



Innovative Educators
Educating Faculty, Staff & Students Online

2024 Title IX Regulations: An Overview of Key Changes

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Our Objectives Today

- Discuss new definitions affecting sex discrimination and sex-based harassment
- Explore options for grievance procedures
- Consider newly defined protections for pregnant and parenting individuals in the campus community

Quick Disclaimer

- This presentation does not constitute legal advice.
- We can't cover it all, so I'm going to try and hit what I consider to be the most interesting changes. There will be more in depth coverage of certain topics later this summer!
- These regulations are effective August 1, 2024, but there are several lawsuits that have already been filed requesting that they not be permitted to go into effect. Stay tuned.

Regarding Questions

- Please feel free to submit questions about the regulations.
- I may not get to answer all of them today, but I will try to ensure that future sessions include needed information.

First: New Definitions

- 34 CFR 106.2 has been extensively rewritten, with definitions revised and added.
- Consider adding a definitions section to your policy, if you have not already done so.
- Note: There is no required definition of consent.

Scope (Definition of Sex) – 34 CFR 106.10

Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Check out 34 CFR 106.31(b) for specific prohibitions about discrimination. This hasn't changed!

Key Regulations Pregnant & Parenting Individuals

- Longstanding non-regulatory guidance has been adopted as regulatory
 - 106.2 – Definitions
 - 106.10 – Scope includes “pregnancy or related conditions”
 - 106.21(c) – Admissions
 - 106.40 – This provides the bulk of the requirements for students
 - 106.51(b)(6) – Leaves
 - 106.57 – This provides the bulk of the requirements for students

Pregnancy/Parenting – Key Takeaways

- Provide “reasonable modifications” to pregnant students
- Provide notice of rights to pregnant students, or notify Title IX Coordinator
- New requirements to provide voluntary leave
- Lactation space now required for students
- Limitations on requiring documentation

Check out our deeper dive on this topic May 23rd from 1:00-2:00ET with Kylie Stryffeler!

Sex-Based Harassment – 34 CFR 106.2

- Is prohibited by the regulations
- Is a form of sex discrimination and means sexual harassment and other harassment **on the basis of sex** (see 34 CFR 106.10), that is:
 - Quid pro quo harassment
 - Hostile environment harassment
 - Specific offenses (sexual assault, dating violence, domestic violence, stalking)

Quid Pro Quo Harassment – 34 CFR 106.2

- 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.

Hostile Environment Harassment – 34 CFR 106.2 (1 of 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 Harassment – 34 CFR 106.2 (2 of 2)

Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

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

Reporting Requirements – 34 CFR 106.44

Elementary/Secondary – All non-confidential employees must report to Title IX Coordinator “conduct that reasonably may constitute sex discrimination”

Reporting Requirements – 34 CFR 106.44

All other recipients:

Duties	Must Report to TIXC	Either report to TIXC or Provide contact info
Authority to institute corrective measures	X	
Administrators	X	
Faculty	X	
Advisors	X	
Non-confidential other employees		X
Confidential employees		X (with required explanations)
Student employees	Institution makes reasonable determination as to what applies	

Confidential Employee – 34 CFR 106.2

- Employees whose communications are privileged by federal or state statute
- Other employees who are designated as confidential by the recipient
- Employee of a post-secondary institution who is conducting IRB-approved research designed to gather information about sex discrimination

Confidential Employee – 34 CFR 106.2

Confidential employees must:

- Explain that they are confidential
- Give the person the Title IX Coordinator's contact info
- Tell them the Coordinator may be able to assist with supportive measures, informal resolution, and/or grievance process

Jurisdiction – 34 CFR 106.11

Prohibition applies to sex discrimination education program/activity in the United States

- This includes off-campus conduct that occurs in a building owned/controlled by an officially recognized student organization
- This includes conduct that is subject to the recipient's disciplinary authority (which may include off-campus behavior depending on your institution)

Institutions are obligated to address hostile environment within their educational programs/activities, even if part of the conduct occurred outside the program or outside the USA.

Receiving a Complaint

106.2 defines complaint as “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 this part.”

Upon receiving a complaint, Coordinator must offer and coordinate supportive measures and notify the complainant of grievance procedures and informal resolution options.

Quick Note about Informal Resolution

Not permitted: In cases involving a K12 student's claims of SBH against an employee.

There are no other restrictions, so schools have discretion to offer when appropriate. See 34 CFR 106.44(k).

No complaint is required for informal resolution, but both parties need notice of the allegation as part of the consent to the process.

Supportive Measures

New definition – 106.2

New regulations – see 106.44(g):

- Keep the requirement that supportive measures may not “unreasonable burden either party” and are not disciplinary.
- Require an ability to challenge decisions about supportive measures.
- Permit non-mutual no-contact orders

Emergency Removals

Regulation at 106.44(h)

Emergency removals are permitted after “an individualized safety and risk analysis” that “determines that an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal”

Must provide notice to respondent and opportunity to challenge

Multiple grievance procedures

- Are you a postsecondary institution?
 - If yes: Go to next question.
 - If no: 106.45 applies.
- Is one of the parties a student?
 - If yes: Go to next question.
 - If no: 106.45 applies.
- Do the allegations include sex-based harassment?
 - If yes: 106.45 + 106.46 apply. (Clery may also apply!)
 - If no: 106.45 applies.

106.45

- Allows for single investigator model – but the decision maker must question parties and witnesses if credibility is in dispute
- If you have different procedures for different situations, you must explain this
- Notice of Allegations does not require as many details
- No mandatory dismissals – all dismissals are discretionary but you must offer an appeal process
- Must provide evidence or a description of the evidence (but they can still see evidence upon request) for party's response (“reasonable opportunity”)
- Must take steps to prevent unauthorized disclosure of evidence
- No requirement to permit advisors (but remember Clery)

106.46 – The Basics

- Notice of Allegations is more robust, and you may delay providing it due to safety concerns
- Parties are entitled to an advisor of choice
- Discretion regarding whether expert witnesses are permitted, provided any restrictions apply equally to all parties

106.46(f) – Credibility Process

- Asynchronous Process – Parties submit questions, decision-maker asks questions and provides recording/transcript, parties submit follow-up questions, repeat
 - Investigator is permitted to conduct this process
- Live Hearing
 - Option #1 – Decision maker asks relevant, permissible questions submitted by the parties
 - Option #2 – Current procedures – Advisors and decision-maker ask questions

106.46(f)(4) – Non-Participation

- Maintains the rule that the decision-maker cannot draw an inference about whether SBH occurred based *solely* on a party's or witness's refusal to respond to such questions.
- New: 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.

Some Thoughts on 106.46 Compliance

- Your current hearing process is likely to substantially comply with the requirements.
- Court decisions in your jurisdiction may affect your ability to use asynchronous hearings.
- There are logistical issues with all of the models, so think a case through step by step as you are determining what is appropriate.
- You can use different procedures for different situations. Think about when it might be appropriate and how to describe that for purposes of the policy.

Training Requirements

- See 106.8(d)
- All employees must be annually trained on the policy and their responsibilities
- Heightened training requirements for Title IX team members
- Remember that Clery also imposes annual training requirements on those handling cases of sexual assault, dating violence, domestic violence, and stalking
- Keep training records for seven years.
 - You are no longer required to post effective August 1, 2024. However, training materials must be available for inspection upon request.

Takeaways

- Your compliant policy must be in place by August 1, 2024.
 - Make sure it is consistent with your state law.
 - If your state law conflicts with these regulations, discuss with competent legal counsel.
- Train your Title IX team, and your employees, as soon as possible.
- Watch for lawsuits that may affect legal obligations under these new regulations.

Upcoming Title IX Webinars

- May 23 at 1:00 Eastern Time - Title IX Compliance: Pregnancy & Parenting On Campus Based On The New 2024 Regulations
- June 6 at 1:00 Eastern Time - Title IX Compliance: Crafting Effective Grievance Procedures Based On The New 2024 Regulations
- June 18 at 1:00 Eastern Time - Understanding Prohibited Conduct: The 2024 Title IX Regulations Explained.

We will be sending a discount coupon code for these webinars to everyone who registered for the complimentary session. You can also contact us at support@ieinfo.org for the coupon code.



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