><i>(§ 106.44(k))</i></b></p>	<p>The final regulations permit a recipient to offer an informal resolution process if appropriate whenever it receives a complaint of sex discrimination or has information about conduct that reasonably may constitute sex discrimination.</p> <ul style="list-style-type: none"> <li>• Participation in informal resolution must be voluntary.</li> </ul>

	<ul style="list-style-type: none"> <li>• Informal resolution is not permitted in situations in which an employee allegedly engaged in sex-based harassment of an elementary school or secondary school student or if such a process would conflict with Federal, State, or local law.</li> </ul> <p><i>The 2020 amendments, at § 106.45(b)(9), permit informal resolution only if a formal complaint alleging sexual harassment has been filed.</i></p>
<p><b><i>Grievance Procedures for All Sex Discrimination Complaints under Title IX (§ 106.45)</i></b></p>	<p>Since 1975, the Title IX regulations have required a recipient to adopt and publish grievance procedures that provide for the prompt and equitable resolution of sex discrimination complaints. The final regulations modify requirements for grievance procedures for complaints of sexual harassment set out in the 2020 amendments and apply them to all complaints of sex discrimination with specific changes that take into account the age, maturity, and level of independence of students in various educational settings, the particular contexts of employees and persons other than students or employees, and the need to ensure that a recipient’s grievance procedures include basic and essential requirements for fairness and reliability for all parties.</p> <p>Under the final regulations, all recipients are required to adopt grievance procedures in writing (§ 106.45(a)(1)) that incorporate the requirements of § 106.45, including the following:</p> <ul style="list-style-type: none"> <li>• General requirements: <ul style="list-style-type: none"> <li>○ Equitable treatment of complainants and respondents. (§ 106.45(b)(1)).</li> <li>○ Title IX Coordinator, investigators, and decisionmakers must not have conflicts of interest or bias. As long as a recipient ensures there is no conflict of interest or bias, a decisionmaker may be the same person as the Title IX Coordinator or investigator. (§ 106.45(b)(2)).</li> <li>○ Presumption that the respondent is not responsible for the alleged conduct until a determination whether sex discrimination occurred is made at the conclusion of the recipient’s grievance procedures. (§ 106.45(b)(3)).</li> <li>○ Reasonably prompt timeframes for all major stages. (§ 106.45(b)(4)).</li> <li>○ Reasonable steps to protect privacy of parties and witnesses. (§ 106.45(b)(5)).</li> <li>○ Objective evaluation of all relevant and not otherwise impermissible evidence. (§ 106.45(b)(6)).</li> <li>○ Exclusion of three types of evidence as impermissible. (§ 106.45(b)(7)).</li> <li>○ If a recipient adopts grievance procedures that apply to the resolution of some, but not all complaints, articulate consistent principles for how the recipient will determine which procedures apply. (§ 106.45(b)(8)).</li> </ul> </li> <li>• Notice of allegations to the parties. (§ 106.45(c)).</li> <li>• Dismissals permitted in certain circumstances, but not required, as long as the recipient offers an appeal and, as appropriate, supportive measures and takes other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur. (§ 106.45(d)).</li> <li>• Consolidation permitted for complaints arising out of the same facts or circumstances. (§ 106.45(e)).</li> </ul>

- Investigation requirements: (§ 106.45(f)).
  - Burden is on the recipient to gather sufficient evidence. (§ 106.45(f)(1)).
  - Equal opportunity for all parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible. (§ 106.45(f)(2)).
  - Determination of what evidence is relevant and what evidence is impermissible. (§ 106.45(f)(3)).
  - Equal opportunity for parties to access relevant and not otherwise impermissible evidence or an accurate description of this evidence—and if the recipient provides a description, the parties may request and then must receive access to the relevant and not otherwise impermissible evidence. (§ 106.45(f)(4)).
    - Reasonable opportunity for the parties to respond to the evidence.
    - Reasonable steps to prevent and address the parties’ unauthorized disclosure of information and evidence obtained solely through the grievance procedures.
- A process that enables the decisionmaker to question parties and witnesses to adequately assess a party’s or witness’s credibility when credibility is in dispute and relevant. (§ 106.45(g)).
- Clear processes for the determination of whether sex discrimination occurred, including:
  - Determining whether sex discrimination occurred using the preponderance of the evidence standard of proof, unless the clear and convincing evidence standard is used in all other comparable proceedings, including other discrimination complaints, in which case that standard may be used in determining whether sex discrimination occurred. (§ 106.45(h)(1)).
  - Notifying parties in writing of the determination whether sex discrimination occurred, 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)).
  - When there is a determination that sex discrimination occurred, requiring the Title IX Coordinator to coordinate the provision and implementation of remedies for the complainant or others whose access to the recipient’s education program or activity has been limited or denied by sex discrimination, coordinate the imposition of any disciplinary sanctions on a respondent, and requiring the Title IX Coordinator 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. (§ 106.45(h)(3)).
  - Not imposing any disciplinary sanctions against a respondent until the grievance procedures are completed. (§ 106.45(h)(4)).
  - Not disciplining a party, witness, or other participant for making a false statement or for engaging in consensual sexual conduct based solely on the determination of whether sex discrimination occurred. (§ 106.45(h)(5)).
- An appeal process that, at a minimum, is the same as the recipient offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints. (§ 106.45(i))
- Parties are permitted to choose to participate in an informal resolution process if one is provided by the recipient. (§ 106.45(k)).

	<ul style="list-style-type: none"> <li>• For sex-based harassment complaints, the grievance procedures must describe the range of possible supportive measures and list, or describe the range of, possible disciplinary sanctions and remedies. (§ 106.45(l)).</li> </ul> <p>A recipient may adopt additional provisions in its grievance procedures as long as the provisions apply equally to the parties. (§ 106.45(j)).</p> <p><i>The 2020 amendments, at § 106.45, include specific requirements for grievance procedures for complaints of sexual harassment that apply to all recipients (except that live hearings and cross-examination by a party’s advisor are required only for postsecondary institutions).</i></p>
<p><b><i>Additional Requirements for Grievance Procedures for Sex-Based Harassment Complaints Involving a Postsecondary Student (§ 106.46)</i></b></p>	<p>A postsecondary institution’s written grievance procedures for prompt and equitable resolution of complaints of sex-based harassment involving a student party must incorporate all of the requirements of § 106.45 and the following additional requirements set forth in § 106.46:</p> <ul style="list-style-type: none"> <li>• Written notice informing the parties of allegations, dismissals, delays, meetings, and proceedings. (§ 106.46(c), (d), (e)(1), and (e)(5)).</li> <li>• Equal opportunity to have an advisor of the party’s choice at any meeting or proceeding. (§ 106.46(e)(2)).</li> <li>• Same opportunities, if any, to have persons other than the advisor present at any meeting or proceeding. (§ 106.46(e)(3)).</li> <li>• Permitting, but not requiring, an institution to allow expert witnesses, as long as the determination applies equally to the parties. (§ 106.46(e)(4)).</li> <li>• Reasonable extension of timeframes on a case-by-case basis for good cause with written notice to the parties, including the reason for the delay. (§ 106.46(e)(5)).</li> <li>• Equal opportunity to access relevant and not otherwise impermissible evidence or a written report summarizing the evidence—and if the institution provides access to an investigative report, the parties may request and then must receive access to the relevant and not otherwise impermissible evidence. (§ 106.46(e)(6)). <ul style="list-style-type: none"> <li>○ Reasonable opportunity for the parties to respond to the evidence.</li> <li>○ Reasonable steps to prevent and address the parties’ and their advisors’ unauthorized disclosure of information and evidence obtained solely through the sex-based harassment grievance procedures.</li> </ul> </li> <li>• A process enabling the decisionmaker to question parties and witnesses to adequately assess a party’s or witness’s credibility when credibility is in dispute and relevant: <ul style="list-style-type: none"> <li>○ When a postsecondary institution chooses not to conduct a live hearing that includes: (1) allowing the investigator or decisionmaker to ask relevant and not otherwise impermissible questions during individual meetings with a party or witness; (2) allowing each party to propose relevant and not otherwise impermissible questions that the party wants asked of any party or witness and have those questions asked by the decisionmaker or investigator during individual meetings, including follow-</li> </ul> </li> </ul>

	<p>up meetings; and (3) providing each party with an audio or audiovisual recording or transcript with enough time for the party to have a reasonable opportunity to propose follow-up questions. (§ 106.46(f)(1)(i)).</p> <ul style="list-style-type: none"> <li>○ When a postsecondary institution chooses to conduct a live hearing, that includes: (1) allowing the decisionmaker to ask relevant and not otherwise impermissible questions during the live hearing, and (2) allowing each party to propose relevant and not otherwise impermissible questions that the party wants asked of any party or witness and have those questions asked during the live hearing by the decisionmaker or allowing an advisor for each party to ask relevant and not otherwise impermissible questions of other parties and any witnesses during the live hearing. (§ 106.46(f)(1)(ii)).</li> <li>● Permitting, but not requiring, a live hearing. When a live hearing is provided, a recipient must allow the parties, on request, to participate from separate locations using technology and create an audio or audiovisual recording, or transcript of any live hearing and make it available to the parties for inspection and review. (§ 106.46(g)).</li> <li>● Prohibiting questions that are unclear or harassing of the party being questioned. (§ 106.46(f)(3)).</li> <li>● Permitting a decisionmaker to weigh the credibility of a party or witness, including when a party or witness refuses to respond to relevant and permissible questions. Not permitting a decisionmaker to draw an inference about whether sex-based harassment occurred based solely on a party’s or witness’s refusal to respond to relevant and permissible questions. (§ 106.46(f)(4)).</li> <li>● Simultaneously providing written notice to the parties of the determination that includes a description of the allegations, information about the policies and procedures used to evaluate the allegations, the decisionmaker’s evaluation of the relevant and not otherwise impermissible evidence and determination whether sex-based harassment occurred, disciplinary sanctions and remedies if relevant, and information about appeal procedures. (§ 106.46(h)).</li> <li>● An opportunity to appeal a dismissal or determination based on procedural irregularity that would change the outcome, new evidence that would change the outcome and that was not reasonably available when the determination or dismissal was made, and conflict of interest or bias, as well as any other bases offered equally to the parties by the recipient. (§ 106.46(i)).</li> </ul> <p><i>The 2020 amendments, at § 106.45, include many of these requirements for all recipients, but only for complaints of sexual harassment. Under the 2020 amendments, live hearings are optional for non-postsecondary institution recipients, and postsecondary institutions are required to use a live hearing with cross-examination by a party’s advisor for all sexual harassment complaints.</i></p>
<p><b>Retaliation</b> <b>(§§ 106.2, 106.71)</b></p>	<p>The final regulations require a recipient to prohibit retaliation, including peer retaliation, and respond to information and complaints involving conduct that reasonably may constitute retaliation using the same procedures it uses for other forms of sex discrimination. (§ 106.71).</p>

	<ul style="list-style-type: none"> <li>• Retaliation is defined as intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient’s education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or the regulations, or because the person has reported possible sex discrimination, made a sex-discrimination complaint, or participated or refused to participate in any way in a recipient’s Title IX process. (§ 106.2).</li> <li>• Peer retaliation, which is defined as retaliation by one student against another student, is also prohibited. (§ 106.2).</li> <li>• The final regulations clarify that nothing in the regulations precludes a recipient from requiring an employee or other person authorized by a recipient to provide aid, benefit, or service under the recipient’s education program or activity to participate as a witness in, or otherwise assist with, a Title IX investigation, proceeding, or hearing. (§ 106.2).</li> </ul> <p><i>The 2020 amendments, at § 106.71, prohibit retaliation; they do not include definitions of either “retaliation” or “peer retaliation.”</i></p>
<p><b><i>Discrimination Based on Pregnancy or Related Conditions</i></b>  <b><i>(§§ 106.2, 106.21(c), 106.40, 106.51(b)(6), 106.57)</i></b></p>	<p>Since 1975, the Title IX regulations have required that recipients not discriminate based on pregnancy or related conditions, including childbirth, termination of pregnancy, and recovery. The final regulations update these existing protections and clarify that a recipient must protect students, employees, and applicants from discrimination based on pregnancy, childbirth, termination of pregnancy, lactation, related medical conditions, or recovery (§ 106.2), including by providing reasonable modifications for students, (§ 106.40(b)(3)(ii)), reasonable break time for employees for lactation (§ 106.57(e)(1)), and a clean, private lactation space for both students and employees (§§ 106.40(b)(3)(v) and 106.57(e)(2)).</p> <p>The final regulations also update and clarify Title IX’s longstanding prohibition on treating parents differently on the basis of sex, including by defining “parental status” to include, <i>e.g.</i>, adoptive parents or stepparents, or legal guardians. (§ 106.2).</p> <p>Under the final regulations, a recipient is required to ensure that when a student (or a student’s parent or other legal representative) informs a recipient’s employee of the student’s pregnancy or related conditions, the employee provides that person with the Title IX Coordinator’s contact information and informs that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student’s equal access to the education program or activity. (§ 106.40(b)(2)).</p> <p>Once a student or the student’s representative notifies the Title IX Coordinator, the recipient must:</p>

	<ul style="list-style-type: none"> <li>• Inform the student of the recipient’s obligations to students who are pregnant or experiencing pregnancy-related conditions and restrictions on recipient disclosure of personal information, as well as provide the recipient’s notice of nondiscrimination. (§ 106.40(b)(3)(i)).</li> <li>• Provide the student with the option of individualized, reasonable modifications as needed to prevent discrimination and ensure equal access to the recipient’s education program or activity. (§ 106.40(b)(3)(ii)).</li> <li>• Allow the student a voluntary leave of absence for, at minimum, the medically necessary time period and reinstatement upon return. (§ 106.40(b)(3)(iv)).</li> <li>• Ensure the student’s access to a clean, private space for lactation. (§ 106.40(b)(3)(v)).</li> </ul> <p>A recipient must not require supporting documentation from a student unless doing so is necessary and reasonable. For example, a recipient must not require documentation when it has already been provided or relates to lactation needs; the need is obvious or one of various routine and simple modifications set forth in § 106.40(b)(3)(vi); or when modifications, leave, or other steps under § 106.40(b)(3)(ii)–(vi) are available to students for non-pregnancy related reasons without submitting supporting documentation. (§ 106.40(b)(3)(vi)).</p> <p>A recipient is required to provide its employees with reasonable break time for lactation and ensure they can access a clean and private lactation space. (§ 106.57(e)(1)–(2)).</p> <p><i>The regulations promulgated in 1975, at §§ 106.21(c)(2), 106.40(b), and 106.57(b), prohibit discrimination against students, employees, and applicants based on pregnancy, childbirth, termination of pregnancy, and recovery. The 1975 regulations, at §§ 106.21(c)(1), 106.40(a), and 106.57(a), also prohibit a recipient from adopting rules that treat parents differently on the basis of sex.</i></p>
<p><b>General Prohibition on More than De Minimis Harm; Application to Policies and Practices that Prevent Participation Consistent with Gender Identity (§ 106.31(a)(2))</b></p>	<p>The final regulations prohibit a recipient from separating or treating any person differently based on sex in a manner that subjects that person to more than de minimis harm, except in the limited circumstances where the statute allows otherwise, such as in the context of sex-separate living facilities and sex-separate athletic teams.</p> <p>The final regulations clarify that policies and practices that prevent a student from participating in a recipient’s education program or activity consistent with their gender identity impose more than de minimis harm on that student on the basis of sex, and therefore generally violate Title IX’s nondiscrimination mandate.</p> <p>The Department intends to issue a separate final rule to address Title IX’s application to sex-separate athletic teams.</p>

***Prohibition on Disclosure of Personally Identifiable Information (§ 106.44(j))***

The final regulations prohibit a recipient from disclosing personally identifiable information obtained in the course of complying with Title IX, with limited exceptions, such as when the recipient has prior written consent or when the information is disclosed to the parent of a minor.

*The 2020 amendments, at § 106.71(a), included a narrower provision that prohibited a recipient from disclosing only the identity of certain individuals participating in a Title IX grievance procedure, with limited exceptions.*

OCR FACT SHEET REGARDING  
DEPARTMENT OF EDUCATION'S 2024 TITLE IX FINAL RULE  
AUGUST 2024

<https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/t9-final-rule-factsheet.pdf>

As of July 31, 2024, pursuant to Federal court orders, the Department is currently enjoined from enforcing the 2024 [Final Rule](#) in the states of Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming; the Department is also currently enjoined from enforcing the 2024 Final Rule at the schools on the list located at <https://www2.ed.gov/about/offices/list/ocr/docs/list-of-schools-enjoined-from-2024-t9-rule.pdf>. Per Court order, this list of schools may be supplemented in the future. The Final Rule and this resource do not currently apply in those states and schools. Pending further court orders, the Department's Title IX Regulations, as amended in 2020 ([2020 Title IX Final Rule](#)) remain in effect in those states and schools.

## **FACT SHEET: U.S. Department of Education's 2024 Title IX Final Rule Overview**

Title IX of the Education Amendments of 1972 (Title IX) was signed into law more than 50 years ago. In the decades since, Title IX's protections have paved the way for tremendous strides in access to education and more for millions of students across the country and have opened doors for generations of women and girls. In spite of this historic progress, rates of sexual harassment and assault in our nation's schools and colleges remain unacceptably high. Many women see their education derailed because of pregnancy discrimination. And many LGBTQI+ students face bullying and harassment just because of who they are. The Biden-Harris Administration believes that the promise of Title IX, an education free from sex discrimination, remains as vital now as it was when it was first signed into law.

On April 19, 2024, the U.S. Department of Education released its final rule to fully effectuate Title IX's promise that no person experiences sex discrimination in federally funded education. Before issuing the proposed regulations, the Department received feedback on its Title IX regulations, as amended in 2020, from a wide variety of stakeholders. The regulations released today draw on the Department's engagement with tens of thousands of students, parents, educators, State government representatives, advocates, lawyers, researchers, and representatives from elementary schools, secondary schools, and postsecondary institutions. After releasing the proposed regulations in July 2022, the Department received and reviewed more than 240,000 comments from the public to inform this rulemaking.

The final regulations will help to ensure that all persons, including students and employees, receive appropriate support if they experience sex discrimination in schools and that schools' procedures for investigating and resolving complaints of sex discrimination are accurate and fair to all involved. The final regulations strengthen several major provisions from the current regulations and provide schools with information to meet their Title IX obligations while providing appropriate discretion and flexibility to account for variations in school size, student populations, and administrative structures. The final regulations also provide greater clarity regarding: the definition of "sex-based harassment"; the scope of sex discrimination, including schools' obligations not to discriminate based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; and schools' obligations to provide an educational environment free from discrimination on the basis of sex.

The final regulations strengthen vital protections for students in our nation's schools and provide clear rules to help schools meet their Title IX obligation to eliminate sex discrimination in their education programs and activities. The final regulations also reaffirm the Department's core commitment to fundamental fairness for all parties; the rights of parents and guardians to support minor children; respect for freedom of speech and academic freedom; and respect for the autonomy that complainants need and deserve when they come forward with a claim of sex discrimination.

The final regulations:

**Provide full protection from sex-based harassment.**

The final regulations strengthen vital protections from all forms of sex-based harassment, including sexual violence and unwelcome sex-based conduct that creates a hostile environment by limiting or denying a person's ability to participate in or benefit from a school's education program or activity.

**Require schools to take prompt and effective action to end any sex discrimination in their education programs or activities—and to prevent its recurrence and remedy its effects.**

The final regulations promote accountability and fulfill Title IX's nondiscrimination mandate by requiring schools to act promptly and effectively in response to information about conduct that reasonably may constitute sex discrimination, including sexual violence and other forms of sex-based harassment. These regulations also require that schools train employees about the school's obligation to address sex discrimination, as well as employees' obligations to notify or provide contact information for the Title IX Coordinator.

**Require schools to provide supportive measures to complainants and respondents affected by conduct that may constitute sex discrimination, including sexual violence and other forms of sex-based harassment.**

Under the final regulations, schools are required to offer supportive measures, as appropriate, to restore or preserve a party's access to the school's education program or activity or provide support during a school's grievance procedures or the informal resolution process. Supportive measures cannot be unreasonably burdensome to a party and cannot be imposed for punitive or disciplinary reasons.

**Require schools to respond promptly and effectively to all complaints of sex discrimination with a fair, transparent, and reliable process that includes trained, unbiased decisionmakers to evaluate all relevant and not otherwise impermissible evidence.**

The final regulations strengthen requirements for schools to conduct reliable and impartial investigations of all sex discrimination complaints. The final regulations maintain several major provisions from the current regulations to ensure consistency for schools while updating required procedures to more effectively protect against sex discrimination in the nation's elementary schools, secondary schools, and postsecondary institutions.

The Department's final regulations include the following:

- All schools must treat complainants and respondents equitably.
- Title IX Coordinators, investigators, decisionmakers, and facilitators of an informal resolution process must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- A school's grievance procedures must include a presumption that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of the school's grievance procedures.
- A school's grievance procedures must require adequate notice to the parties of the allegations, dismissal, delays, meetings, proceedings, and determinations.
- A school's grievance procedures must give the parties an equal opportunity to present and access relevant and not otherwise impermissible evidence, as well as provide a reasonable opportunity for each party to respond to that evidence.

- The school’s decisionmakers must objectively evaluate each party’s relevant and not otherwise impermissible evidence.
- A school must have a process enabling the decisionmaker to assess a party’s or witness’s credibility when credibility is in dispute and relevant. For sex-based harassment complaints involving a student party at a postsecondary institution, this process must include either: questioning by the investigator or decisionmaker during individual meetings with a party or witness (including questions proposed by each party), or questioning by the decisionmaker during a live hearing (including questions proposed by each party and asked by the decisionmaker or the party’s advisor).
- In evaluating the parties’ evidence, a school must use the preponderance of the evidence standard of proof unless the school uses the clear and convincing evidence standard in all other comparable proceedings, including proceedings relating to other discrimination complaints, in which case the school may use that standard in determining whether sex discrimination occurred.
- A school must not impose disciplinary sanctions under Title IX on any person unless it determines at the conclusion of grievance procedures that sex discrimination for which the person was responsible has occurred.

**Provide schools with flexibility to adapt the regulations’ grievance procedure requirements to their educational communities so that all schools can implement Title IX’s promise of nondiscrimination fully and fairly in their educational environments.**

The Department’s final regulations will enable all schools to meet their Title IX obligations while providing appropriate discretion and flexibility to account for variations in school size, student populations, and administrative structures. For instance, schools have the option to use a single-investigator model, and schools may choose to use this model in some, but not all, cases as long as it is clear in their grievance procedures when this model will be utilized. Schools also have the option to offer an informal resolution process for sex discrimination complaints unless the complaint includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or unless such a process would conflict with Federal, State, or local law.

Further, the Department’s final regulations reflect a framework that accounts for differences in the age, maturity, needs, and level of independence of students in various educational settings. The final regulations include some requirements that apply in all educational settings as well as specialized requirements that are tailored to the unique situation of sex-based harassment complaints involving postsecondary students. This framework is designed to ensure that all elementary and secondary schools and postsecondary institutions provide for the prompt and equitable resolution of sex discrimination complaints in their respective settings.

**Protect students, employees, and applicants from discrimination based on pregnancy or related conditions.**

The final regulations update longstanding existing protections for students, employees, and applicants against discrimination based on pregnancy, childbirth, termination of pregnancy, lactation, related medical conditions, or recovery from these conditions. Specifically, the final regulations strengthen requirements that schools provide reasonable modifications for students

based on pregnancy or related conditions, allow for reasonable break time for lactation for employees, and access to a clean, private lactation space for students and employees.

The final regulations also require that when a student, a parent of a minor student, or other authorized legal representative informs a school employee of a student's pregnancy or related conditions, the employee then must provide the individual with information about the school's obligations to prevent discrimination and ensure equal access. The final regulations also prohibit schools from disclosing personally identifiable information they obtain through complying with Title IX, including information about reasonable modifications for pregnancy or related conditions, with limited exceptions.

**Prohibit discrimination against LGBTQI+ students, employees, and others.**

The rule prohibits discrimination and harassment based on sexual orientation, gender identity, and sex characteristics in federally funded education programs, applying the reasoning of the Supreme Court's ruling in *Bostock v. Clayton County*.

**Protect people from harm when they are separated or treated differently based on sex in school.**

The final regulations clarify that a school must not separate or treat people differently based on sex in a manner that subjects them to more than de minimis harm, except in limited circumstances permitted by Title IX. The final regulations further recognize that preventing someone from participating in school (including in sex-separate activities) consistent with their gender identity causes that person more than de minimis harm. This general nondiscrimination principle applies except in the limited circumstances specified by statute, such as in the context of sex-separate living facilities and sex-separate athletic teams.

The final regulations do not include new rules governing eligibility criteria for athletic teams.

**Protects students, employees, and others from retaliation.**

The final regulations reinforce that schools must not intimidate, threaten, coerce, or discriminate against someone in order to interfere with their Title IX rights or because they reported sex discrimination, including sexual violence or other forms of sex-based harassment, or participated in, or refused to participate in, the school's Title IX process. The final regulations also make clear that schools must protect students from peer retaliation by other students.

**Support the right of parents and guardians to act on behalf of their elementary and secondary school children.**

The final regulations support the rights of parents and guardians to act on behalf of a minor student, including when seeking assistance under Title IX and participating in a school's Title IX grievance procedures.

**Ensure that schools communicate their nondiscrimination policies and procedures.**

The final regulations require schools to clearly and effectively inform key people, including students, employees, and applicants, of their nondiscrimination policies and procedures.

**Prohibit schools from sharing personal information.**

The final regulations prohibit schools from disclosing personally identifiable information they obtain through complying with Title IX, with limited exceptions, such as when they have prior written consent or when the information is disclosed to the parent of a minor.

The unofficial version of the final regulations is available [here](#). In addition, the Department has released a [summary](#) of the major provisions of the final regulations and a [resource](#) for drafting Title IX nondiscrimination policies, notices of nondiscrimination, and grievance procedures. The final regulations are effective on August 1, 2024, and apply to complaints of sex discrimination regarding alleged conduct that occurs on or after that date. The Department is committed to supporting schools in implementing the final regulations and will provide technical assistance and additional resources to schools to support implementation and compliance, as appropriate.

OCR RESOURCE RECOMMENDATIONS FOR  
DEPARTMENT OF EDUCATION'S 2024 TITLE IX  
POLICY, NOTICE, AND GRIEVANCE PROCEDURE REQUIREMENTS  
AUGUST 2024

<https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/resource-nondiscrimination-policies.pdf>

## **Resource for Drafting Nondiscrimination Policies, Notices of Nondiscrimination, and Grievance Procedures under 2024 Amendments to the U.S. Department of Education's Title IX Regulations**

The U.S. Department of Education's (Department) Office for Civil Rights (OCR) prepared this resource to help recipients of Department funds (recipients)<sup>1</sup> comply with the 2024 amendments to the Department's regulations implementing Title IX of the Education Amendments of 1972 (2024 amendments).<sup>2</sup> The 2024 amendments take effect on August 1, 2024, and obligate recipients to apply the requirements set forth therein to complaints of sex discrimination regarding alleged conduct that occurs on or after that date. This Resource creates no legal rights or responsibilities. It is intended only to help recipients draft Title IX policies that comply with some provisions of the 2024 amendments. Recipients are not obliged to consult this Resource in drafting their policies. The Department remains committed to supporting schools in implementing these regulations, including through additional technical assistance.

Title IX prohibits sex discrimination in education programs and activities that receive Federal financial assistance. Title IX obligates all recipients to comply with Title IX and the Department's Title IX regulations, with some limited exceptions set out in the statute and regulations. When "Title IX" is referenced in this Resource, the term refers to Title IX and the regulations.

The 2024 amendments require recipients to adopt and publish grievance procedures for the prompt and equitable resolution of complaints of sex-based harassment involving a student complainant or student respondent at a postsecondary institution. This Resource addresses only the applicable regulatory requirements in §§ 106.8(b)–(c), 106.45 and 106.46. As described in more detail below:

- Sections 106.8(b) and (c) require all recipients to adopt, publish, and implement a nondiscrimination policy and publish a notice of nondiscrimination.
- Section 106.45 requires all recipients to adopt, publish, and implement grievance procedures for complaints of sex discrimination.
- Section 106.46 requires all postsecondary institutions that are recipients to adopt, publish, and implement grievance procedures for complaints of sex-based harassment involving student complainants or student respondents at postsecondary institutions.

Under Title IX and its implementing regulations, recipients are not obligated to describe all applicable portions of the Title IX regulations in the policies, notices, and procedures required by §§ 106.8(b)–(c), 106.45 and 106.46, but recipients must satisfy all Title IX regulatory requirements, including the 2024 amendments starting August 1, 2024.

<sup>1</sup> Recipients largely include state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive Department funds.

<sup>2</sup> The Department has issued Title IX regulations, which can be found at 34 C.F.R. part 106, to implement Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681, 1682, 1683, 1685, 1686, 1687, 1688, 1689.

In drafting their Title IX policies and procedures, recipients have discretion to meet the needs of their educational community, as long as the policies and procedures comply with Title IX. This Resource addresses the minimum requirements contained in the 2024 amendments for a recipient’s nondiscrimination policy, notice of nondiscrimination, and grievance procedures. Sample text is provided, but recipients are not required to use the text provided herein. The Resource also includes some sample introductory language and footnotes to further assist drafters in implementing the above-referenced sections of the 2024 amendments. As long as the regulatory requirements are satisfied, recipients have discretion regarding level of detail in their Title IX policies and procedures.

Recipients have discretion to create a single document that addresses all the regulatory requirements, or to create multiple documents. Recipients also have discretion to incorporate the requirements of the 2024 amendments in policies or procedures that also address discrimination under other laws.

This resource does not bind the public or impose new legal requirements, nor does it bind the Department in the exercise of its discretionary enforcement authority under Title IX. This resource does not have the force and effect of law.

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## **Nondiscrimination Policy & Notice of Nondiscrimination (§ 106.8(b)–(c))**

Section 106.8(b) of the 2024 amendments requires each recipient to adopt, publish, and implement a **nondiscrimination policy**. A recipient has discretion over the content of its nondiscrimination policy. The following sample nondiscrimination policy meets the minimum requirements of the 2024 amendments:

[ABC School] does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX, including in admission<sup>3</sup> and employment.

Section 106.8(c) of the 2024 amendments also requires each recipient to provide a **notice of nondiscrimination** to students; parents, guardians, or other authorized legal representatives of elementary school and secondary school students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the recipient. Nothing prevents a recipient from including in its notice of nondiscrimination information about any exceptions or exemptions applicable to the recipient under Title IX.

The following sample notice of nondiscrimination meets the minimum requirements of the 2024 amendments:

[ABC School] does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its regulations, including in admission<sup>4</sup> and employment.

Inquiries about Title IX may be referred to [ABC School's] Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights,<sup>5</sup> or both. [ABC School's] Title IX Coordinator is [name or title, office address, email address, and telephone number].

[ABC School's] nondiscrimination policy and grievance procedures can be located at [include link to location(s) on website or otherwise describe location(s)].

To report information about conduct that may constitute sex discrimination or make a complaint of sex discrimination under Title IX, please refer to [include link to location(s) on website or otherwise describe location(s)].

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<sup>3</sup> Title IX's prohibition on discrimination in admission applies to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education. § 106.15(d). Title IX does not require any other recipients to state in their nondiscrimination policy that they do not discriminate on the basis of sex in admission.

<sup>4</sup> As noted above, Title IX only prohibits institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education from discriminating based on sex in admission, *see* § 106.15(d), and thus only such institutions must state in their notice of nondiscrimination that they do not discriminate on the basis of sex in admission.

<sup>5</sup> Contact information for OCR is available here: <https://ocrcas.ed.gov/contact-ocr>.

The 2024 amendments require each recipient to prominently include all elements of its notice of nondiscrimination on its website and in each handbook, catalog, announcement, bulletin, and application form that it makes available to people entitled to notice, or which are otherwise used in connection with the recruitment of students or employees.

If necessary, due to the format or size of any publication, the 2024 amendments provide that a recipient may instead include in those publications the information covered in the following statement:

[ABC School] prohibits sex discrimination in any education program or activity that it operates. Individuals may report concerns or questions to the Title IX Coordinator. The notice of nondiscrimination is located at [insert website address].

## **Grievance Procedures for Complaints of Sex Discrimination (§ 106.45)**

The 2024 amendments require each recipient to adopt, publish, and implement grievance procedures for the prompt and equitable resolution of complaints of sex discrimination, consistent with the requirements of § 106.45.

The following statement published in a recipient's grievance procedures would accurately summarize this general requirement:

[ABC School] has adopted grievance procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

Note that under § 106.46 of the 2024 amendments, there are additional requirements for a postsecondary institution's written grievance procedures for the prompt and equitable resolution of complaints of sex-based harassment involving a student party. Those requirements are described in the last part of this Resource. The 2024 amendments do not require elementary schools and secondary schools to comply with § 106.46.

The 2024 amendments give recipients discretion to choose to use certain procedures (e.g., single investigator, live hearings) for some, but not all, complaints of sex discrimination. If a recipient adopts certain procedures that apply to the resolution of some, but not all, complaints of sex discrimination, the 2024 amendments require the recipient to articulate consistent principles for how the recipient will determine which procedures apply. Accordingly, a recipient must provide information in its grievance procedures regarding what factors, if any, the recipient will consider when determining under what circumstances or to which types of sex discrimination complaints certain procedures apply (e.g., complaints involving certain forms of sex-based harassment, student-to-student sex-based harassment complaints, complaints involving students of certain ages or education levels).

The 2024 amendments permit a recipient's grievance procedures to also include additional provisions beyond those required by the 2024 amendments, as long as they apply equally to the parties.

Under the 2024 amendments, a recipient's grievance procedures must be in writing and must include the required components set forth in § 106.45. The information in the following statements incorporates the requirements of the Title IX grievance procedures:

### **Complaints:**

The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that [ABC School] investigate and make a determination about alleged discrimination under Title IX:

- A “complainant,” which includes:
  - a student or employee of [ABC School] who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
  - a person other than a student or employee of [ABC School] who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in [ABC School’s] education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- [ABC School’s] Title IX Coordinator.<sup>6</sup>

Note that a person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 C.F.R. § 106.44(f)(1)(v).

With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint:

- Any student or employee [of ABC School]; or
- Any person other than a student or employee who was participating or attempting to participate in [ABC School’s] education program or activity at the time of the alleged sex discrimination.

[ABC School] may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances.<sup>7</sup> When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

### **Basic Requirements of Title IX Grievance Procedures:**

[ABC School] will treat complainants and respondents equitably.

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<sup>6</sup> *Note to Drafter:* When a Title IX Coordinator is notified of conduct that reasonably may constitute sex discrimination under Title IX (and 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), the Title IX Coordinator must determine whether to initiate a complaint of sex discrimination as required under Title IX. The requirements for such a fact-specific determination are set forth in § 106.44(f)(1)(v).

<sup>7</sup> *Note to Drafter:* The Department notes that a recipient is not permitted to consolidate complaints if consolidation would violate the Family Educational Rights and Privacy Act (FERPA). Consolidation would not violate FERPA when a recipient obtains prior written consent from the parents or eligible students to the disclosure of their education records. *See* 34 CFR 99.30; 34 CFR 99.3 (defining an “eligible student” as “a student who has reached 18 years of age or is attending an institution of postsecondary education”).

[ABC School] requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A decisionmaker may be the same person as the Title IX Coordinator or investigator.

[ABC School] presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

[ABC School] has established the following timeframes for the major stages of the grievance procedures: [DESCRIBE REASONABLY PROMPT TIMEFRAMES, for major stages, including for example, evaluation (*i.e.*, the decision whether to dismiss or investigate a complaint); investigation; determination; and appeal, if any].

[ABC School] has also established the following process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay: [DESCRIBE PROCESS].

[ABC School] will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not 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; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses.

[ABC School] will objectively evaluate all evidence that is relevant and not otherwise impermissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by [ABC School] to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless [ABC School] obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual

conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

### **Notice of Allegations:**

Upon initiation of [ABC School]'s Title IX grievance procedures, [ABC School] will notify the parties of the following:

- [ABC School's] Title IX grievance procedures and any informal resolution process;<sup>8</sup>
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited; and
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. [If [ABC School] provides a description of the evidence: The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.]

If, in the course of an investigation, [ABC School] decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided or that are included in a complaint that is consolidated, [ABC School] will notify the parties of the additional allegations.

### **Dismissal of a Complaint:**

[ABC School] may dismiss a complaint of sex discrimination if:

- [ABC School] is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in [ABC School's] education program or activity and is not employed by [ABC School];
- The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and [ABC School] determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- [ABC School] determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, [ABC School] will make reasonable efforts to clarify the allegations with the complainant.

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<sup>8</sup> *Note to Drafter:* Title IX does not require a recipient to offer an informal resolution process. However, a recipient is free to provide such a process in some circumstances, as long as it complies with certain regulatory requirements. Requirements related to informal resolution are set forth in § 106.44(k).

Upon dismissal, [ABC School] will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then [ABC School] will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

[ABC School] will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then [ABC School] will also notify the respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

If the dismissal is appealed, [ABC School] will:

- Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Implement appeal procedures equally for the parties;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;<sup>9</sup>
- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, [ABC School] will, at a minimum:

- Offer supportive measures to the complainant as appropriate;<sup>10</sup>
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within [ABC School's] education program or activity.<sup>11</sup>

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<sup>9</sup> *Note to Drafter:* Training requirements are set forth in § 106.8(d).

<sup>10</sup> *Note to Drafter:* Requirements related to supportive measures are set forth in § 106.44(g).

<sup>11</sup> *Note to Drafter:* The Title IX Coordinator requirements are set forth in § 106.44(f).

**Investigation:**

[ABC School] will provide for adequate, reliable, and impartial investigation of complaints.

The burden is on [ABC School]—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

[ABC School] will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.

[ABC School] will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

[ABC School] will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

- [ABC School] will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence. [If [ABC School] provides a description of the evidence: [ABC School] will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.];
- [ABC School] will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
- [ABC School] will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

**Questioning the Parties and Witnesses:**

[ABC School] will provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination. [DESCRIBE PROCESS]

**Determination Whether Sex Discrimination Occurred:**

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, [ABC School] will:

- Use the [preponderance of the evidence or, if applicable,<sup>12</sup> clear and convincing] standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
- Notify the parties in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable;
- Not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
  - Coordinate the provision and implementation of remedies to a complainant and other people [ABC School] identifies as having had equal access to [ABC School's] education program or activity limited or denied by sex discrimination;
  - Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
  - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within [ABC School's] education program or activity.
- Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent; and
- Not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.<sup>13</sup>

### **Appeal of Determinations, if offered<sup>14</sup>:**

[ABC School] offers the following process for appeals from a determination whether sex discrimination occurred: [DESCRIBE APPEAL PROCESS]. This appeal process will be, at a

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<sup>12</sup> *Note to Drafter:* If a recipient uses the clear and convincing evidence standard of proof in all other comparable proceedings, including proceedings relating to other discrimination complaints, the 2024 amendments permit the recipient to elect to use that standard of proof in determining whether sex discrimination occurred.

<sup>13</sup> *Note to Drafter:* A recipient is still permitted to address false statements by initiating a disciplinary process under its code of conduct as long as there is evidence independent of the determination whether sex discrimination occurred.

<sup>14</sup> *Note to Drafter:* The 2024 amendments require a recipient to offer an opportunity to appeal a dismissal of a complaint on the bases outlined in the *Dismissal of a Complaint* section. Regarding an appeal of a determination, however, the 2024 amendments require a recipient to offer an appeal process that, at a minimum, is the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints. This section provides sample text a recipient may elect to include in its grievance procedures, but recipients are not required to use the text provided. If a recipient does not offer an appeal process for determinations, it may opt to omit a section on appeals of determinations from its published grievance procedures. Requirements related to appeals are set forth in § 106.45(i).

minimum, the same as [ABC School] offers in all other comparable proceedings, including proceedings relating to other discrimination complaints.

**Informal Resolution, if offered<sup>15</sup>:**

In lieu of resolving a complaint through [ABC School]’s Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. [ABC School] does not offer informal resolution to resolve a complaint that includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or when such a process would conflict with Federal, State, or local law.

**Supportive Measures:**

[ABC School] will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person’s access to [ABC School’s] education program or activity or provide support during [ABC School’s] Title IX grievance procedures or during the informal resolution process.<sup>16</sup> For complaints of sex-based harassment, these supportive measures may include [DESCRIBE RANGE that complies with § 106.44(g)].

**Disciplinary Sanctions and Remedies:**

Following a determination that sex-based harassment occurred, [ABC School] may impose disciplinary sanctions, which may include [LIST OR DESCRIBE RANGE]. [ABC School] may also provide remedies, which may include [LIST OR DESCRIBE RANGE].

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<sup>15</sup> *Note to Drafter:* The 2024 amendments do not require a recipient to offer an informal resolution process. However, a recipient is free to provide such a process, as long as it complies with certain regulatory requirements. This section provides sample text a recipient may elect to include in its grievance procedures, but recipients are not required to use the exact text provided. Further, if a recipient does not offer informal resolution for sex discrimination complaints, it may opt to omit a section on informal resolution from its published grievance procedures. Requirements related to informal resolution are set forth in § 106.44(k).

<sup>16</sup> *Note to Drafter:* The requirements for offering and coordinating supportive measures are set forth in § 106.44(g).

## **Grievance Procedures for Complaints of Sex-Based Harassment Involving Student Complainants or Student Respondents at Postsecondary Institutions (§ 106.46)**

The 2024 amendments require each postsecondary institution<sup>17</sup> to adopt, publish, and implement grievance procedures consistent with the requirements of §§ 106.45 and 106.46 for the prompt and equitable resolution of complaints of sex-based harassment involving a student complainant or student respondent at a postsecondary institution.

The following statement would accurately summarize this general requirement:

[ABC College] has adopted Title IX grievance procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator. These grievance procedures address complaints of sex-based harassment that involve a student party.

When a party is both a student and an employee of a postsecondary institution, the 2024 amendments require an institution to make a fact-specific inquiry to determine whether the requirements of § 106.46 apply. In making this determination, a postsecondary institution must, at a minimum, consider whether the party's primary relationship with the postsecondary institution is to receive an education and whether the alleged sex-based harassment occurred while the party was performing employment-related work.

The 2024 amendments give postsecondary institutions discretion to choose to use certain procedures (e.g., single investigator, live hearings) for some, but not all, complaints. If a postsecondary institution adopts certain procedures that apply to the resolution of some, but not all, complaints of sex-based harassment, the 2024 amendments require the postsecondary institution to articulate consistent principles for how the institution will determine which procedures apply. Accordingly, a postsecondary institution must provide information in its grievance procedures regarding what factors, if any, it will consider when determining under what circumstances or to which types of sex-based harassment complaints certain procedures apply.

The 2024 amendments permit a postsecondary institution's grievance procedures to also include additional provisions beyond those required by the 2024 amendments, as long as they apply equally to the parties.

Under the 2024 amendments, a postsecondary institution's grievance procedures for complaints of sex-based harassment involving a student party must be in writing and must include the

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<sup>17</sup> *Note to Drafter:* The definition of the term "postsecondary institution," is in § 106.2. Consistent with the definition, the term "postsecondary institution," as used in this section of the Resource, means an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education that serves postsecondary school students and receives Federal financial assistance from the Department.

required components set forth in §§ 106.45 and 106.46. The information in the following statements incorporates the requirements of the Title IX grievance procedures:

### **Complaints:**

The following people have a right to make a complaint of sex-based harassment, requesting that [ABC College] investigate and make a determination about alleged sex-based harassment under Title IX:

- A “complainant,” which includes:
  - a student or employee of [ABC College] who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
  - a person other than a student or employee of [ABC College] who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in [ABC College’s] education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- [ABC College’s] Title IX Coordinator.<sup>18</sup>

Note that a person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 C.F.R. § 106.44(f)(1)(v).

[ABC College] may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances.<sup>19</sup> When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

### **Basic Requirements of Title IX Grievance Procedures:**

[ABC College] will treat complainants and respondents equitably.

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<sup>18</sup> *Note to Drafter:* When a Title IX Coordinator is notified of conduct that reasonably may constitute sex discrimination under Title IX (and 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), the Title IX Coordinator must determine whether to initiate a complaint of sex discrimination as required under Title IX.

<sup>19</sup> *Note to Drafter:* The Department notes that a recipient is not permitted to consolidate complaints if consolidation would violate the Family Educational Rights and Privacy Act (FERPA). Consolidation would not violate FERPA when a postsecondary institution obtains prior written consent from eligible students to the disclosure of their education records. *See* 34 CFR 99.30; 34 CFR 99.3 (defining an “eligible student” as “a student who has reached 18 years of age or is attending an institution of postsecondary education”).

[ABC College] requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. As long as there is no conflict of interest or bias, a decisionmaker may be the same person as the Title IX Coordinator or investigator.

[ABC College] presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

[ABC College] has established the following timeframes for the major stages of the grievance procedures: [DESCRIBE REASONABLY PROMPT TIMEFRAMES for major stages, including for example, evaluation (*i.e.*, the decision whether to dismiss or investigate a complaint); investigation; determination; and appeal, if any].

[ABC College] has also established the following process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with written notice of any extension to the parties that includes the reason for the delay: [DESCRIBE PROCESS].

[ABC College] will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not 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; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses.

[ABC College] will objectively evaluate all evidence that is relevant and not otherwise impermissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by [ABC College] to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless [ABC College] obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual

conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

### **Written Notice of Allegations:**

Upon initiation of these Title IX grievance procedures, [ABC College] will notify the parties in writing of the following with sufficient time for the parties to prepare a response before any initial interview:

- [ABC College's] Title IX grievance procedures and any informal resolution process;
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex-based harassment, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited;
- The respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the grievance procedures. Prior to such a determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker;
- The parties may have an advisor of their choice who may be, but is not required to be, an attorney;
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigative report that accurately summarizes this evidence. [If [ABC College] provides access to an investigative report: The parties are entitled to an equal opportunity to access the relevant and not impermissible evidence upon the request of any party]; and
- [if [ABC College's] Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during grievance procedures, include the following:] Section [XX] of [ABC College's] Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance procedures.

If, in the course of an investigation, [ABC College] decides to investigate additional allegations of sex-based harassment by the respondent toward the complainant that are not included in the written notice or that are included in a consolidated complaint, it will provide written notice of the additional allegations to the parties.

### **Dismissal of a Complaint:**

[ABC College] may dismiss a complaint if:

- [ABC College] is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in [ABC College's] education program or activity and is not employed by [ABC College];

- [ABC College] obtains the complainant’s voluntary withdrawal in writing of any or all of the allegations, the Title IX Coordinator declines to initiate a complaint, and [ABC College] determines that, without the complainant’s withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- [ABC College] determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, [ABC College] will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, [ABC College] will promptly notify the complainant in writing of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then [ABC College] will notify the parties simultaneously in writing.

[ABC College] will notify the complainant that a dismissal may be appealed on the bases outlined in the *Appeals* section. If dismissal occurs after the respondent has been notified of the allegations, then [ABC College] will also notify the respondent that the dismissal may be appealed on the same bases. If a dismissal is appealed, [ABC College] will follow the procedures outlined in the *Appeals* section.

When a complaint is dismissed, [ABC College] will, at a minimum:

- Offer supportive measures to the complainant as appropriate;<sup>20</sup>
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within [ABC College’s] education program or activity.<sup>21</sup>

**Investigation:**

[ABC College] will provide for adequate, reliable, and impartial investigation of complaints.

The burden is on [ABC College]—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

[ABC College] will provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare to participate.

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<sup>20</sup> *Note to Drafter:* Requirements related to supportive measures are set forth in § 106.44(g).

<sup>21</sup> *Note to Drafter:* The Title IX Coordinator requirements are set forth in § 106.44(f).

[ABC College] will provide the parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.

- [ABC College] will not limit the choice or presence of the advisor for the complainant or respondent in any meeting or proceeding.
- [ABC College] may establish restrictions regarding the extent to which the advisor may participate in these grievance procedures, as long as the restrictions apply equally to the parties.

[ABC College] will provide the parties with the same opportunities, if any, to have people other than the advisor of the parties' choice present during any meeting or proceeding.

[ABC College] will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.<sup>22</sup>

[ABC College] will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

[ABC College] will provide each party and the party's advisor, if any, with an equal opportunity to access the evidence that is relevant to the allegations of sex-based harassment and not otherwise impermissible, in the following manner:

- [ABC College] will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or the same written investigative report that accurately summarizes this evidence. [If [ABC College] provides access to an investigative report: [ABC College] will further provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.];
- [ABC College] will provide a reasonable opportunity to review and respond to the evidence or the investigative report. If [ABC College] conducts a live hearing as part of its grievance procedures, it will provide this opportunity to review the evidence in advance of the live hearing. [[ABC College] may decide 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.]; and
- [ABC College] will take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the sex-based harassment grievance procedures.

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<sup>22</sup> *Note to Drafter:* Under § 106.46(e)(4), a postsecondary institution has discretion to determine whether the parties may present expert witnesses as long as the determination applies equally to the parties.

## **Questioning the Parties and Witnesses:**

[ABC College] will provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment.

[When [ABC College] chooses not to conduct a live hearing: [ABC College's] process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses, including questions challenging credibility, will:

- Allow the investigator or decisionmaker to ask such questions during individual meetings with a party or witness;
- Allow each party to propose such questions that the party wants asked of any party or witness and have those questions asked by the investigator or decisionmaker during one or more individual meetings, including follow-up meetings, with a party or witness, subject to the procedures for evaluating and limiting questions discussed below; and
- Provide each party with an audio or audiovisual recording or transcript with enough time for the party to have a reasonable opportunity to propose follow-up questions.]

[When [ABC College] chooses to conduct a live hearing: [ABC College's] process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses, including questions challenging credibility, will allow the decisionmaker to ask such questions, and either:

- Allow each party to propose such questions that the party wants asked of any party or witness and have those questions asked by the decisionmaker, subject to the procedures for evaluating and limiting questions discussed below; or
- Allow each party's advisor to ask any party or witness such questions, subject to the procedures for evaluating and limiting questions discussed below. Such questioning will never be conducted by a party personally. [If [ABC College] permits advisor-conducted questioning and a party does not have an advisor to ask questions on their behalf, [ABC College] will provide the party with an advisor of [ABC College's] choice, without charge to the party, for the purpose of advisor-conducted questioning. In those instances, [ABC College] will not appoint a confidential employee and may appoint, but is not required to appoint, an attorney to serve as an advisor.]

*Procedures for the decisionmaker to evaluate the questions and limitations on questions:*

The decisionmaker will determine whether a proposed question is relevant and not otherwise impermissible before the question is posed and will explain any decision to exclude a question as not relevant or otherwise impermissible. Questions that are unclear or harassing of the party or witness being questioned will not be permitted. The decisionmaker will give a party an

opportunity to clarify or revise a question that the decisionmaker determines is unclear or harassing. If the party sufficiently clarifies or revises the question, the question will be asked.<sup>23</sup>

*Refusal to respond to questions and inferences based on refusal to respond to questions:* The 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 will 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.

#### **Procedures for a Live Hearing, if offered<sup>24</sup>:**

[ABC College] will conduct the live hearing with the parties physically present in the same geographic location or, at [ABC College's] discretion or upon the request of either party, will conduct the live hearing with the parties physically present in separate locations with technology enabling the decisionmaker and parties to simultaneously see and hear the party or witness while that person is speaking.

[ABC College] will create an audio or audiovisual recording or transcript of any live hearing and make it available to the parties for inspection and review.

#### **Determination Whether Sex-Based Harassment Occurred:**

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, [ABC College] will:

- Use the [preponderance of the evidence or, if applicable,<sup>25</sup> clear and convincing] standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
- Notify the parties simultaneously in writing of the determination whether sex-based harassment occurred under Title IX including:
  - A description of the alleged sex-based harassment;

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<sup>23</sup> *Note to Drafter:* The 2024 amendments permit a postsecondary institution to also adopt and apply other reasonable rules regarding decorum, provided they apply equally to the parties.

<sup>24</sup> *Note to Drafter:* The 2024 amendments do not require a postsecondary institution to conduct live hearings. However, a postsecondary institution is free to conduct live hearings, as long as it complies with certain regulatory requirements. This section provides sample text a postsecondary institution may elect to include in its grievance procedures, but postsecondary institutions are not required to use the exact text provided. Further, if a postsecondary institution does not conduct live hearings, it may opt to omit a section on live hearings from its published grievance procedures. Requirements related to live hearings are set forth in § 106.46(g).

<sup>25</sup> *Note to Drafter:* If a postsecondary institution uses the clear and convincing evidence standard of proof in all other comparable proceedings, including proceedings relating to other discrimination complaints, the 2024 amendments permit the institution to elect to use that standard of proof in determining whether sex-based harassment occurred.

- Information about the policies and procedures that [ABC College] used to evaluate the allegations;
- The decisionmaker's evaluation of the relevant and not otherwise impermissible evidence and determination whether sex-based harassment occurred;
- When the decisionmaker finds that sex-based harassment occurred, any disciplinary sanctions [ABC College] will impose on the respondent, whether remedies other than the imposition of disciplinary sanctions will be provided by [ABC College] to the complainant, and, to the extent appropriate, other students identified by [ABC College] to be experiencing the effects of the sex-based harassment; and
- [ABC College's] procedures and permissible bases for the complainant and respondent to appeal.
- [ABC College] will not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the Title IX grievance procedures that the respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, as appropriate, the Title IX Coordinator will:
  - Coordinate the provision and implementation of remedies to a complainant and other people [ABC College] identifies as having had equal access to [ABC College's] education program or activity limited or denied by sex discrimination;
  - Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
  - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within [ABC College's] education program or activity.
- Comply with the Title IX grievance procedures before the imposition of any disciplinary sanctions against a respondent; and
- Not discipline a party, witness, or others participating in the Title IX grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.<sup>26</sup>

The determination regarding responsibility becomes final either on the date that [ABC College] provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.

### **Appeals:**

[ABC College] will offer an appeal from a dismissal or determination whether sex-based harassment occurred on the following bases:

- Procedural irregularity that would change the outcome;

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<sup>26</sup> *Note to Drafter:* A recipient is still permitted to address false statements by initiating a disciplinary process under its code of conduct as long as there is evidence independent of the determination whether sex discrimination occurred.

- New evidence that would change the outcome and that was not reasonably available when the determination or dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

If a party appeals a dismissal or determination whether sex-based harassment occurred, [ABC College] will:

- Notify the parties in writing of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Implement appeal procedures equally for the parties;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;<sup>27</sup>
- Communicate to the parties in writing that [ABC College] will provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties in writing of the result of the appeal and the rationale for the result.

Any additional procedures or bases for appeal [ABC College] offers will be equally available to all parties.

**Informal Resolution, if offered<sup>28</sup>:**

In lieu of resolving a complaint through [ABC College’s] Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. [ABC College] will inform the parties in writing of any informal resolution process it offers and determines is appropriate, if any. [ABC College] will not offer informal resolution to resolve a complaint when such a process would conflict with Federal, State, or local law. Before the initiation of an informal resolution process, [ABC College] will explain in writing to the parties:

- The allegations;
- The requirements of the informal resolution process;

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<sup>27</sup> *Note to Drafter:* Training requirements are set forth in § 106.8(d).

<sup>28</sup> *Note to Drafter:* Title IX does not require a recipient to offer an informal resolution process. However, a recipient is free to provide such a process, as long as it complies with certain regulatory requirements. This section provides sample text a postsecondary institution may elect to include in its § 106.46 grievance procedures, but a postsecondary institution is not required to use the exact text provided. Further, if a postsecondary institution does not offer informal resolution for sex-based harassment complaints that involve a student party, it may opt to omit a section on informal resolution from its § 106.46 grievance procedures. The requirements related to informal resolution are set forth in § 106.44(k).

- That any party has the right to withdraw from the informal resolution process and initiate or resume grievance procedures at any time before agreeing to a resolution;
- That if the parties agree to a resolution at the end of the informal resolution process, they cannot initiate or resume grievance procedures arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- What information [ABC College] will maintain and whether and how [ABC College] could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed.

**Supportive Measures:**

[ABC College] will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person’s access to the [ABC College’s] education program or activity or provide support during [ABC College’s] Title IX grievance procedures or during the informal resolution process. For complaints of sex-based harassment, these supportive measures may include [DESCRIBE RANGE that complies with 106.44(g)].

**Disciplinary Sanctions and Remedies:**

Following a determination that sex-based harassment occurred, [ABC College] may impose disciplinary sanctions, which may include [LIST OR DESCRIBE RANGE]. [ABC College] may also provide remedies, which may include [LIST OR DESCRIBE RANGE].

## **Appendix: Definitions (106.2)**

Section 106.2 of the 2024 amendments includes a number of definitions. When those defined terms are used in this Resource, they have the meaning set forth in § 106.2. The 2024 amendments do not require a recipient to incorporate these definitions into their policies or grievance procedures, but we include key definitions below that may inform a recipient's development of grievance procedures:

*Complainant* means:

- (1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations; or
- (2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations and who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.

*Complaint* means an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or its regulations.

*Disciplinary sanctions* means consequences imposed on a respondent following a determination under Title IX that the respondent violated the recipient's prohibition on sex discrimination.

*Party* means a complainant or respondent.

*Relevant* means related to the allegations of sex discrimination under investigation as part of these grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

*Remedies* means measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the recipient's education program or activity after a recipient determines that sex discrimination occurred.

*Respondent* means a person who is alleged to have violated the recipient's prohibition on sex discrimination.

*Retaliation* means intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, 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 the Title IX regulations.

*Sex-based harassment* is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, that is:

(1) *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;

(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:

(i) The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;

(ii) The type, frequency, and duration of the conduct;

(iii) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(iv) The location of the conduct and the context in which the conduct occurred; and

(v) Other sex-based harassment in the recipient's education program or activity; or

(3) *Specific offenses*.

(i) 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;

(ii) Dating violence meaning 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;

(iii) 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; or
- (iv) 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.

*Supportive measures* means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

- (1) Restore or preserve that party's access to the recipient's education program or activity, including measures that are designed to protect the safety of the parties or the recipient's educational environment; or
- (2) Provide support during the recipient's grievance procedures or during an informal resolution process.

LETTER TO EDUCATORS ON TITLE IX'S 49<sup>TH</sup> ANNIVERSARY NOTICE OF  
LANGUAGE ASSISTANCE

JUNE 23, 2021



## Letter to Educators on Title IX's 49<sup>th</sup> Anniversary Notice of Language Assistance

**Notice of Language Assistance:** If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**Aviso a personas con dominio limitado del idioma inglés:** Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**給英語能力有限人士的通知:** 如果您不懂英語, 或者使用英語有困難, 您可以要求獲得向大眾提供的語言協助服務, 幫助您理解教育部資訊。這些語言協助服務均可免費提供。如果您需要有關口譯或筆譯服務的詳細資訊, 請致電 1-800-USA-LEARN (1-800-872-5327) (聽語障人士專線: 1-800-877-8339), 或電郵: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov)。

**Thông báo dành cho những người có khả năng Anh ngữ hạn chế:** Nếu quý vị gặp khó khăn trong việc hiểu Anh ngữ thì quý vị có thể yêu cầu các dịch vụ hỗ trợ ngôn ngữ cho các tin tức của Bộ dành cho công chúng. Các dịch vụ hỗ trợ ngôn ngữ này đều miễn phí. Nếu quý vị muốn biết thêm chi tiết về các dịch vụ phiên dịch hay thông dịch, xin vui lòng gọi số 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), hoặc email: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

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**Paunawa sa mga Taong Limitado ang Kaalaman sa English:** Kung nahihirapan kayong makaintindi ng English, maaari kayong humingi ng tulong ukol dito sa impormasyon ng Kagawaran mula sa nagbibigay ng serbisyo na pagtulong kaugnay ng wika. Ang serbisyo na pagtulong kaugnay ng wika ay libre. Kung kailangan ninyo ng dagdag na impormasyon tungkolsa mga serbisyo kaugnay ng pagpapaliwanag o pagsasalin, mangyari lamang tumawag sa 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o mag-email sa: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**Уведомление для лиц с ограниченным знанием английского языка:** Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

June 23, 2021

Dear Educator:

On this 49<sup>th</sup> anniversary of the passage of Title IX of the Education Amendments of 1972—our nation’s most powerful legal tool for combating sex discrimination in education—I take this opportunity to highlight a selection of resources available for you to ensure that the education environment you provide is free from sex discrimination in all forms. Among these resources is our recent [public notice](#) clarifying Title IX’s protection against discrimination based on sexual orientation and gender identity.

The U.S. Department of Education’s Office for Civil Rights works to ensure that Title IX’s mandate protects students in all aspects of their education, including recruitment, admissions, and counseling; financial assistance; athletics; protections from sex-based harassment, which encompasses sexual assault and other forms of sexual violence; treatment of pregnant and parenting students; discipline; equal access to classes and activities; and treatment of lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI+) students.

I encourage you to review OCR’s recent report, [Education in a Pandemic: The Disparate Impacts of COVID-19 on America’s Students](#), in which we address the disparities based on sex, including sexual orientation and gender identity, as well as race, disability, and other characteristics experienced by students both before and during the pandemic in K-12 and postsecondary settings. On this anniversary of Title IX, I recognize the particular vulnerability of LGBTQI+ students and the often overwhelming challenges these students face in education compared to their peers, including feeling less safe, experiencing poor mental health, facing a higher risk of suicide, being more likely to miss school, and facing a disproportionate risk of being homeless.

I also want to bring to your attention OCR’s [public notice](#) based on the Supreme Court’s recent decision in *Bostock v. Clayton County*, 140 S. Ct. 1731, 590 U.S. \_\_\_\_ (2020), which clarifies that Title IX’s protection against sex discrimination encompasses discrimination based on sexual orientation and gender identity. Specifically, OCR clarifies that the Supreme Court’s decision in *Bostock* applies to the Department’s interpretation of Title IX. In its decision, the Supreme Court explained that “it is impossible to discriminate against a person” because of their sexual orientation or gender identity “without discriminating against that individual based on sex.” *Id.* at 1741. That reasoning applies regardless of whether the individual is an adult in a workplace or a student in school.

Consistent with this notice, OCR will fully enforce Title IX to prohibit discrimination based on sexual orientation and gender identity in education programs and activities that receive Federal financial assistance from the Department. For more information, please see our accompanying [fact sheet](#) in which OCR and the U.S. Department of Justice’s Civil Rights Division provide examples of the kinds of incidents we can investigate.

OCR has also updated its website to provide the resources mentioned above and to provide additional information and [resources for LGBTQI+ students](#).

On Title IX more generally, you might find it useful to review this [Overview of the Law](#) and these [Answers to Frequently Asked Questions about Sex Discrimination](#).

We realize educators may have questions about the Department’s 2020 amendments to the Title IX regulations, and we appreciate that so many of you shared your insights and experiences during our virtual public hearing on Title IX held on June 7-11, 2021. We are reviewing the comments we received and, [as previously noted](#), anticipate issuing a notice of proposed rulemaking to amend the regulations. In addition, we plan to issue a question-and-answer document to provide additional clarity about how OCR interprets schools’ existing obligations under the 2020 amendments, including the areas in which schools have discretion in their procedures for responding to reports of sexual harassment.

If you have questions or would like additional information or technical assistance, please visit us at [www.ed.gov/ocr](http://www.ed.gov/ocr) or contact OCR at 800-421-3481 (TDD: 800-877-8339) or at [ocr@ed.gov](mailto:ocr@ed.gov).

We at OCR share with you the responsibility to ensure that all students have equal access to education, regardless of race, color, national origin, sex, disability, or age. Thank you for all that you do to support all of our nation’s students and to ensure that they have the opportunity to learn and thrive in school.

Sincerely,

A handwritten signature in black ink, appearing to read "Suzanne B. Goldberg", is written over a light gray grid background.

Suzanne B. Goldberg  
Acting Assistant Secretary for Civil Rights

JOINT DEPARTMENT OF JUSTICE AND DEPARTMENT EDUCATION  
NOTICE: CONFRONTING ANTI-LGBTQI+ HARASSMENT IN SCHOOLS,  
A RESOURCE FOR STUDENTS AND FAMILIES DATED JUNE 23, 2021



# Confronting Anti-LGBTQI+ Harassment in Schools

## A Resource for Students and Families

Many students face bullying, harassment, and discrimination based on sex stereotypes and assumptions about what it means to be a boy or a girl. Students who are lesbian, gay, bisexual, transgender, queer, intersex, nonbinary, or otherwise gender non-conforming may face harassment based on how they dress or act, or for simply being who they are. It is important to know that discrimination against students based on their sexual orientation or gender identity is a form of sex discrimination prohibited by federal law. It is also important that LGBTQI+ students feel safe and know what to do if they experience discrimination.

Public elementary and secondary schools, as well as public and private colleges and universities, have a responsibility to investigate and address sex discrimination, including sexual harassment, against students because of their perceived or actual sexual orientation or gender identity. When schools fail to respond appropriately, the Educational Opportunities Section of the Civil Rights Division (CRT) at the U.S. Department of Justice and the Office for Civil Rights (OCR) at the U.S. Department of Education can help by enforcing federal laws that protect students from discrimination. CRT and OCR can also provide information to assist schools in meeting their legal obligations.

### Examples of the kinds of incidents CRT and OCR can investigate:

A lesbian high school student wants to bring her girlfriend to a school social event where students can bring a date. Teachers refuse to sell her tickets, telling the student that bringing a girl as a date is “not appropriate for school.” Teachers suggest that the student attend alone or bring a boy as a date.

When he starts middle school, a transgender boy introduces himself as Brayden and tells his classmates he uses he/him pronouns. Some of his former elementary school classmates “out” him to others, and every day during physical education class call him transphobic slurs, push him, and call him by his former name. When he reports it to the school’s administrators, they dismiss it, saying: “you can’t expect everyone to agree with your choices.”

A community college student discloses he’s gay during a seminar discussion. Leaving class, a group of students calls him a homophobic slur, and one bumps him into the wall. A professor witnesses this, but does nothing. Over the next month, the harassment worsens. The student goes to his dean after missing several lectures out of fear. The college interviews one, but not all, of the harassers, does nothing more, and never follows up with the student.

An elementary school student with intersex traits dresses in a gender neutral way, identifies as nonbinary, and uses they/them pronouns. The student’s teacher laughs when other students ask if they are “a boy or a girl” and comments that there is “only one way to find out.” The teacher tells the class that there are only boys and girls and anyone who thinks otherwise has something wrong with them. The student tells an administrator, who remarks “you have to be able to laugh at yourself sometimes.”

On her way to the girls’ restroom, a transgender high school girl is stopped by the principal who bars her entry. The principal tells the student to use the boys’ restroom or nurse’s office because her school records identify her as “male.” Later, the student joins her friends to try out for the girls’ cheerleading team and the coach turns her away from tryouts solely because she is transgender. When the student complains, the principal tells her “those are the district’s policies.”



# What if a Student Experiences Discrimination in School?

If you have been treated unfairly or believe a student has been treated unfairly—for example, treated differently, denied an educational opportunity, harassed, bullied, or retaliated against—because of sexual orientation or gender identity, there are a number of actions you can take:

1

**Notify a teacher or school leader** (for example, a principal or student affairs staff) immediately. If you don't get the help you need, file a formal complaint with the school, school district, college, or university. Keep records of your complaint(s) and responses you receive.

2

**Write down the details** about what happened, where and when the incident happened, who was involved, and the names of any witnesses. Do this for every incident of discrimination, and keep copies of any related documents or other information.

3

If you are not proficient in English, you have the right to **ask the school to translate or interpret information** into a language you understand. If you have communication needs because of a disability, you have the right to receive accommodations or aids and services that provide you with effective communication.

4

Counseling and other mental health support can sometimes be helpful for a student who has been harassed or bullied. **Consider seeking mental health resources** if needed.

5

**Consider filing a complaint** with the Civil Rights Division of the U.S. Department of Justice at [civilrights.justice.gov](https://www.civilrights.justice.gov) (available in several different languages), or with the Office for Civil Rights at the U.S. Department of Education at [www.ed.gov/ocr/complaintintro.html](https://www.ed.gov/ocr/complaintintro.html) (to file a complaint in English) or [www.ed.gov/ocr/docs/howto.html](https://www.ed.gov/ocr/docs/howto.html) (to file a complaint in multiple languages).

*“All students should be able to learn in a safe environment, free from discrimination and harassment. The Civil Rights Division stands with LGBTQI+ students and will fight to protect their right to an education regardless of who they are or whom they love.”*

– Kristen Clarke, Assistant Attorney General for Civil Rights, Department of Justice

*“The Department of Education strives to ensure that all students—including LGBTQI+ students—have access to supportive, inclusive school environments that allow them to learn and thrive in all aspects of their educational experience. Federal law prohibits discrimination based on sexual orientation and gender identity, and we are here to help schools, students, and families ensure that these protections are in full force.”*

– Suzanne B. Goldberg, Acting Assistant Secretary for Civil Rights, Department of Education



NEW YORK LABOR LAW 201-g  
NEW YORK STATE SEXUAL HARASSMENT PREVENTION<sup>1</sup>  
MINIMUM POLICY STANDARDS<sup>2</sup>, MODEL POLICY<sup>3</sup>,  
MODEL PUBLIC NOTICE<sup>4</sup>, AND MODEL COMPLAINT FORM<sup>5</sup>  
SEPTEMBER 2023

1. <https://www.ny.gov/combating-sexual-harassment-workplace/sexual-harassment-prevention-model-policy-and-training>
2. <https://www.ny.gov/sites/default/files/atoms/files/MinimumStandardsforSexualHarassmentPreventionPolicies.pdf>
3. <https://www.ny.gov/sites/default/files/2024-08/SexualHarassmentModelPolicyUpdated.pdf>
4. [https://www.ny.gov/sites/default/files/atoms/files/sexualharassmentpreventionposter\\_English\\_handfill.pdf](https://www.ny.gov/sites/default/files/atoms/files/sexualharassmentpreventionposter_English_handfill.pdf)
5. <https://www.ny.gov/sites/default/files/2023-04/CombatHarassmentComplaintForm.docx>

# Minimum Standards for Sexual Harassment Prevention Policies



## Combating Sexual Harassment

Every employer in the State of New York is required to adopt a sexual harassment prevention policy pursuant to Section 201-g of the Labor Law. An employer that does not adopt the model policy must ensure that the policy that they adopt meets or exceeds the following minimum standards. The policy must:

- i) prohibit sexual harassment consistent with [guidance](#) issued by the Department of Labor in consultation with the Division of Human Rights;
- ii) provide examples of prohibited conduct that would constitute unlawful sexual harassment;
- iii) include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws;
- iv) include a complaint form;
- v) include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties;
- vi) inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially;
- vii) clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue; and
- viii) clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful.

Employers must provide each employee with a copy of its policy in writing. Employers should provide employees with the policy in the language spoken by their employees.

\* \* \*

*The adoption of a policy does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.*

# Sexual Harassment Policy for All Employers in New York State



Combating  
Sexual Harassment

**This model policy is a template that can be used by employers to meet the New York State Labor Law requirements for a sexual harassment prevention policy. Employers are encouraged to tailor this policy to their individual needs, though as the minimum standard, no section in this policy should be omitted. The list of examples provided in this model policy is not meant to be exhaustive.**

## **Purpose and Goals**

[Employer Name] is committed to maintaining a workplace free from harassment and discrimination. Sexual harassment is a form of workplace discrimination that subjects an employee to inferior conditions of employment due to their gender, gender identity, gender expression (perceived or actual), and/or sexual orientation. Sexual harassment is often viewed simply as a form of gender-based discrimination, but [Employer name] recognizes that discrimination can be related to or affected by other identities beyond gender. Under the New York State Human Rights Law, it is illegal to discriminate based on sex, sexual orientation, gender identity or expression, age, race, creed, color, national origin, military status, disability, pre-disposing genetic characteristics, familial status, marital status, criminal history, or status as a victim of domestic violence. Our different identities impact our understanding of the world and how others perceive us. For example, an individual's race, ability, or immigration status may impact their experience with gender discrimination in the workplace. While this policy is focused on sexual harassment and gender discrimination, the methods for reporting and investigating discrimination based on other protected identities are the same. The purpose of this policy is to teach employees to recognize discrimination, including discrimination due to an individual's intersecting identities, and provide the tools to take action when it occurs. All employees, managers, and supervisors are required to work in a manner designed to prevent sexual harassment and discrimination in the workplace. This policy is one component of [Employer Name's] commitment to a discrimination-free work environment.

### **Goals of this Policy:**

Sexual harassment and discrimination are against the law. After reading this policy, employees will understand their right to a workplace free from harassment. Employees will also learn what harassment and discrimination look like, what actions they can take to prevent and report harassment, and how they are protected from retaliation after taking action. The policy will also explain the investigation process into any claims of harassment. Employees are encouraged to report sexual harassment or discrimination by filing a complaint internally with [Employer Name]. Employees can also file a complaint with a government agency or in court under federal, state, or local antidiscrimination laws. To file an employment complaint with the New York State Division of Human Rights, please visit <https://dhr.ny.gov/complaint>. To file a complaint with the United States Equal Employment Opportunity Commission, please visit <https://www.eeoc.gov/filing-charge-discrimination>.

## **Sexual Harassment and Discrimination Prevention Policy:**

1. **[Employer Name's]** policy applies to all employees, applicants for employment, and interns, whether paid or unpaid. The policy also applies to additional covered individuals. It applies to anyone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services in our workplace. These individuals include persons commonly referred to as independent contractors, gig workers, and temporary workers. Also included are persons providing equipment repair, cleaning services, or any other services through a contract with **[Employer Name]**. For the remainder of this policy, we will use the term "covered individual" to refer to these individuals who are not direct employees of the company.
2. Sexual harassment is unacceptable. Any employee or covered individual who engages in sexual harassment, discrimination, or retaliation will be subject to action, including appropriate discipline for employees. In New York, harassment does not need to be severe or pervasive to be illegal. Employees and covered individuals should not feel discouraged from reporting harassment because they do not believe it is bad enough, or conversely because they do not want to see a colleague fired over less severe behavior. Just as harassment can happen in different degrees, potential discipline for engaging in sexual harassment will depend on the degree of harassment and might include education and counseling. It may lead to suspension or termination when appropriate.
3. Retaliation is prohibited. Any employee or covered individual that reports an incident of sexual harassment or discrimination, provides information, or otherwise assists in any investigation of a sexual harassment or discrimination complaint is protected from retaliation. No one should fear reporting sexual harassment if they believe it has occurred. So long as a person reasonably believes that they have witnessed or experienced such behavior, they are protected from retaliation. Any employee of **[Employer Name]** who retaliates against anyone involved in a sexual harassment or discrimination investigation will face disciplinary action, up to and including termination. All employees and covered individuals working in the workplace who believe they have been subject to such retaliation should inform a supervisor, manager, or **[name of appropriate person]**. All employees and covered individuals who believe they have been a target of such retaliation may also seek relief from government agencies, as explained below in the section on [Legal Protections](#).
4. Discrimination of any kind, including sexual harassment, is a violation of our policies, is unlawful, and may subject **[Employer Name]** to liability for the harm experienced by targets of discrimination. Harassers may also be individually subject to liability and employers or supervisors who fail to report or act on harassment may be liable for aiding and abetting such behavior. Employees at every level who engage in harassment or discrimination, including managers and supervisors who engage in harassment or discrimination or who allow such behavior to continue, will be penalized for such misconduct.
5. **[Employer Name]** will conduct a prompt and thorough investigation that is fair to all parties. An investigation will happen whenever management receives a complaint about discrimination or sexual harassment, or when it otherwise knows of possible discrimination or sexual harassment occurring. **[Employer Name]** will keep the investigation confidential to the extent possible. If an investigation ends with the finding that discrimination or sexual harassment occurred, **[Employer Name]** will act as required. In addition to any required discipline, **[Employer Name]** will also take steps to ensure a safe work environment for the employee(s) who experienced the discrimination

or harassment. All employees, including managers and supervisors, are required to cooperate with any internal investigation of discrimination or sexual harassment.

6. All employees and covered individuals are encouraged to report any harassment or behaviors that violate this policy. All employees will have access to a complaint form to report harassment and file complaints. Use of this form is not required. For anyone who would rather make a complaint verbally, or by email, these complaints will be treated with equal priority. An employee or covered individual who prefers not to report harassment to their manager or employer may instead report harassment to the New York State Division of Human Rights and/or the United States Equal Employment Opportunity Commission. Complaints may be made to both the employer and a government agency.

Managers and supervisors are **required** to report any complaint that they receive, or any harassment that they observe or become aware of, to **[person or office designated]**.

7. This policy applies to all employees and covered individuals, such as contractors, subcontractors, vendors, consultants, or anyone providing services in the workplace, and all must follow and uphold this policy. This policy must be provided to all employees in person or digitally through email upon hiring and will be posted prominently in all work locations. For those offices operating remotely, in addition to sending the policy through email, it will also be available on the organization's shared network.

## **What Is Sexual Harassment?**

Sexual harassment is a form of gender-based discrimination that is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender. Sexual harassment is not limited to sexual contact, touching, or expressions of a sexually suggestive nature. Sexual harassment includes all forms of gender discrimination including gender role stereotyping and treating employees differently because of their gender.

Understanding gender diversity is essential to recognizing sexual harassment because discrimination based on sex stereotypes, gender expression and perceived identity are all forms of sexual harassment. The gender spectrum is nuanced, but the three most common ways people identify are cisgender, transgender, and non-binary. A cisgender person is someone whose gender aligns with the sex they were assigned at birth. Generally, this gender will align with the binary of male or female. A transgender person is someone whose gender is different than the sex they were assigned at birth. A non-binary person does not identify exclusively as a man or a woman. They might identify as both, somewhere in between, or completely outside the gender binary. Some may identify as transgender, but not all do. Respecting an individual's gender identity is a necessary first step in establishing a safe workplace.

Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment does not need to be severe or pervasive to be illegal. It can be any harassing behavior that rises above petty slights or trivial inconveniences. Every instance of harassment is unique to those experiencing it, and there is no single boundary between petty slights and harassing behavior. However, the Human Rights Law specifies that whether harassing conduct is considered petty or trivial is to be viewed from the standpoint of a reasonable victim of discrimination with the same protected characteristics. Generally, any behavior in which an employee or covered individual is treated worse because of their gender (perceived or actual), sexual orientation, or gender expression is considered a

violation of [**Employer Name's**] policy. The intent of the behavior, for example, making a joke, does not neutralize a harassment claim. Not intending to harass is not a defense. The impact of the behavior on a person is what counts. Sexual harassment includes any unwelcome conduct which is either directed at an individual because of that individual's gender identity or expression (perceived or actual), or is of a sexual nature when:

- The purpose or effect of this behavior unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment. The impacted person does not need to be the intended target of the sexual harassment;
- Employment depends implicitly or explicitly on accepting such unwelcome behavior; or
- Decisions regarding an individual's employment are based on an individual's acceptance to or rejection of such behavior. Such decisions can include what shifts and how many hours an employee might work, project assignments, as well as salary and promotion decisions.

There are two main types of sexual harassment:

- Behaviors that contribute to a **hostile work environment** include, but are not limited to, words, signs, jokes, pranks, intimidation, or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex, gender identity, or gender expression. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory, or discriminatory statements which an employee finds offensive or objectionable, causes an employee discomfort or humiliation, or interferes with the employee's job performance.
- Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions, or privileges of employment. This is also called **quid pro quo** harassment.

Any employee or covered individual who feels harassed is encouraged to report the behavior so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be discrimination and is covered by this policy.

### **Examples of Sexual Harassment**

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited. **This list is just a sample of behaviors and should not be considered exhaustive.** Any employee who believes they have experienced sexual harassment, even if it does not appear on this list, should feel encouraged to report it:

- Physical acts of a sexual nature, such as:
  - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body, or poking another employee's body; or
  - Rape, sexual battery, molestation, or attempts to commit these assaults, which may be considered criminal conduct outside the scope of this policy (please contact local law enforcement if you wish to pursue criminal charges).
- Unwanted sexual comments, advances, or propositions, such as:
  - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion, or other job benefits;

- This can include sexual advances/pressure placed on a service industry employee by customers or clients, especially those industries where hospitality and tips are essential to the customer/employee relationship;
  - Subtle or obvious pressure for unwelcome sexual activities; or
  - Repeated requests for dates or romantic gestures, including gift-giving.
- Sexually oriented gestures, noises, remarks or jokes, or questions and comments about a person's sexuality, sexual experience, or romantic history which create a hostile work environment. This is not limited to interactions in person. Remarks made over virtual platforms and in messaging apps when employees are working remotely can create a similarly hostile work environment.
- Sex stereotyping, which occurs when someone's conduct or personality traits are judged based on other people's ideas or perceptions about how individuals of a particular sex should act or look:
  - Remarks regarding an employee's gender expression, such as wearing a garment typically associated with a different gender identity; or
  - Asking employees to take on traditionally gendered roles, such as asking a woman to serve meeting refreshments when it is not part of, or appropriate to, her job duties.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
  - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace;
  - This also extends to the virtual or remote workspace and can include having such materials visible in the background of one's home during a virtual meeting.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity, or gender expression, such as:
  - Interfering with, destroying, or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
  - Sabotaging an individual's work;
  - Bullying, yelling, or name-calling;
  - Intentional misuse of an individual's preferred pronouns; or
  - Creating different expectations for individuals based on their perceived identities:
    - Dress codes that place more emphasis on women's attire;
    - Leaving parents/caregivers out of meetings.

### **Who Can be a Target of Sexual Harassment?**

Sexual harassment can occur between any individuals, regardless of their sex or gender. Harassment does not have to be between members of the opposite sex or gender. New York Law protects employees and all covered individuals described earlier in the policy. **Harassers can be anyone in the workplace.** A supervisor, a supervisee, or a coworker can all be harassers. Anyone else in the workplace can also be harassers including an independent contractor, contract worker, vendor, client, customer, patient, constituent, or visitor.

Sexual harassment does not happen in a vacuum and discrimination experienced by an employee can be impacted by biases and identities beyond an individual's gender. For example:

- Placing different demands or expectations on black women employees than white women employees can be both racial and gender discrimination;
- An individual's immigration status may lead to perceptions of vulnerability and increased concerns around illegal retaliation for reporting sexual harassment; or
- Past experiences as a survivor of domestic or sexual violence may lead an individual to feel re-traumatized by someone's behaviors in the workplace.

Individuals bring personal history with them to the workplace that might impact how they interact with certain behavior. It is especially important for all employees to be aware of how words or actions might impact someone with a different experience than their own in the interest of creating a safe and equitable workplace.

### **Where Can Sexual Harassment Occur?**

Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer or industry sponsored events or parties. Calls, texts, emails, and social media usage by employees or covered individuals can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices, or during non-work hours.

Sexual harassment can occur when employees are working remotely from home as well. Any behaviors outlined above that leave an employee feeling uncomfortable, humiliated, or unable to meet their job requirements constitute harassment even if the employee or covered individual is at home when the harassment occurs. Harassment can happen on virtual meeting platforms, in messaging apps, and after working hours between personal cell phones.

### **Retaliation**

Retaliation is unlawful and is any action by an employer or supervisor that punishes an individual upon learning of a harassment claim, that seeks to discourage a worker or covered individual from making a formal complaint or supporting a sexual harassment or discrimination claim, or that punishes those who have come forward. These actions need not be job-related or occur in the workplace to constitute unlawful retaliation. For example, threats of physical violence outside of work hours or disparaging someone on social media would be covered as retaliation under this policy.

Examples of retaliation may include, but are not limited to:

- Demotion, termination, denying accommodations, reduced hours, or the assignment of less desirable shifts;
- Publicly releasing personnel files;
- Refusing to provide a reference or providing an unwarranted negative reference;
- Labeling an employee as "difficult" and excluding them from projects to avoid "drama";
- Undermining an individual's immigration status; or
- Reducing work responsibilities, passing over for a promotion, or moving an individual's desk to a less desirable office location.

Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in "protected activity." Protected activity occurs when a person has:

- Made a complaint of sexual harassment or discrimination, either internally or with any government agency;
- Testified or assisted in a proceeding involving sexual harassment or discrimination under the Human Rights Law or any other anti-discrimination law;
- Opposed sexual harassment or discrimination by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of suspected harassment;
- Reported that another employee has been sexually harassed or discriminated against; or
- Encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

## **Reporting Sexual Harassment**

**Everyone must work toward preventing sexual harassment, but leadership matters. Supervisors and managers have a special responsibility to make sure employees feel safe at work and that workplaces are free from harassment and discrimination.** Any employee or covered individual is encouraged to report harassing or discriminatory behavior to a supervisor, manager or **[person or office designated]**. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager, or **[person or office designated]**.

Reports of sexual harassment may be made verbally or in writing. A written complaint form is attached to this policy if an employee would like to use it, but the complaint form is not required. Employees who are reporting sexual harassment on behalf of other employees may use the complaint form and should note that it is on another employee's behalf. A verbal or otherwise written complaint (such as an email) on behalf of oneself or another employee is also acceptable.

Employees and covered individuals who believe they have been a target of sexual harassment may at any time seek assistance in additional available forums, as explained below in the section on [Legal Protections](#).

## **Supervisory Responsibilities**

Supervisors and managers have a responsibility to prevent sexual harassment and discrimination. All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing or discriminatory behavior, or for any reason suspect that sexual harassment or discrimination is occurring, are required to report such suspected sexual harassment to **[person or office designated]**. Managers and supervisors should not be passive and wait for an employee to make a claim of harassment. If they observe such behavior, they must act.

Supervisors and managers can be disciplined if they engage in sexually harassing or discriminatory behavior themselves. Supervisors and managers can also be disciplined for failing to report suspected sexual harassment or allowing sexual harassment to continue after they know about it.

Supervisors and managers will also be subject to discipline for engaging in any retaliation.

While supervisors and managers have a responsibility to report harassment and discrimination, supervisors and managers must be mindful of the impact that harassment and a subsequent investigation has on victims. Being identified as a possible victim of harassment and questioned about harassment and discrimination can be intimidating, uncomfortable and re-traumatizing for individuals. Supervisors and managers must accommodate the needs of individuals who have experienced harassment to ensure the workplace is safe, supportive, and free from retaliation for them during and after any investigation.

## **Bystander Intervention**

Any employee witnessing harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to harassment is **required** to report it. There are five standard methods of bystander intervention that can be used when anyone witnesses harassment or discrimination and wants to help.

1. A bystander can interrupt the harassment by engaging with the individual being harassed and distracting them from the harassing behavior;
2. A bystander who feels unsafe interrupting on their own can ask a third party to help intervene in the harassment;
3. A bystander can record or take notes on the harassment incident to benefit a future investigation;
4. A bystander might check in with the person who has been harassed after the incident, see how they are feeling and let them know the behavior was not ok; and
5. If a bystander feels safe, they can confront the harassers and name the behavior as inappropriate. When confronting harassment, physically assaulting an individual is never an appropriate response.

Though not exhaustive, and dependent on the circumstances, the guidelines above can serve as a brief guide of how to react when witnessing harassment in the workplace. Any employee witnessing harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to harassment is required to report it.

## **Complaints and Investigations of Sexual Harassment**

All complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. An investigation of any complaint, information, or knowledge of suspected sexual harassment will be prompt, thorough, and started and completed as soon as possible. The investigation will be kept confidential to the extent possible. All individuals involved, including those making a harassment claim, witnesses, and alleged harassers deserve a fair and impartial investigation.

Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. **[Employer Name]** will take disciplinary action against anyone engaging in retaliation against employees who file complaints, support another's complaint, or participate in harassment investigations.

**[Employer Name]** recognizes that participating in a harassment investigation can be uncomfortable and has the potential to re-traumatize an employee. Those receiving claims and leading investigations will handle complaints and questions with sensitivity toward those participating.

While the process may vary from case to case, investigations will be done in accordance with the following steps. Upon receipt of a complaint, **[person or office designated]**:

1. Will conduct a prompt review of the allegations, assess the appropriate scope of the investigation, and take any interim actions (for example, instructing the individual(s) about whom the complaint was made to refrain from communications with the individual(s) who reported the harassment), as appropriate. If complaint is verbal, request that the individual completes the complaint form in writing. If the person reporting prefers not to fill out the form, **[person or office designated]** will prepare a complaint form or equivalent documentation based on the verbal reporting;
2. Will take steps to obtain, review, and preserve documents sufficient to assess the allegations, including documents, emails or phone records that may be relevant to the investigation. **[Person or office delegated]** will consider and implement appropriate document request, review, and preservation measures, including for electronic communications;
3. Will seek to interview all parties involved, including any relevant witnesses;
4. Will create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
  - a. A list of all documents reviewed, along with a detailed summary of relevant documents;
  - b. A list of names of those interviewed, along with a detailed summary of their statements;
  - c. A timeline of events;
  - d. A summary of any prior relevant incidents disclosed in the investigation, reported or unreported; and
  - e. The basis for the decision and final resolution of the complaint, together with any corrective action(s).
5. Will keep the written documentation and associated documents in a secure and confidential location;
6. Will promptly notify the individual(s) who reported the harassment and the individual(s) about whom the complaint was made that the investigation has been completed and implement any corrective actions identified in the written document; and
7. Will inform the individual(s) who reported of the right to file a complaint or charge externally as outlined in the next section.

## **Legal Protections and External Remedies**

Sexual harassment is not only prohibited by **[Employer Name]**, but it is also prohibited by state, federal, and, where applicable, local law.

The internal process outlined in the policy above is one way for employees to report sexual harassment. Employees and covered individuals may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may also seek the legal advice of an attorney.

## **New York State Division of Human Rights:**

The New York State Human Rights Law (HRL), N.Y. Executive Law, art. 15, § 290 *et seq.*, applies to all employers in New York State and protects employees and covered individuals, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the New York State Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints of sexual harassment filed with DHR may be submitted any time **within three years** of the harassment. If an individual does not file a complaint with DHR, they can bring a lawsuit directly in state court under the Human Rights Law, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to **[Employer Name]** does not extend your time to file with DHR or in court. The three years are counted from the date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases receive a public hearing before an administrative law judge. If sexual harassment is found at the hearing, DHR has the power to award relief. Relief varies but it may include requiring your employer to take action to stop the harassment, or repair the damage caused by the harassment, including paying of monetary damages, punitive damages, attorney's fees, and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: [www.dhr.ny.gov](http://www.dhr.ny.gov).

Go to [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint with DHR. The website has a digital complaint process that can be completed on your computer or mobile device from start to finish. The website has a complaint form that can be downloaded, filled out, and mailed to DHR as well as a form that can be submitted online. The website also contains contact information for DHR's regional offices across New York State.

Call the DHR sexual harassment hotline at **1(800) HARASS3** for more information about filing a sexual harassment complaint. This hotline can also provide you with a referral to a volunteer attorney experienced in sexual harassment matters who can provide you with limited free assistance and counsel over the phone.

## **The United States Equal Employment Opportunity Commission:**

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act, 42 U.S.C. § 2000e *et seq.* An individual can file a complaint with the EEOC anytime within 300 days from the most recent incident of harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint and determine whether there is reasonable cause to believe that discrimination has occurred. If the EEOC determines that the law may have been violated, the EEOC will try to reach a voluntary settlement with the employer. If the EEOC cannot reach a settlement, the EEOC (or the Department of Justice in certain cases) will decide whether to file a lawsuit. The EEOC will issue a Notice of Right to Sue permitting

workers to file a lawsuit in federal court if the EEOC closes the charge, is unable to determine if federal employment discrimination laws may have been violated, or believes that unlawful discrimination occurred by does not file a lawsuit.

Individuals may obtain relief in mediation, settlement or conciliation. In addition, federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov).

If an individual filed an administrative complaint with the New York State Division of Human Rights, DHR will automatically file the complaint with the EEOC to preserve the right to proceed in federal court.

### **Local Protections**

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment or discrimination with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 22 Reade Street, 1st Floor, New York, New York; call 311 or (212) 306-7450; or visit [www.nyc.gov/html/cchr/html/home/home.shtml](http://www.nyc.gov/html/cchr/html/home/home.shtml).

### **Contact the Local Police Department**

If the harassment involves unwanted physical touching, coerced physical confinement, or coerced sex acts, the conduct may constitute a crime. Those wishing to pursue criminal charges are encouraged to contact their local police department.

## **Conclusion**

The policy outlined above is aimed at providing employees at **[Employer Name]** and covered individuals an understanding of their right to a discrimination and harassment free workplace. All employees should feel safe at work. Though the focus of this policy is on sexual harassment and gender discrimination, the New York State Human Rights law protects against discrimination in several protected classes including sex, sexual orientation, gender identity or expression, age, race, creed, color, national origin, military status, disability, pre-disposing genetic characteristics, familial status, marital status, criminal history, or domestic violence survivor status. The prevention policies outlined above should be considered applicable to all protected classes.

# Sexual Harassment Prevention Notice



Combating  
Sexual Harassment

## Sexual harassment is against the law.

All employees have a legal right to a workplace free from sexual harassment, and [ ] is committed to maintaining a workplace free from sexual harassment.

Per New York State Law, [ ] has a sexual harassment prevention policy in place that protects you. This policy applies to all employees, paid or unpaid interns and non-employees in our workplace, regardless of immigration status. You are receiving this notice, as required by law, either at the time of hiring or during your annual sexual harassment prevention training.

If you believe you have been subjected to or witnessed sexual harassment, you are encouraged to report the harassment to a supervisor, manager or [ ] so we can take action.

**Our complete policy**     is enclosed/attached     may be found at the link below:

\_\_\_\_\_

**Our training materials**     are enclosed/attached     may be found at the link below:

\_\_\_\_\_

**Our Complaint Form**     is enclosed/attached     may be found at the link below:

\_\_\_\_\_

**If you have questions or to make a complaint, please contact:**

[ ]

[ ]

For more information and additional resources, please visit:  
[www.ny.gov/programs/combating-sexual-harassment-workplace](http://www.ny.gov/programs/combating-sexual-harassment-workplace)

# Complaint Form for Reporting Sexual Harassment



Combating Sexual Harassment

[Name of employer]

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form to report alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment or gender discrimination, you are encouraged, but not required, to complete this form and submit it to [person or office designated; contact information for designee or office; how the form can be submitted]. No employee will be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, your employer should complete this form, provide you with a copy, and follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

For additional resources, visit: [ny.gov/programs/combating-sexual-harassment-workplace](https://ny.gov/programs/combating-sexual-harassment-workplace)

## COMPLAINANT INFORMATION

Name:

Work Address:

Work Phone:

Job Title:

Email:

Select Preferred Communication Method:

Email  Phone  In person

## SUPERVISORY INFORMATION

Immediate Supervisor's Name:

Title:

Work Phone:

Work Address:

*Adoption of this form does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.*

## COMPLAINT INFORMATION

1. Your complaint of sexual harassment is made about:

Name:

Title:

Work Address:

Work Phone:

Relationship to you: Supervisor Supervisee Co-Worker Other (please specify)

2. Please describe what happened and include as many details as possible. You may use additional sheets of paper if necessary. If you have any relevant documents, please include them. .

3. Date(s) sexual harassment occurred:

Is the sexual harassment continuing? Yes No

4. If possible, please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

*The last question is optional, but may help the investigation.*

5. Have you previously provided information (verbal or written) about related incidents? If yes, when and to whom did you provide information?

This is not required, but if you have retained legal counsel and would like us to work with them, please provide their contact information.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **Instructions for Employers**

If you receive a complaint about alleged sexual harassment, follow your sexual harassment prevention policy.

An investigation involves:

- Speaking with the employee
- Speaking with the alleged harasser
- Interviewing witnesses
- Collecting and reviewing any related documents

While the process may vary from case to case, all allegations should be investigated promptly and resolved as quickly as possible. The investigation should be kept confidential to the extent possible.

Sexual harassment occurs on a spectrum and employers are encouraged to view all potential allegations with an open mind. Disciplinary action should meet the severity of the alleged actions.

Employers should document the findings of the investigation and basis for your decision along with any corrective actions taken. Notify the employee and the individual(s) against whom the report was made of the investigation's outcome and corrective actions taken. This may be done via email.

NEW YORK LABOR LAW 201-g  
NEW YORK STATE SEXUAL HARASSMENT PREVENTION  
FOR NEW YORK'S MODEL TRAINING DECKS AND SCRIPTS THAT  
COMPLY WITH NYS LABOR LAW  
SEPTEMBER 2023

<https://www.ny.gov/combating-sexual-harassment-workplace/sexual-harassment-prevention-model-policy-and-training>