

TITLE IX

An Introduction to the New Regulations

PRESENTED BY

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The New Regulations



Effective August 1, 2024

→ All incidents occurring **on or after August 1, 2024, are** subject to new regulations.

→ All incidents occurring **prior to August 1, 2024,** are subject to 2020 regulations (i.e., the process we're currently using).

Major Themes



- New regulations cover more conduct, including sexual orientation and gender identity.
- More flexible, less document-heavy investigation process
- More responsibilities for the Title IX Coordinator
- Two processes for higher education institutions
- Protections for pregnant students and employees
- Lots of training for staff



**What conduct is covered
under the regulations?**



What conduct is covered
under the regulations?

Sex Discrimination

*The rules apply to **ALL** reports of sex discrimination or harassment: different treatment, disparate impact, failure to accommodate (pregnancy) & retaliation.*

Sex Discrimination Includes:



Different Treatment

- Sex Stereotypes
- Sex Characteristics
- Pregnancy or Related Conditions
- Sexual Orientation
- Gender Identity

Sex-Based Harassment

- *Quid pro quo*
- Hostile Environment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

Sexual Harassment

34 CFR 106.2 states that sex-based conduct meets the following 3 definitions and criteria.



Quid Pro Quo

1. 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 aid, benefit, or service on a person's participation in unwelcome sexual conduct.

Sexual Harassment

34 CFR 106.2 states that sex-based conduct meets the following 3 definitions and criteria.



Hostile Environment

2. 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).

Hostile Environment Factors



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

Sexual Harassment

34 CFR 106.2 states that sex-based conduct meets the following 3 definitions and criteria.

3. Sexual Assault, dating violence, domestic violence or stalking (as defined in Clery Act/VAWA)

Gender Identity Discrimination



106.31 states as follows: Adopting 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.

This may conflict with state laws requiring restroom and locker room use on the basis of biological sex. Expect litigation regarding this issue.

Jurisdiction



Conduct that is subject to the district's disciplinary authority.

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

Important Definitions and Concepts

COMPLAINT



COMPLAINANT



RESPONDENT



PARTY



Important Definitions and Concepts

COMPLAINT

An *oral or written* request to the district that objectively can be understood as a request for the district to investigate and make a determination about alleged discrimination under Title IX.

COMPLAINANT

RESPONDENT

PARTY

Important Definitions and Concepts

COMPLAINT

COMPLAINANT

1. A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX, 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 and was participating or attempting to participate in the district's program or activity at the time of the alleged sex discrimination.

RESPONDENT

PARTY

Important Definitions and Concepts

COMPLAINT

COMPLAINANT

RESPONDENT

A person who is alleged to have violated the recipient's prohibitions on sex discrimination.

PARTY

Important Definitions and Concepts

COMPLAINT

COMPLAINANT

RESPONDENT

PARTY

Complainant or respondent.

Important Definitions and Concepts

CONFIDENTIAL EMPLOYEES



RELEVANT



SUPPORT MEASURES



Important Definitions and Concepts

CONFIDENTIAL EMPLOYEES

1. An employee of the district whose communications are privileged or confidential under Federal or State law (only when information received when acting within scope of duties that privilege applies).
2. An employee of the district whom the district has designated as a confidential for the purpose of providing services to persons related to sex discrimination (only confidential when receive information in this role).
3. Employee of postsecondary institution who is conducting an Institutional Review Board-approved research study designed to gather information about sex discrimination (only confidential when receiving information in this role).

RELEVANT

SUPPORT MEASURES

Important Definitions and Concepts

CONFIDENTIAL EMPLOYEES

RELEVANT

Related to the allegations of sex discrimination under investigation.

SUPPORT MEASURES

Important Definitions and Concepts

CONFIDENTIAL EMPLOYEES

RELEVANT

SUPPORT MEASURES

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 either party to:

1. Restore or preserve that party's access to the district's education program or activity, including measures that are designed to protect the safety of the parties or the district's educational environment, or and designed to:
2. Provide support during the district's grievance procedures under 106.45, and if applicable 106.46, or during the informal resolution process under 106.44(k).

Title IX Training

All Employees



Must be trained upon hiring and annually thereafter on:

- District's obligation to address sex discrimination in programs and activities
- Scope of conduct constituting sex discrimination, including sex-based harassment
- All notification and information requirements under 106.40(b)(2) and 106.44

Must be able to verify that employee completed training.

Title IX Training

*Investigators,
decisionmakers and
others responsible for
implementing grievance
procedures or
modifying/terminating
supportive measures*



Must have training on:

- District's obligations under 106.44 – **monitoring and notification**
- District's obligations under 106.45, and if applicable, 106.46 – **grievance procedures**

Title IX Training

*Investigators,
decisionmakers and
others responsible for
implementing grievance
procedures or
modifying/terminating
supportive measures*



- Serving impartially
- Meaning and application of the term “relevant” regarding evidence, and the evidence impermissible regardless of the relevance.

Title IX Training

Informal Resolution Facilitators

In addition to the district's obligations under 106.44 – **monitoring and notification** – informal resolution facilitators must also have training on the rules and practices for informal resolution and how to serve impartially.



Title IX Training

TIX-C & Designees



In addition to all the before mentioned training, must also have training on:

- Basic responsibilities under 106.8(a)
- Responsibilities when notified of student's pregnancy or related conditions under 106.40(b)(3)
- District's recordkeeping system and requirements under 106.8(f)
- Any other training necessary to coordinate district's compliance with Title IX.

What are schools required to do?

**Section
106.8**

Coordinator

**Policies
& Procedures**

**Section
106.8**

Notice of Nondiscrimination

Coordinator

Designate at least one employee to coordinate compliance with Title IX.

Section 106.8

Policies & Procedures

Adopt, publish, and implement nondiscrimination policy & grievance procedure.

Notice of Nondiscrimination

Provide notice of nondiscrimination to students, parents/guardians/other authorized representatives, employees, etc.

Basic Requirements



Statement of nondiscrimination:

Include on website and each handbook, catalog, announcement, bulletin, and application form made available.

Title IX Coordinator – Responsibilities



- Coordinate district's efforts to comply with Title IX, including:
 - Designating and coordinating Title IX team
 - Ensure proper training received and documented
 - Ensure district has Title IX policy and procedures, and nondiscrimination statement published properly
 - Provide notice and coordinate responsibilities to pregnant students
 - Monitor for barriers to reporting and take steps to address such barriers
 - Oversee recordkeeping requirements

Title IX Coordinator – Responsibilities



- Take steps to promptly and effectively end sex discrimination and prevent its recurrence, including:
 - Treat complainant and respondent equitably
 - Offer and coordinate supportive measures
 - Notify complainant of grievance procedures
 - Initiate grievance procedures or informal resolution (IR) process
 - Consult with IDEA or 504 teams

Major Stages of an Investigation

1 EVALUATION

Determination of whether to dismiss or investigate.

2 INVESTIGATION

Including credibility assessments.

3 DETERMINATION

4 APPEAL, IF ANY



1 Notice



When is a district required to respond to violations of the above-referenced standards?

2 Evaluation



What is a district required to do when it has “notice?”

3 Investigation



What are the requirements of the investigation phase?

4 Determination



What is included in the decision?

5 Appeal



On what bases must an appeal be provided?

1

Notice



When is a district required to respond to allegations of sex discrimination?



Notice (Higher Ed)



If an employee has ***information about conduct that reasonably may constitute sex discrimination*** under Title IX, they must take the following actions based on their employee status:

Notice (Higher Ed)



Position	Learned from	TIX-C Notification	Give contact Info for TIX-C
Confidential Employees	Student/Employee	✗	✓
Authority to institute corrective measures	Student/Employee	✓	✗
Administrative Leadership, Teaching, & Learning	Student/Employee	✓	✗
All other employees	Student/Employee	Choose Either	



Institutional Notice (Higher Ed)



Non-confidential employees who either have (1) authority to institute corrective measures, or (2) responsibility for administrative leadership, teaching, or advising must notify the Title IX Coordinator.



Institutional Notice (Higher Ed)



All other non-confidential employees must either:

- Notify the Title IX Coordinator, or
- Provide the contact information of the Title IX Coordinator and information about how to make a complaint of sex discrimination to any person who provides the employee with the information.

Student Employees (Higher Ed)



A postsecondary institution must reasonably determine and specify whether and under what circumstances a person who is both a student and an employee is subject to the requirements of paragraph (c)(2) of this section.

106.44(c)(3).

Confidential Employees



If informed of conduct that reasonably may constitute sex discrimination, confidential employees must:

- Explain their confidential status, including when they may not be required to notify the Title IX Coordinator of conduct that reasonably may violate Title IX
- Explain how to contact Title IX coordinator and how to file a complaint.
- Explain that Title IX Coordinator may be able to offer and coordinate supportive measures and initiate informal resolution or an investigation.

Confidential Employees



A recipient must notify all participants in the recipient's education program or activity of how to contact its confidential employees, if any

106.44(d)(1).

2 *Evaluation*



What is a district required to do when it has “notice?”


Two Processes for Higher Ed



	106.45 (slimmed-down process)	106.46 (similar to 2020 process)
K-12	Sex-discrimination & sex-based harassment.	Never
Higher Ed	<ul style="list-style-type: none">Sex discrimination that is <u>not</u> sexual harassmentSex-based harassment where neither C nor R are students.	Sex-based harassment where at least one party is a student.

Who Can Make a Complaint?



- 
- A large, dark blue silhouette of a person is positioned on the left side of the slide. It consists of a solid circle for the head and a solid, rounded shape for the torso and shoulders.
1. Complainant
 2. Parent, guardian, or other authorized legal representative with legal right to act on complainant's behalf
 3. Title IX Coordinator (after considering factors)

Who Can Make a Complaint?



4. Other than sex-based harassment:

- Student or employee
- persons other than student or employee who was participating or attempting to participate in education program or activity when alleged discrimination occurred



Title IX Coordinator



Notice Received

When the Title IX Coordinator is notified of conduct that *reasonably may constitute sex discrimination under Title IX*, they must:

1. Treat complainant and respondent equitably.
2. Notify the **complainant**, or if complainant unknown, the person who reported the conduct, of the applicable grievance procedures and IR process, if appropriate.
3. Offer and coordinate supportive measures for the complainant.

Title IX Coordinator



Complaint Received

1. Treat complainant and respondent equitably.
2. Notify the respondent of the applicable grievance procedures *and* the informal resolution process, if appropriate.
3. Offer and coordinate supportive measures to both parties.
4. Initiate grievance procedures or informal resolution or dismiss the complaint (*see dismissal procedures below*).

Title IX Coordinator



No Complaint

TIX-C must determine whether to open a complaint if:

- (1) no complaint is filed,
- (2) any or all allegations are withdrawn,
- (3) absence of or termination of an informal resolution process (if no complaint has been filed)

Title IX Coordinator Determination



When determining whether to file a complaint on behalf of a complainant, the Title IX Coordinator must make a fact-specific inquiry and consider, at a minimum, the following factors:

1. The complainant's request not to proceed with initiation of a complaint.
2. The complainant's reasonable safety concerns regarding initiation of a complaint.
3. The risk that additional acts of sex discrimination would occur if a complaint is not initiated.

Title IX Coordinator Determination



4. The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.
5. The age and relationship of the parties, including whether the respondent is an employee of the recipient.
6. The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals.

Title IX Coordinator Determination



7. The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred.
8. Whether the recipient could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures.

Title IX Coordinator Determination



If, after considering 8 factors listed in 106.44(f)(v)(A) and other relevant factors, the Title IX Coordinator determines that the conduct as alleged:

1. Presents an imminent and serious threat to the health or safety of the complainant or other person, or
2. That the conduct as alleged prevents the recipient from ensuring equal access on the basis of sex to its education program or activity,

the Title IX Coordinator may initiate a complaint.

Title IX Coordinator Determination



If the Title IX Coordinator determines to initiate a complaint on their own, they must

- (1) notify the complainant prior to doing so, and
- (2) appropriately address reasonable concerns about the complainant's safety or the safety of others, including by providing supportive measures.

Dismissal – Reasons



May dismiss complaint for any of the four following reasons:

1. Unable to identify respondent after taking reasonable steps to do so.
2. Respondent not participating in education program or activity and not employed by district.
3. Complainant voluntarily withdraws any or all allegations, the TIX-C declines to initiate a complaint, *and* without withdrawn allegations conduct alleged would not constitute sex discrimination.
4. Even if proven true, would not constitute sex discrimination under Title IX (must make reasonable efforts to clarify allegations).

Dismissal – Notice (106.45)



Notice of Dismissal

Promptly notify the complainant of the basis for dismissal (and respondent *if notified of complaint prior to dismissal*).

Notice of Appeal

Notify complainant (and respondent if already notified of complaint) that dismissal may be appealed on following bases:

1. Procedural irregularity that would change outcome;
2. New evidence that would change outcome and was not reasonably available at dismissal;
3. Conflict of interest or bias

Dismissal – Notice (106.46)



When dismissing a complaint of sex-based harassment involving a student party:

- Written notice to complainant of dismissal and basis for dismissal, and if respondent was notified of complaint prior to dismissal, provide *simultaneous written notice* to both parties.
- Voluntary withdrawals: If dismissing based on the complainant's withdrawal of complaint or allegations, obtain complainant's voluntary withdrawal in writing.

Dismissal – Appeals



1. Notify parties when an appeal is filed and provide notice of allegations in complaint *if notice was not provided to all parties prior to dismissal*.
2. Implement appeal procedures equally.
3. Ensure appeal decisionmaker did not take part in investigation or dismissal.
4. Ensure appeal decisionmaker is appropriately trained.
5. Provide both parties an equal opportunity to make a statement in support of, or challenging, the outcome.
6. Notify all parties of the result and rationale of the result.

Appeal – 106.46



Must provide notice to the parties in writing of the following:

- When an appeal is filed and implement procedures equally.
- The parties' right to a reasonable and equal opportunity to make a statement in support or challenge of the outcome.
- The result of the appeal and rationale for the result.

Dismissal – Other Obligations



1. Offer supportive measures to complainant as appropriate.
2. If respondent is notified and the dismissal is because of a complainant's voluntary withdrawal of allegations or a determination that, even if true, would not violate Title IX, offer supportive measures to respondent.
3. Require TIX-C to take prompt and effective steps to ensure sex discrimination does not continue or recur.

Consolidation



A district may consolidate complaints 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.***

Postsecondary: If one of the complaints is a complaint of sex-based harassment involving a student party, then grievance procedures for investigating consolidated complaint must comply with 106.46.

Supportive Measures



The district **must** offer and coordinate supportive measures, as appropriate. Supportive measures may vary depending on what the district deems to be **reasonably available**.

Examples:

- Counseling
- Extensions of deadlines and other course-related adjustments.
- Campus escort services
- Increased security and monitoring of certain areas of the campus
- Restrictions on contact applied to one or more parties
- Leaves of absence
- Voluntary/involuntary changes in class, work, housing or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative
- Training and education programs related to sex-based harassment

Supportive Measures



- Must not unreasonably burden either party
- Must be designed to protect the safety of the parties or the district's educational program, or to provide support during the grievance process or informal resolution
- Not for punitive or disciplinary purposes.

106.44(g)

Supportive Measures



Opportunity to Challenge

Must provide complainant or respondent ***with a timely opportunity to seek, from an appropriate and impartial employee, modification or reversal of the decision to provide, deny, modify, or terminate supportive measures applicable to them, and to seek modification or termination of a supportive measure if circumstances change materially.***

Impartial Employee – Someone other than the employee who made the decision and must have authority to modify/reverse if it is decided that the supportive measure decision was inconsistent with the definition of supportive measures in 106.2.

Supportive Measures



Privacy

May not disclose information about supportive measures to anyone else to whom they apply, including another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity.

Supportive Measures - Students with Disabilities



K-12 Schools

If either party is on an IEP or 504 plan, TIX-C **must** consult with “one or more members, as appropriate” of the IEP team or 504 team “to determine how to comply with the” IDEA or Section 504 while implementing supportive measures.

Postsecondary Schools

If either party is a student with a disability, institution **may** consult with ADA office “to determine how to comply” with Section 504 while implementing supportive measures.

Emergency Removal



May remove a respondent from the education program or activity on an emergency basis if district:

- Undertakes an individualized safety and risk analysis.
- Determines that an imminent and serious threat to the *health or safety* of a complainant or any students, employees, or other persons from the allegations of sex discrimination justifies removal.
- Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

A removal cannot violate the IDEA, Section 504 or the ADA.

Administrative Leave



A district can still place an employee on administrative leave during an investigation.

Informal Resolution



- When: Any time prior to making a determination, even prior to complaint, but *never when allegation that employee engaged in sex-based harassment against K-12 student*.
- District Discretion: TIX-C has discretion to offer or not offer.
- Cannot Pressure: May not pressure or require parties to pursue IR.
- Voluntary: Must be **voluntary** and **cannot require waiver** of the right to an investigation and determination of a complaint.

Informal Resolution



Circumstances when a school district may decline to allow IR include, but aren't limited to, when the district determines the alleged conduct would present a future risk of harm.

Informal Resolution

Prior to initiation of IR, school districts must provide the parties notice that explains:



1. The allegations.
2. The requirements of the IR process.
3. Prior to an agreement, they have the right to withdraw and initiate or resume investigation.
4. That agreement would prohibit from initiating or resuming investigation arising from same allegations.
5. The potential terms may be requested or offered, including notice that an agreement is binding only on the parties.
6. Which information the district will maintain and whether and how it could be disclosed in a grievance process.

Informal Resolution – 106.46



For allegations of sex-based harassment involving a student party, Institutions must provide all notices required under 106.44(k) for informal resolutions in writing.

Informal Resolution (Facilitator)



- Cannot be same person as investigator or decisionmaker.
- Cannot have a conflict of interest or bias against parties generally or individually.
- Must receive training in accordance with regulations.

Confidentiality



When providing supportive measures, conducting an informal resolution, or investigating, the district must not disclose the identity of a party, witness, or other participant *except*:

- When the person has provided prior written consent
- When permitted under FERPA
- As required by law
- To carry out the purposes of Title IX

3 Investigation



What steps must be taken after a complaint is opened?

Grievance Procedures



The regulations list the following basic requirements for the grievance procedures, which kick in after a complaint is filed **but before written notice of of the allegations is provided.**

- (1) Treat complainants and respondents equitably.
- (2) Require TIX-C, investigator or decisionmaker to not have a conflict of interest or bias for/against complainants or respondents generally or individually.
- (3) Include a presumption that the respondent is not responsible for the alleged conduct until a determination is made.

Grievance Procedures



- (4) Establish reasonably prompt timeframes for “major stages” of the investigation, including a process that allows for reasonable extension of timeframes for good cause with notice to parties that includes reason for the delay.
- (5) Take reasonable steps to protect privacy of parties and witnesses, but cannot restrict ability to obtain and present evidence (including speaking to witnesses); consult with family members confidential resources, or advisors; other otherwise prepare to participate.
- (6) Objective evaluation of all relevant and not otherwise impermissible evidence, including inculpatory and exculpatory evidence, and ensure credibility determination not be based on person’s status as complainant, respondent or witness.

Grievance Procedures



(7) Exclude the following types of evidence:

- Protected under a privilege (unless waived) or provided to confidential employee.
- Records maintained by a physician, psychologist or other recognized professional in connection with treatment (unless voluntary, written consent).
- Evidence that relates to complainant's sexual interest or prior sexual conduct, unless offered to prove consent or that someone other than respondent committed alleged conduct.

Grievance Procedures



(8) If adopt grievance procedures that apply to some, but not all, complaints, articulate consistent principles for determining which procedures apply.

Initiate Complaint – Notice of Allegations

106.45

Written notice not required (but recommended), and additional notice for new allegations after original notice.

1. Grievance procedures and any IR process
2. Sufficient information known at the time:
 - Party identities
 - Alleged conduct
 - Date(s) and location(s) of alleged incident(s)
3. Statement that retaliation is prohibited
4. Equal opportunity to access relevant evidence

106.46

- **In writing**
- **Sufficient time to prepare for first interview**
- **Can reasonably delay to address safety**
 1. Information from 106.45
 2. Presumption of non-responsibility
 3. Equal opportunity to present relevant evidence to decision-maker
 4. Right to advisor
 5. Equal opportunity to access relevant evidence



Further Notice Requirements

106.45

Additional allegations: If added after complaint initiated, or consolidated with another complaint, notice of new allegations to parties whose identities are known.

106.46

- **Additional Allegations:** Notice of additional allegations must be in writing.
- If applicable, include that code of conduct prohibits knowingly making false statements or submitting false evidence.

Safety Concerns – 106.46



- If institution has reasonable concerns for the safety of any person as a result of providing notice, may reasonably delay providing written notice in order to address the concern appropriately.
- Must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

Investigation Requirements – 106.45



The regulations indicate that after notice of the allegations is provided, the district must provide for adequate, reliable, and impartial investigation of complaints, which requires the district to:

- (1) Ensure that the burden is on the district – not the parties – to conduct an investigation and gather sufficient evidence.
- (2) Provide equal opportunity for parties to present relevant fact witnesses and other inculpatory or exculpatory evidence that is relevant and not otherwise impermissible.
- (3) Review all evidence and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

Investigation Requirements – 106.45



(4) Provide each party with an equal opportunity to access the evidence that is relevant to the allegations and not otherwise impermissible, in the following manner:

- (i) Provide equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of the evidence. If a description is provided, it must provide the parties an equal opportunity to access the evidence upon request
- (ii) Provide a reasonable opportunity to respond to the evidence or to the description of the evidence, and
- (iii) Take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures

Investigation Requirements – 106.46



For sex-based harassment complaints involving a student party, must provide, *in addition to the above requirements in 106.45*, the following:

- (1) Written notice of interviews: must provide written notice of interviews and meetings with sufficient time to prepare to participate, which must include:
 - Date
 - Time
 - Location
 - Participants
 - Purpose

Investigation Requirements – 106.46



- (2) Same opportunities to be accompanied with an advisor of their choice (may establish restrictions extent of participation if applied equally)
- (3) Same opportunities to, if any, be accompanied by persons other than an advisor
- (4) Discretion to allow expert witnesses, if applied equally
- (5) Written notice for reasonable extension of timeframes that provides reasons for delay.

Investigation Requirements – 106.46



(6) Provide each party and party's advisor with equal opportunity to access relevant and not otherwise impermissible evidence, in the following manner:

(i) Prior to a determination, provide parties either access to the relevant evidence or the investigative report, and if the investigative report, then the relevant and not impermissible evidence upon request. If the investigative report, equal opportunities to access evidence upon request.

Investigation Requirements – 106.46



- (ii) Must provide the parties with a reasonable opportunity to review and respond to the evidence or the investigative report prior to the determination whether sex-based harassment occurred.
 - If conducting a live hearing, then provide access to the evidence in advance of the live hearing. Institution's discretion regarding whether to allow opportunity to respond prior to, during, or both prior to and during a live hearing.
- (iii) Must take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through grievance procedures.

Investigation Requirements – 106.46



Student Employee

When a party is both a student and an employee of the institution, must make a fact-specific inquiry to determine whether this section applies. Must, at a minimum, consider:

1. Whether the party's primary relationship with the postsecondary institution is to receive an education, and
2. Whether the alleged sex-based harassment occurred while the party was performing employment-related work.

Investigation Requirements – 106.45



Evaluating Allegations & Assessing Credibility

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 (1) in dispute, and (2) relevant to evaluating one or more allegations of sex discrimination.

**If investigator is decision-maker, can do during investigative interviews.*

Investigation Requirements – 106.46



Evaluating Allegations & Assessing Credibility

Must also 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 (1) in dispute, and (2) relevant to evaluating one or more allegations of sex discrimination.

Live Hearing Optional

Investigation Requirements – 106.46



If No Live Hearing

1. Allow the investigator or decision-maker to ask such questions during individual meetings with a party or witness;
2. Allow each party to propose such questions and have them asked by the investigator or decision-maker during individual meetings; and
3. Provide each party with an audio or audiovisual recording or transcripts.

Investigation Requirements – 106.46



If Live Hearing

1. Allow each party to propose such questions and have them asked by the decision-maker; or
2. Allow each party's advisor to ask such questions of parties and witnesses (the parties may never ask such questions personally).
 - If advisor questions are permitted, and a party does not have an advisor, institution must appoint the party an advisor for advisor-conducted questioning. Must not appoint a confidential employee but may appoint an attorney.
3. Decision-maker must determine relevance before each question.

Investigation Procedures – 106.46



Procedure for decisionmaker to evaluate questions and limitations on questions:

- Decisionmakers must determine whether a proposed question is relevant and not otherwise impermissible *prior to* the question being posed and explain any decision to exclude a question as not relevant.
- If determines is relevant and otherwise permissible, must allow question to be asked, but must not permit questions that are unclear or harassing of party or witness being questioned. Must give party opportunity to revise or clarify, and if satisfactory, question must be allowed.

Investigation Procedures – 106.46



Refusal to respond to questions and inferences based on refusal:

- A decision-maker 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.
- Must not draw inferences about whether sex-based harassment occurred based solely on a party's or witness' refusal to respond to questions related to credibility.

Investigation Procedures – 106.46



Live hearings are *optional*, but if the school does have a live hearing:

It may conduct with parties physically present in same location, but at either party's request it must conduct with parties physically present but in separate locations with technology enabling decisionmaker and parties to simultaneously see and hear the party or witness that is speaking/communicating.

4 DETERMINATION

Standard of Review



Preponderance of the evidence, *unless* using clear and convincing for other comparable proceedings, then may use clear and convincing.

However, regardless of the quantity of evidence, the decisionmaker must evaluate the relevant evidence for its *persuasiveness*.

Decision-Making Requirements – 106.45



Written determination with:

- Rationale for decision
- Grounds for appeal

TIX-C coordinates remedies and sanctions when violation found.

Decision-Making Requirements – 106.46



Written determination issued to the parties simultaneously that includes:

- A description of the alleged harassment.
- 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 of whether harassment occurred.

Decision-Making Requirements – 106.46



- **If determined that harassment occurred:**
 - Disciplinary sanctions imposed on respondent.
 - Remedies other than disciplinary sanctions imposed on respondent for the complainant, if any.
 - Remedies for other students that experienced the effects of the harassment, if any.
- Appeal rights and procedures

Remedies



If determined sex discrimination occurred, TIX-C must:

- Coordinate the provision and implementation of remedies for complainant or any other person whose access to the educational environment was limited,
- Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions.
- Take effective steps to ensure sex discrimination does not continue or recur.

Discipline



May 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.

Discipline



Districts cannot discipline a party or witness for making a false statement or engaging in consensual sexual conduct based *solely* on determination whether sex discrimination occurred.

5 APPEAL, IF ANY

Appeal – 106.45



Must 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.

Appeal – 106.46



Must offer appeal all parties appeal on the following bases:

- Procedural irregularity that would change the determination of whether harassment occurred.
- New evidence that would change the outcome of the matter, which was not reasonably available at the time the determination or dismissal was made.
- TIX-C, investigator or decisionmaker had a conflict of interest or bias.

**May offer on other basis if offered to all parties equally.*

Appeal – 106.46



Must provide notice to the parties in writing of the following:

- When an appeal is filed and implement procedures equally.
- The parties' right to a reasonable and equal opportunity to make a statement in support or challenge of the outcome.
- The result of the appeal and rationale for the result.

Recordkeeping



Must maintain for at least seven years:

- For each complaint of sex discrimination, records documenting the IR process or grievance procedures and resulting outcome.
- For each notification the TIX-C receives of information about conduct that reasonably may constitute sex discrimination under Title IX, records documenting the actions the district took to meet its obligations under 106.44.
- All materials used to provide training under 106.8(d). Must make available to members of the public upon request.

Pregnancy or Related Conditions

Students & Employees



Students

Nondiscrimination



A school district must not discriminate in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions.

Providing Information



If an employee learns of a student's pregnancy from the student or an individual that has the legal right to act on behalf of the student, they must:

- Promptly provide them with TIX-C's contact information, and
- Inform them that the TIX-C can coordinate actions to prevent sex discrimination and ensure equal access to education environment.

Not required if reasonably believe TIX-C already notified.

Preventing Discrimination



Once TIX-C is notified of a student's pregnancy or related condition, they must promptly:

1 Notify of the recipient's obligations to:

- Provide reasonable modifications to policies, practices or procedures.
- Allow access to separate and comparable portion of education program or activity
- Allow voluntary leave of absence.
- Ensure availability of lactation space.

Preventing Discrimination



- 2 Provide with voluntary reasonable modifications.**
- 3 Allow voluntary leave of absence that covers the period of time deemed medically necessary by student's physician or other licensed healthcare provider:**
 - If district's policy allows greater time than medically necessary period, allow student to take leave under policy if they choose.
 - Upon return, restore to same academic and extracurricular status.

Preventing Discrimination



4

Ensure availability of lactation space, other than a bathroom, that is clean, shielded from view, free from intrusion, and may used by a student for expressing breast milk or breastfeeding.

Reasonable Modifications

1 Must be provided on an individualized and voluntary basis to meet a student's needs, *unless it would fundamentally alter* the education program or activity

- Fundamentally Alter: a change that is so significant that it alters the essential nature of the education program or activity.

2 Must be effectively implemented, coordinated, and documented by the TIX-C.

Reasonable Modifications



3

May include but are not limited to:

- Breaks during class for health needs – expressing breast milk or breast feeding
- Intermittent absences for medical appointments
- Access to online or other homebound education
- Changes in schedule or course sequence
- Extension of time for coursework and rescheduling of tests
- Counseling
- Changes in physical space or supplies
- Elevator access
- Other appropriate changes to policies, practices, or procedures

Comparable Treatment to Temporary Disabilities



Treat pregnancy and related conditions, or any temporary disability resulting therefrom, in the same manner and under the same policies as any other temporary disability or physical condition with respect to any:

- Medical or Hospital Visit
- Service
- Plan
- Policy

Certificate to Participate



May not require a student who is pregnant or has related conditions to provide medical certification to participate unless:

- The certified level of physical ability or health is necessary for participation.
- Required from all students participating.
- Information obtained not used as basis for sex discrimination.

In General



A district shall not adopt or implement any policy, practice, or procedure, or take any employment action, on the basis of sex:

- Concerning the current, potential, or past parental, family, or marital status of an employee or applicant for employment which treats persons differently, or
- That is based upon whether an employee or applicant for employment is the head of household or principal wage earner in the family unit.

Employees

Nondiscrimination



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

Employees

Comparable Treatment to Temporary Medical Conditions



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
- Reinstatement
- Under any fringe benefit offered to employees by virtue of employment

Lactation Time & Space



1. Must provide reasonable break time for an employee to express breast milk or breastfeed.
2. Ensure availability of lactation space, other than a bathroom, that is clean, shielded from view, free from intrusion, and may be used for expressing breast milk or breastfeeding.

Pre-Employment Inquiries



- Cannot inquire as to the marital status of an applicant for employment, including whether the applicant is “Miss or Mrs.”
- May ask applicant to self-identify *sex only if* the district asks all applicants to do so and information is not used to discriminate on the basis of sex.

**Thank you for attending
today's workshop!**

Have a question? Contact us!



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