



D. STAFFORD
& ASSOCIATES

Title IX Coordinator Class

(2 Day Version)

Presented by:

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Day One: Foundations of Title IX

- The Law
- Title IX Regulations
- Title IX Grievance Procedures
- Looking Ahead - The 2022 Proposed Regulations
- Addressing “Non-Title IX” Cases
- VAWA Procedural Requirements
- VAWA Education Requirements

Day Two: Title IX – Pregnancy, Family, & Marital Status

- Key Takeaways
- Title IX Regulations
- Title IX Guidance

Sexual Misconduct & Harassment

- Intake & Initial Meetings
- Notice
- Consolidation
- Dismissals
- Investigation Stage
- Reports
- Formal Resolution
- Informal Resolution



TITLE IX

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ISSUANCE OF CERTIFICATES FOR COMPLETION OF DSA/NACCOP CLASSES

To receive a certificate for classes held by D. Stafford & Associates, LLC or the National Association of Clergy Compliance Officers and Professionals (NACCOP), attendees must attend the majority of the class. This includes in-person classes and virtual classes. DSA and NACCOP understands that attendees may need to miss class for a legitimate reason for longer periods of time or may need to leave the room during a class for a few minutes to take a phone call or attend to other business. That said, our general rule of thumb for our 4 and 5 day classes is that if an attendee misses more than 1 hour of class time, they will not be issued a certificate of completion for the class. If the class is a 1, 2 or 3 day class, the amount of time that can be missed may be less, as classes of those lengths are more condensed.

For virtual classes, because we can't see all of the attendees all of the time like we can in an in-person class (based on the attendee controlling whether they have their camera turned on or not), the criteria for receipt of a certificate is determined based on missed class time (no more than 1 hour or less, depending on the length of the class) and participation in the Attendance Polls that will be launched throughout each day of class. Attendance polls are left up for approximately 5 minutes and the instructor notifies the attendees that a poll is being launched before doing so, to ensure that everyone who is there can/will respond to the poll. If there is an issue with responding to the attendance poll, the attendee would need to **immediately notify the Administrative Support person** in the course via the chat function in the zoom platform. That way we can immediately resolve any issues and give the attendee credit for being in attendance for the poll. Notifying us hours or days after having an issue with not being able to complete the attendance poll will not allow us to give the attendee credit for being in class during the poll.

Our classes qualify for credit toward a Master's Degree at New England College (and regardless if you decide to seek credit or not, but accreditation requirements mandate that we follow the same standards for all class attendees), so we have strict attendance standards that we follow for issuance of a certificate, which equates to verification that the participant attended the complete class. For DSA and NACCOP, issuance of a Certificate of Completion is verification of that fact.

If the attendee missed class for a legitimate reason, that doesn't mean that an attendee wasn't there for much of the class and that they didn't benefit from that attendance. It just means that based on the missed time and/or attendance polls (in virtual classes only), we aren't able to issue you a certificate of completion.

If an attendee has to miss time in class, the instructions attendees receive before the class provide instructions for notifying the Administrative Support person about the time that will be missed **IN ADVANCE**, so we can jointly identify what blocks of instruction will be missed, and the DSA/NACCOP team will then work with the attendee to see if we can get them in a future class module to make up that material, which would result in us being able to issue the attendee a certificate. We provide this service and opportunity at no additional cost, as we want each attendee to finish the class and get a certificate of completion. Effective communication by each attendee is the key to this option.



Catherine Cocks, M.A.
Consultant, Student Affairs, Title IX, and
Equity Compliance Services



Ms. Cocks has been a higher education professional for over thirty years. Her work with D. Stafford & Associates focuses on Title IX investigations and training; assessment of student affairs policies, practices and services; and behavioral threat assessment. Cathy was the Director of Community Standards for the University of Connecticut for 14 years where she managed the student conduct process, which included managing all Title IX cases involving student respondents and chaired the University's student threat assessment team. Prior to that, she held several positions within Residential Life at the University of Connecticut and Roger Williams University.

She is a faculty member for the Association for Student Conduct Administration's (ASCA) Donald D. Gehring Academy teaching on subjects such as ethics, governance, threat assessment, media relations, and higher education trends. She was an affiliated faculty

member for many years in the University of Connecticut's Higher Education and Student Affairs Master's program teaching "The Law, Ethics, and Decision-Making in Student Affairs."

Cathy has co-authored the "Philosophy of Student Conduct" chapter in the 2nd edition of "Student Conduct Practice" (2020) and was a member of the writing team for CAS Standards' Cross-functional Framework for Identifying and Responding to Behavioral Concerns.

Cathy is a Past President of ASCA. She has also served as a Circuit representative, co-chair of the Public Policy and Legislative Issues Committee, and as a member of the ASCA Expectations of Members Task Force. Cathy has served in a variety of leadership roles in NASPA Region I.

She was the 2015 recipient of ASCA's Donald D. Gehring Award. She is a past recipient of the NASPA Region I Mid-Level Student Affairs Professional Award and the NASPA Region I Continuous Service Award.

She earned her Master's degree in Higher Education Administration from the University of Connecticut and Bachelor's degree in Communications/Media from Fitchburg State University.



Adrienne Meador Murray, Vice President, Equity Compliance and Civil Rights Services



In January 2014, Adrienne Meador Murray joined D. Stafford & Associates where she currently serves as the Vice President, Equity Compliance and Civil Rights Services after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012 and the National Association of Clery Compliance Officers & Professionals (NACCOP) where she currently serves as Director of Training and Compliance Activities. Murray began her career in municipal law enforcement as a civilian employee with the City of Richmond Police Department (Virginia). She graduated from the Virginia Commonwealth University Police Training Academy and began her career as a sworn police officer for the University of Richmond (UR) Police Department (Virginia). At UR, Murray progressed through the ranks from a night shift patrol officer to Operations Lieutenant (overseeing criminal investigations, crime prevention and patrol) over the span of a decade before becoming the Chief of Police at Davidson

College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.).

As the Executive Director, Equity Compliance and Civil Rights Services for DSA, Murray builds on her 17-year career in law enforcement in which she became a nationally recognized expert in the field of best practice postsecondary institutional response to the sexual victimization of college women in the United States and in Canada. She is also a trained civil rights investigator and is well respected throughout the country for her ability to aid institutions in understating how to do best practice criminal and civil rights investigations concurrently. She is well known for her work in having provided support, advocacy and criminal investigative services for victims of sexual assault, stalking and intimate partner violence and is a sought-out speaker and investigator. She has expertise in the construction of best practice law enforcement standard operating procedures and training police officers to respond in best practice and trauma-informed ways to victims of sexual assault and intimate partner violence. In her current role, Murray coordinates curriculum development and instruction for national classes, including basic and advanced sexual misconduct investigation classes; an investigation of dating violence, domestic violence and stalking class; and a Title IX Coordinator/Investigator class offered through D. Stafford & Associates. To date, Murray has trained more than 3,500 criminal and civil rights investigators throughout the U.S.

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA



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Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based trainings pertaining to the resolution of sexual misconduct offenses on college and university campuses. Murray frequently presents at regional and national conferences on topics such as the *Sexual Victimization of College Women*, *Understanding Consent and Incapacitation*, and *Responding to Sexual Assault on Campus: Clery Act and Title IX Implications*. Murray also conducts provincially specific sexual misconduct trainings throughout Canada.

Murray is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management and of New England College, where she received her Master's Degree in Campus Public Safety Administration. Murray is also a graduate of the 235th session of the prestigious FBI National Academy where she was awarded a graduate certificate in Criminal Justice from the University of Virginia. She has authored numerous journal articles.



Ann Todd

Consultant, Equity Compliance and Civil Rights Investigations



Ann Todd, Esq is a seasoned civil rights investigator in higher education for D. Stafford & Associates (DSA). Ms. Todd is a graduate of Davidson College with a degree in psychology and holds a JD from the University of Nebraska. Prior to joining DSA, she practiced law in Charlotte, NC, specializing in employment and civil rights and worked for a number of non-profit organizations. She returned to her alma mater (Davidson College) in 2008 and worked there through March of 2016 serving as the Assistant Director of Human Resources with the responsibility of managing employee relations and the learning and development function while also serving as the deputy Title IX Coordinator.

Ms. Todd joined the DSA in 2015 and currently serves as the Consultant, Equity Compliance and Civil Rights Investigations. She is the Senior Investigator for the DSA Title IX Investigation Team. She conducts external investigations on behalf of colleges and universities, specializing in investigating student allegations of sex discrimination, sexual assault, intimate partner violence, and stalking. Additionally, she brings a strong Human Resources background to investigating a range of employee misconduct—from performance issues to discrimination.

In addition to conducting investigations, Ms. Todd is a frequent speaker and consultant on Title IX investigations, conducting 20-30 courses every year on best practices for investigating sex discrimination and sex crimes on campus. She works with schools to draft policies and processes that provide equity and fairness to



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all parties involved and is adept at facilitating discussions with institutions to ensure the end product represents the values of the campus community.

Ms. Todd is licensed private investigator and a member of the NC Bar. She is a Certified Clery Compliance Officer through the National Association of Clery Compliance Officers and Professionals (NACCOP) and she is also a certified 360 facilitator through the Center for Creative Leadership. Ms. Todd lives in Davidson, NC where she volunteers on a number of local and town boards.

INVESTIGATION CLASS ACRONYMS

- ASR:** Annual Security Report (often used as a reference to the Annual Security Report and/or the Annual Security and Fire Safety Report) that must be published by each institution of higher education.
- CSA:** Campus Security Authority—Individuals on each campus who have been identified by the Department of Education as persons who are required to report crimes that they become aware of to the Reporting Structure at each institution.
- DCL:** Dear Colleague Letter—this is a formal name of the method of communication from the Department of Education to college campuses. It is like naming their official “memo” to campuses.
- FERPA:** Family Educational Rights and Privacy Act—governs the confidentiality of student records.
- FNE:** Forensic Nurse Examiners
- GO:** General Order—some departments describe their operating procedures as general orders
- HEOA:** Higher Education Opportunity Act—the broader law that contains the Clery Act language and the fire safety and missing person language that is in the law but not contained within the “Clery Act” portion of the law.
- HIPAA:** Health Insurance Portability and Accountability Act of 1996 —governs privacy of medical records.
- MOU:** Memorandum of Understanding—an official agreement developed between agencies.
- NIBRS:** National Incident-Based Reporting System. 1 of 2 crime reporting systems developed by the FBI, but not the system that you are required to use for Clery Reporting—the only portion of this system that is used for Clery Act purposes are the 4 forcible and 2 non-forcible sex offense definitions.
- OCR:** Office for Civil Rights—the unit of the Department of Education that oversees Title IX Compliance.
- RE:** Responsible Employee as defined by Title IX (OCR)
- PD:** Police Department
- PS:** Public Safety
- PNG:** Persona-non-Grata—process used by some campuses not keep students from entering certain areas of the campus or the entire campus (administrative process) versus legal bar notice or trespass warning.


SANE: Sexual Assault Nurse Examiner

SART: Sexual Assault Response Team


SOP: Standard Operating Procedures—some departments describe their operating procedures as Standard Operating Procedures. Some call them General Orders, etc...

TWN: Timely Warning Notice

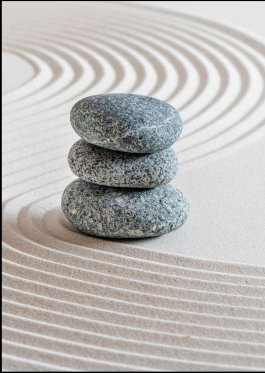
UCR: Uniformed Crime Report. This is 1 of 2 crime statistics reporting systems developed by the FBI. Institutions are required to use UCR Standards for counting and classifying crimes for reporting the Clery statistics.



FOUNDATIONS OF TITLE IX



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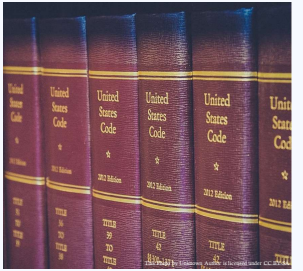
AGENDA

- The Law
- Title IX Regulations
- Title IX Grievance Procedures
- Looking Ahead - The 2022 Proposed Regulations
- Addressing “Non-Title IX” Cases
- VAWA Procedural Requirements
- VAWA Education Requirements

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THE LAW



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FEDERAL LAW

 Statutes 20 U.S.C.D. §1681-1688	 Regulatory Guidance 34 C.F.R. § 106	 Sub-Regulatory Guidance DCLs Preamble to Regs Executive Orders OCR Website	 Case Law Circuit courts District courts
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TITLE IX STATUTE



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**TITLE IX, EDUCATION AMENDMENTS OF 1972,
20 U.S.C. § 1681**

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.

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§ 1681(a) - EXCEPTIONS

- Admission policies
- Institutions changing from single-sex status
- Religious institutions
- Military services or merchant marines
- Public traditional single-sex institutions
- Social fraternities or sororities
- Voluntary youth organizations
- Boy or girl conferences
- Father-son/mother-daughter activities
- "Beauty" pageants

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§ 1681(c) - "EDUCATIONAL INSTITUTION"

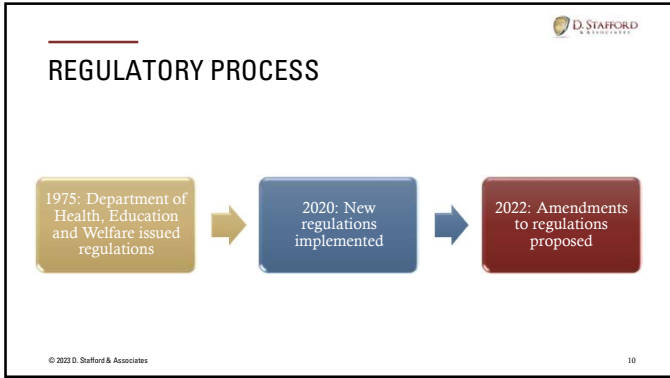
Any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

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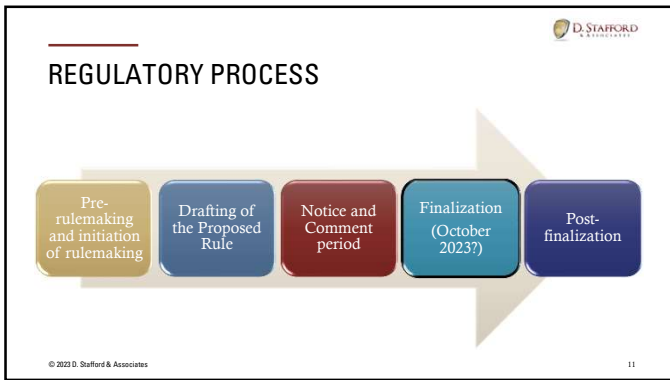
REGULATORY GUIDANCE ("TITLE IX REGULATIONS")



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SUB-REGULATORY GUIDANCE

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE ASSISTANT SECRETARY
April 4, 2011

Dear Colleague:

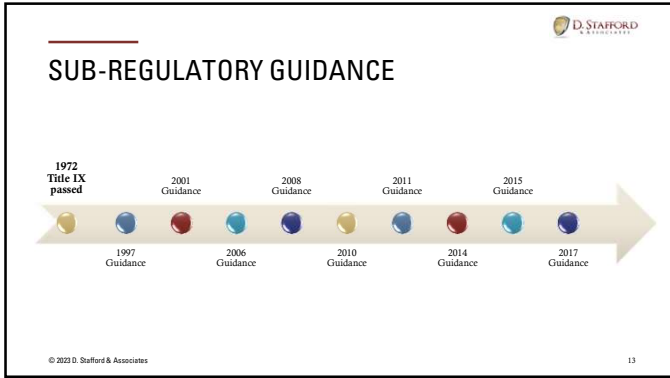
Education has long been recognized as the great equalizer in America. The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and in the case of sexual violence, is a crime.

Title IX of the Education Amendments of 1972 (Title IX, 20 U.S.C. §§ 1681 et seq.) and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX, in order to assist recipients, which include school districts, colleges, and universities (hereinafter "schools" or "recipients") in meeting their obligations, this letter explains that the requirements of Title IX pertaining to sexual harassment also cover sexual violence, and they can be searched for "requirements" applicable to sexual violence.¹ Sexual violence, as that term is used in this letter, refers to physical sexual acts perpetrated against a person without their consent, in the victim's lack of knowledge of the act or force or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape.

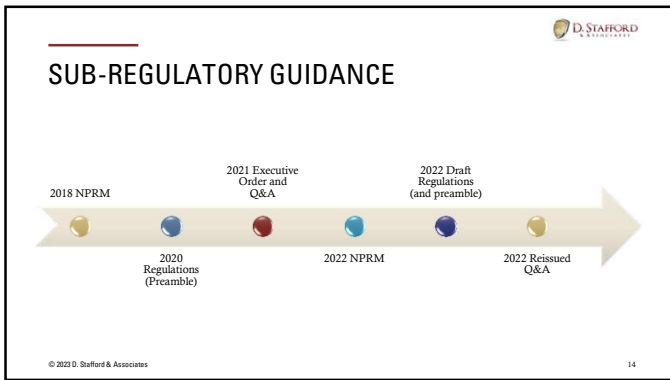
¹ This guidance has been used in the Dear Colleague Letter to "highlight guidance issued" under the Office of Education's oversight of the Department of Education's Title IX work.

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 **FEDERAL REGISTER**
The Daily Journal of the United States Government 

 Rule

**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**

A Rule by the Education Department on 09/22/2021

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BRIEFING ROOM

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

JANUARY 20, 2021 • PRESIDENTIAL ACTIONS

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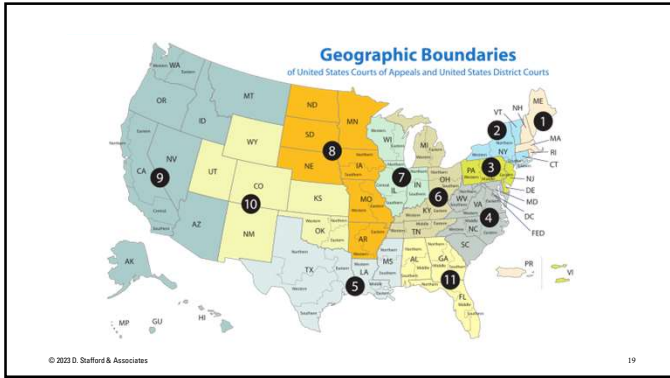


CASE LAW

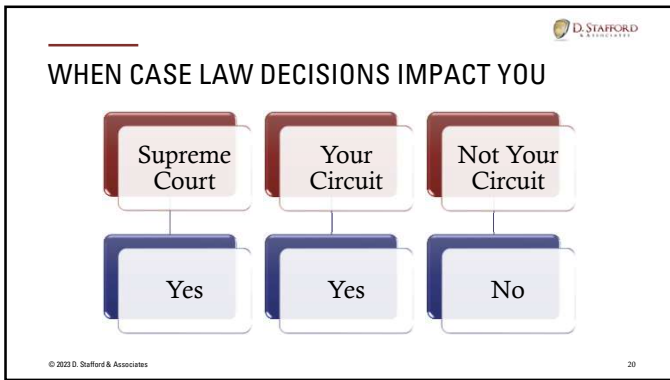


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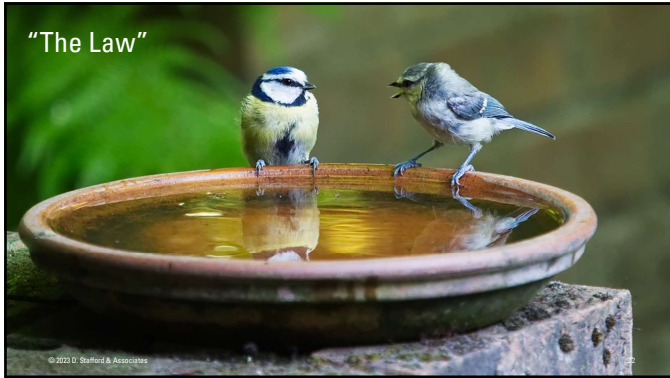
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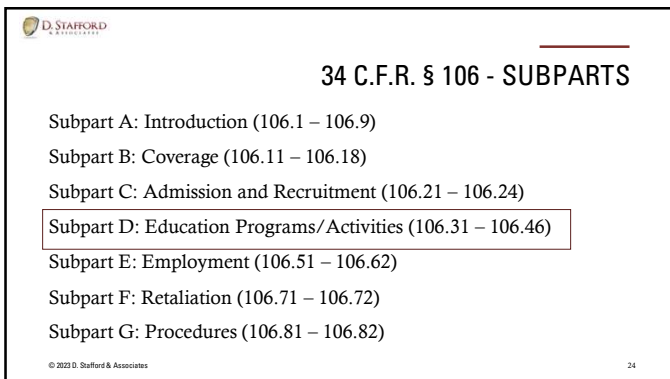
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TITLE IX REGULATIONS OVERVIEW

Applies to
Higher
Education and
K-12


Covers wide
range of sex
discrimination

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SUBPART A: INTRODUCTION




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SUBPART A: A FEW FYIS...




§ 106.2
Definitions



§ 106.3
Remedial Action




§ 106.3
Affirmative Action



§ 106.6
Preservation of rights

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§ 106.8(a) - DESIGNATION OF COORDINATOR

Designate	Designate at least one person
Notify	Notify people of name and contact information
Receive	Receive reports in person, by mail, by phone, by email, or other
Accept	Accept reports during non-business hours

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§ 106.8(b)(1) - NOTIFICATION OF POLICY

Who

- Applicants - admission
- Applicants - employment
- Students
- Employees
- Unions, etc.


What

- Does not discriminate
- Required by Title IX
- Includes admission & employment
- Inquiries to Title IX or OCR
- Grievance procedures & process
- How to report or file complaint of discrimination
- How to report or file complaint of harassment
- How the school will respond

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Our Title IX Coordinator is...



§ 106.8(b)(2) – PUBLICATIONS

What

- Contact information
- Policy

Where

- Website
- Handbook and/or Catalogs

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§ 106.8(c) - ADOPTION OF GRIEVANCE PROCEDURES

“grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30.”

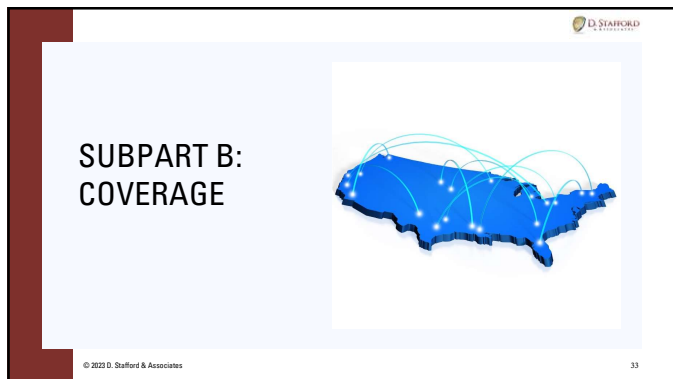
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§ 106.8(d)

Applies only to sex discrimination occurring against a person in the United States

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SUBPART B: COVERAGE

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§ 106.12 - EDUCATIONAL INSTITUTIONS CONTROLLED BY RELIGIOUS ORGANIZATIONS

- May submit in writing seeking assurance of the exemption
- Must identify the provision and explain how it conflicts with a specific tenet
- Not required to seek assurance
- May raise its exemption at any time

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§ 106.15 ADMISSIONS (EXCEPTIONS AND COVERAGE)

Applies to

- Vocational education
- Professional education
- Graduate higher education
- Public undergraduate education

Does not apply to

- Public schools with traditionally one sex

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SUBPART C: ADMISSION & RECRUITMENT



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DISCRIMINATION AND ADMISSIONS

Subpart B (Exceptions): **Private institutions CAN discriminate in admissions**

Subpart C (Admissions): **Everyone else cannot discriminate in admissions**

Subpart D (Programs or Activities) : **Once they are in, discrimination is prohibited**



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§ 106.21 ADMISSION & § 106.23 RECRUITMENT


Limits or proportions	Ranking separately	Testing
Pregnancy	Parenting or marital status	Recruitment from single-sex high schools
Can ask gender but...		



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**SUBPART D:
EDUCATIONAL PROGRAMS OR ACTIVITIES**




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§ 106.31 EDUCATIONAL PROGRAMS OR ACTIVITIES




Aid, Benefit, or Service
Requirement or Condition
Right or privilege
Advantage or opportunity




Academic
Extracurricular
Research
Discipline
Treatment
Externships

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§ 106.37 FINANCIAL ASSISTANCE



§ 106.37(a) – Can't discriminate in financial assistance




§ 106.37 (b) Exceptions to rule that can't have single-sex scholarships



§ 106.37 (c) – Athletic scholarships allocated proportionally based on participation numbers

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§ 106.31(B)(4) EQUITY IN DISCIPLINE

Rules of Behavior

Sanctions

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§ 106.32 - HOUSING

A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

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§ 106.33 - COMPARABLE FACILITIES

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

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§ 106.40 MARITAL OR PARENTAL STATUS

Reminder: Can't discriminate in admissions on basis of pregnancy... § 106.21(c)

No rules concerning actual or potential parental, family, or marital status on the basis of sex § 106.40(a)

No discrimination on the basis of pregnancy, childbirth, false pregnancy, termination or recovery § 106.40(b)

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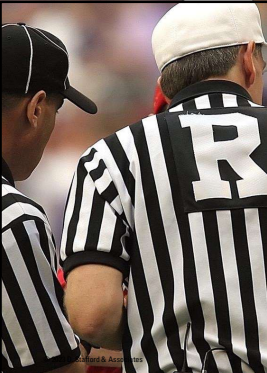



PREGNANCY: INSTITUTIONAL RESPONSIBILITIES

<p>Must Allow or Provide</p> <ul style="list-style-type: none"> • Continued participation in programs/activities • Reasonable adjustments • Excuse absences • Leave of absence • Return status • Temporary medical condition • Protects against harassment • Policies and procedures • Breastfeeding 	<p>Cannot . . .</p> <ul style="list-style-type: none"> • Require doctor's note ONLY for pregnancy • List pregnancy as an infraction • Exclude from programs/activities • Remove financial aid
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§ 106.41(a) - ATHLETICS

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.


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ATHLETICS




Applies to intercollegiate, club, & intramural



Separate Teams are permitted

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§ 106.41(c) - EQUAL OPPORTUNITY


1. Accommodate the interests
2. Equipment and supplies
3. Scheduling (games and practice)
4. Travel and per diem
5. Coaching and tutoring
6. Assignment and compensation for above
7. Locker room and other facilities
8. Medical and training services
9. Housing and dining services
10. Publicity

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WAIT FOR IT...ALSO IN SUBPART D (COMING SOON!)



§ 106.30 DEFINITIONS
(FOR THIS SUBPART)



§ 106.44 RESPONSE TO
SEXUAL HARASSMENT

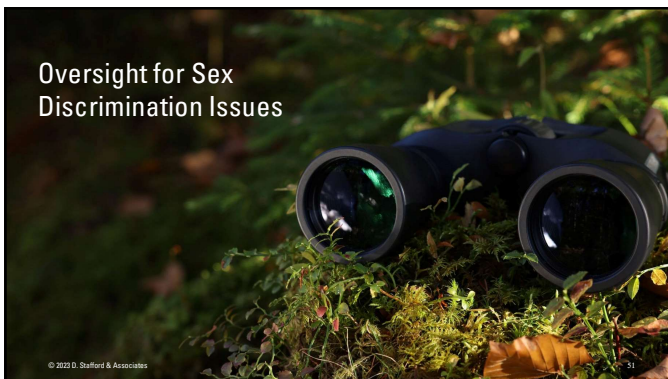


§ 106.45 GRIEVANCE
PROCESS

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Oversight for Sex Discrimination Issues



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SUBPART E: EMPLOYMENT



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KEY TAKEAWAY

Title IX common rule applies its prohibition against sex-based discrimination to the full range of activities related to the recruitment, evaluation, classification, payment, assignment, retention or treatment of employees. The Title IX common rule addresses various areas including the treatment of pregnancy as a temporary disability, pre-employment inquiries regarding marital or parental status, imposition of employment criteria or testing devices having a disproportionate impact, recruitment, and compensation and benefits.

The Department of Justice, Title IX Legal Manual

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EMPLOYMENT


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

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SUBPART F: RETALIATION



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§ 106.71 RETALIATION

No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. . .

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§ 106.71 RETALIATION

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.

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 § 106.71 - RETALIATION

Must keep confidential the identity of parties and witnesses

May use sex discrimination grievance procedures

Exercise of First Amendment does not constitute retaliation

Discipline for “materially false statement in bad faith” is not retaliation

But determination of responsibility alone does not mean a person provided a false statement...

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 TITLE IX GRIEVANCE PROCEDURES



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BEFORE WE BEGIN...

Sex Discrimination
§ 106.8(c)

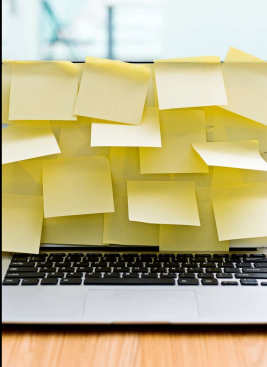
- “grievance procedures that provide for the prompt and equitable resolution of student and employee complaints.”
- Any person may report sex discrimination to the Title IX Coordinator
- Must publish grievance procedures to address sex discrimination
- No requirement other than “prompt” and “equitable”


Sexual Harassment
§ 106.44 and § 106.45

Other Behaviors
Conduct codes

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MORE REMINDERS

- Applies to K-12
- Incorporates the Clery Act
- Lots of guidance: 500+ pages of preamble plus more recent Q&As
- (This section is not in order of regulations)

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PEOPLE DEFINITIONS



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§ 106.30(a) - DEFINITIONS

Complainant

- *An individual who is alleged to be the victim of conduct that could constitute sexual harassment*

Respondent

- *An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment*

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TITLE IX PERSONNEL

Title IX Coordinator Investigator Decision-maker Informal Resolution Facilitator

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DUTIES OF THE TITLE IX COORDINATOR

- § 106.8(a) Must be referred to as the "Title IX Coordinator"
- § 106.8(a) Coordinate efforts to comply
- § 106.44(a) Receive reports and promptly contact the complainant
- § 106.30 Sign formal complaints
- § 106.30 Responsible for coordinating the effective implementation of supportive measures

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 § 106.45(b)(1)(iii) - TRAINING

All Title IX Personnel

- Definition of sexual harassment
- Scope of the recipient's education program or activity
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

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 § 106.45(b)(1)(iii) - TRAINING

Decision-makers


- Technology to be used at a live hearing
- Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant






Investigators

- Issues of relevance to create an investigative report that fairly summarizes relevant evidence

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 **ADVISOR OF CHOICE**

				
May be but is not required to be an attorney	May accompany to any meeting or proceeding	Institution may restrict participation (except at hearing)	Receives the draft and final reports	Conducts cross-examination at hearing

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Managing Advisors

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SEXUAL HARASSMENT DEFINITIONS



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§ 106.30(a) - SEXUAL HARASSMENT

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- 1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;*
- 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;*
- 3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).*


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**PRONG 1:
QUID PRO QUO**

An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct






(§ 106.30(a))




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QUID PRO QUO (FROM THE PREAMBLE)

-  "This for that" harassment
-  Must be an employee respondent (not volunteer, visitor, student)
-  "Unwelcome" is subjective element (submission vs. consent)
-  Does not need to meet pervasiveness element
-  Limited need to show impact - single instance could jeopardize access




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**PRONG 2:
HOSTILE ENVIRONMENT+
(THE DAVIS STANDARD)**


Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity

(§ 106.30(a))



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§ 106.30(a) - HOSTILE ENVIRONMENT+

Referred to in preamble as “The Davis Standard”

Not the same Title VII “hostile environment” or 2001 Guidance

First Amendment protections

Must show the “effectively denies” to reach the bar


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PRONG 3: THE VAWA OFFENSES

“Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30)

(§ 106.30(a))




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THE VAWA OFFENSES




- Severity, pervasiveness, and offensiveness are not elements
- Denial of equal access not an element - it is assumed
- Includes multiple offenses



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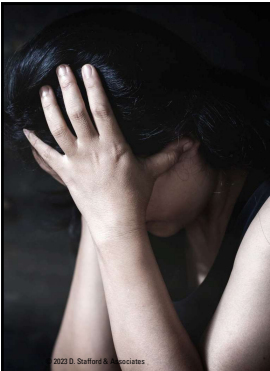
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§ 106.30(a) - THE VAWA OFFENSES

 Sexual Assault	Rape Fondling Incest Statutory Rape
 Intimate Partner Violence	Dating Violence Domestic Violence
 Stalking	

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SEXUAL ASSAULT

“Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v)

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SEXUAL ASSAULT

			
Rape	Fondling	Incest	Statutory Rape

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SEXUAL ASSAULT - RAPE

Rape - The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.

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SEXUAL ASSAULT - FONDLING

Fondling - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental incapacity.


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SEXUAL ASSAULT - INCEST & STATUTORY RAPE

Incest - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape - Sexual intercourse with a person who is under the statutory age of consent.

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INCEST AND STATUTORY RAPE CONSIDERATIONS

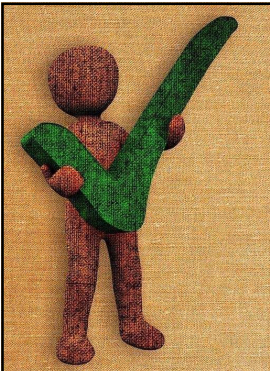
State law definitions


Complainant as a non-student

Conduct codes

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§ 106.30(a) - CONSENT

The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault.

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SEXUAL ASSAULT DEFINITION CONSIDERATIONS

Includes attempts

Can broaden based on "consent" definition

Can specify which body parts are "private" and whether touching is over or under clothes

"Severity" of rape vs. fondling

Naming the offense in the policy

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INTIMATE PARTNER VIOLENCE

*“dating violence” as defined in 34 U.S.C. 12291(a)(10),
“domestic violence” as defined in 34 U.S.C. 12291(a)(8)*

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DATING VIOLENCE - 34 U.S.C. 12291(A)(10)

The term “dating violence” means violence committed by a person— (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

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DATING VIOLENCE - CLERY REGULATION ADDITIONS

(ii) For the purposes of this definition -

(A) *Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.*

(B) *Dating violence does not include acts covered under the definition of domestic violence.*

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DOMESTIC VIOLENCE - 34 U.S.C. 12291(A)(8)

The term "domestic violence" includes felony or misdemeanor crimes of violence committed by

- a current or former spouse or intimate partner of the victim,
- by a person with whom the victim shares a child in common,
- a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

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INTIMATE PARTNER VIOLENCE CONSIDERATIONS

Consistency in assigning violations

Severity, pervasiveness, and offensiveness not elements

Denial of equal access is not an element

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STALKING

"stalking" as defined in 34 U.S.C. 12291(a)(30)

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STALKING - 34 U.S.C. 12291(A)(30)

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- *Fear for the person's safety or the safety of others; or*
- *Suffer substantial emotional distress.*

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STALKING - CLERY REGULATION ADDITIONS

(ii) For the purposes of this definition -

(A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

(C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

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TITLE IX JURISDICTION - PERSON



At the time of filing a formal complaint...the complainant must be participating in or attempting to participate in the education program or activity." (§106.30(a))



The recipient exercised substantial control over over both the respondent and the context in which the sexual harassment occurs.

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“ATTEMPTING TO PARTICIPATE”

- Has withdrawn due to alleged harassment and has desire to re-enroll
- Has graduated but intends to apply to new program or participate in alumni programs
- Is on a leave of absence and still enrolled or intends to re-apply
- Has applied for admission

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SIDEBAR: NON-STUDENT OR NON-EMPLOYEE COMPLAINANTS (Q&A)

There are circumstances when a Title IX Coordinator may need to sign a formal complaint that obligates the school to initiate an investigation regardless of the complainant's relationship with the school or interest in participating in the Title IX grievance process.

- Examples:
 - Perpetrator in a position of authority
 - Potential for harm to other students

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TITLE IX JURISDICTION – CONTEXT OF EDUCATIONAL PROGRAMS OR ACTIVITIES

Locations, events or circumstances in which the institution has control over the respondent AND context

Or


Any building owned or controlled by a student organization that is officially recognized

And


Occurred in the United States

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OFF-CAMPUS JURISDICTION




Hotel
On field trip




Home
While tutoring



Bus
For athletic travel



Virtual
During class




Business
At internship

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RECEIVING REPORTS



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§ 106.44(a) - GENERAL RESPONSE TO SEXUAL HARASSMENT

Prompt

Not Deliberately Indifferent

i.e., clearly unreasonable in light of the known circumstances

Equitable

Offer supportive measures to complainant

Follow grievance process before imposing sanctions

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§ 106.30(a) - ACTUAL KNOWLEDGE

Title IX Coordinator

Official with Authority

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NO ACTUAL KNOWLEDGE § 106.30(a)

Not constructive notice


Not vicarious liability

Not when respondent only has notice

Not just ability, obligation, or training to report

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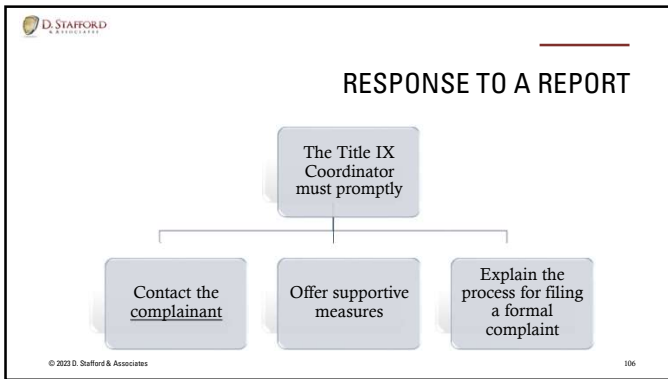
WHO MAY REPORT (FROM THE Q&A)

“A school may receive actual knowledge of sexual harassment from any person. There is no requirement that the person be participating in or attempting to participate in a school program or activity to report sexual harassment.”

- Complainant
- Friend
- Parent
- Witness

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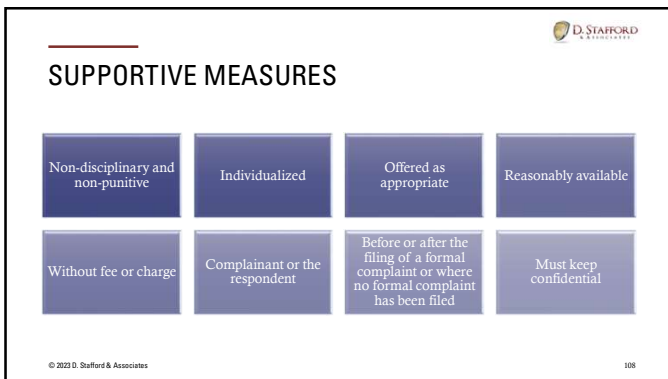
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§ 106.30(a) - SUPPORTIVE MEASURES

Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.

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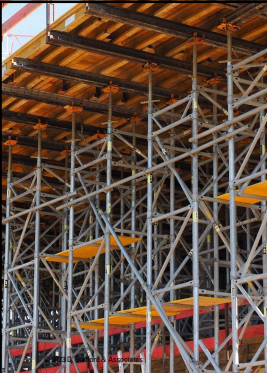
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SUPPORTIVE MEASURE EXAMPLES § 106.30(a)

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Other similar measures

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SUPPORTIVE MEASURES FROM GUIDANCE

- Fact specific determinations of supportive measures
- No contact orders do not have to be mutual
- Emergency removal can remove from all or part of educational program
- Student workers straddle both removal options
- If considered as a potential sanction, it is a burden

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WHAT COULD "UNREASONABLY BURDEN"?


- Change in class schedule
- Housing adjustment
- Sports team membership
- Student government position
- Extracurricular activity participation
- Suspension
- Expulsion

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LEAVE OPTIONS




Emergency removal




Administrative leave

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§ 106.44(c) - EMERGENCY REMOVAL



Immediate threat to physical health or safety




Must arise from the allegations




Provide notice and opportunity to challenge

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§ 106.30(a) - FORMAL COMPLAINT

filed by a complainant

↔

signed by the Title IX Coordinator

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**§ 106.45 -
GRIEVANCE
PROCESS FOR
FORMAL
COMPLAINTS OF
SEXUAL
HARASSMENT**

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§ 106.45(a) - RECIPIENT'S TREATMENT OF PARTIES

A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.

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§106.45 (b)(1)(i-iii) - GRIEVANCE PROCESS

Equitable

Objective Evaluation
(inculpatory and exculpatory)

No conflict of interest or bias

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§ 106.45 (b)(1)(iv-x) - GRIEVANCE PROCESS

- Presumption of not responsible
- Prompt time frames
- Range of sanctions
- Standard of evidence
- Appeal Procedures
- Range of supportive measures
- Limits on privileged evidence

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§ 106.45(b)(2) - NOTICE OF ALLEGATIONS

- Grievance process
- Sufficient details and sufficient time to prepare
- Identities of the parties, alleged conduct
- Date and location of incident
- Presumed not responsible
- Advisor of choice
- False statements

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§ 106.45(b)(2)(ii) - Additional Allegations

An amended notice must be sent to the parties when additional allegations will be investigated that were not in the original notice letter.

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§ 106.45(b)(3) - DISMISSAL OF FORMAL COMPLAINT

Must Dismiss

- If the conduct alleged in the formal complaint would not constitute sexual harassment
- Did not occur in the educational program or activity
- Did not occur in the United States

May Dismiss

- Complainant withdraws the formal complaint
- Respondent is no longer enrolled/employed
- Insufficient evidence

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§ 106.45(b)(4) - CONSOLIDATION OF COMPLAINTS

Multiple respondents

More than one complainant against one or more respondent

One party against other party

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§ 106.45(b)(9) - INFORMAL RESOLUTION



Notice



Voluntary

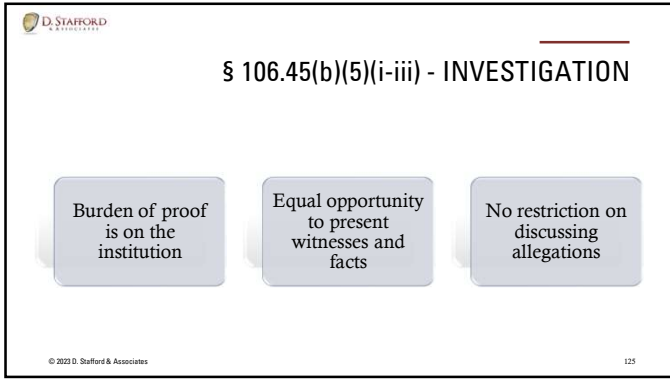


Not allowed for Employee/student

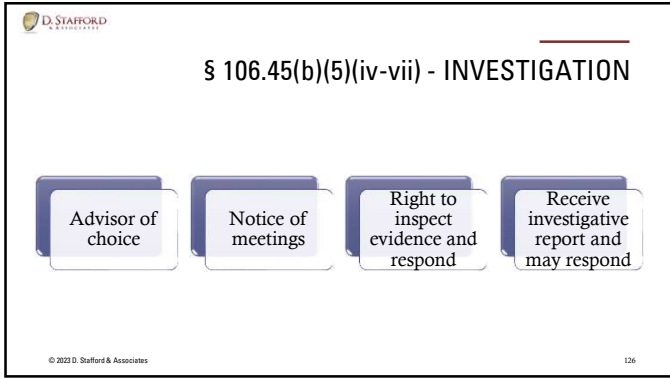
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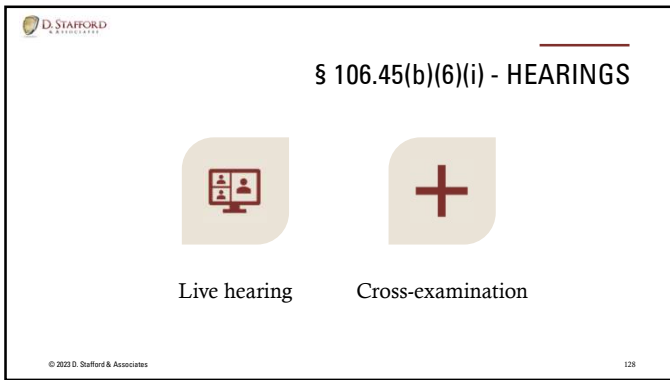
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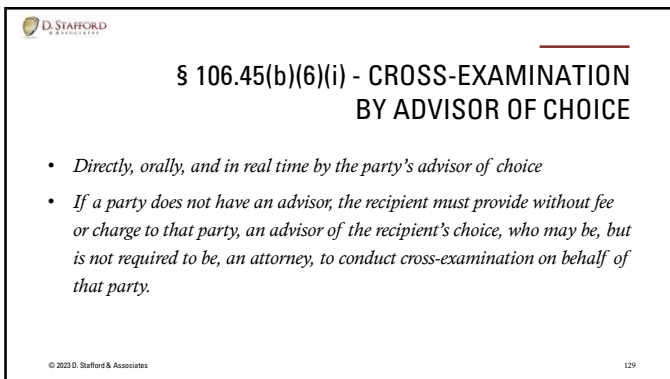
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§ 106.45(b)(6)(i) - RELEVANCY DETERMINATION

Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

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§ 106.45(b)(6)(i) - RELEVANCY - SEXUAL PREDISPOSITION AND HISTORY

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless



- offered to prove that someone other than the respondent committed the conduct, or
- if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

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§ 106.45(b)(6)(i) - "PHYSICALLY PRESENT"


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 § 106.45(b)(6)(i) - HEARING RECORDING



Audio



Video



Transcript

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 § 106.45 (b)(7)(i) - DETERMINATION REGARDING RESPONSIBILITY



Made by the decision-maker




Decision-maker can have no other role



Applying the standard of evidence

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 § 106.45 (b)(7)(ii) - DETERMINATION REGARDING RESPONSIBILITY


- _____ Allegations
- _____ Procedural steps
- _____ Findings of fact
- _____ Conclusion/application
- _____ Rationale
- _____ Appeal procedures

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SANCTIONS AND REMEDIES



Sanctions:
Disciplinary/punitive



Remedies:
Restore or preserve access

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§ 106.45(b)(8) - APPEALS

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§ 106.45(b)(8) - APPEALS

- Mandatory grounds
 - Procedural irregularity that affected the outcome
 - New evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome
 - The Title IX Coordinator, investigator, or decision-maker had a general or specific conflict of interest or bias against the complainant or respondent that affected the outcome
- Additional grounds are permitted

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§ 106.45(b)(8)(iii) - APPEALS

- Notification to both parties of an appeal submission
- Appeal officer cannot be the hearing decision-maker
- Appeal officer must be trained and be without bias/conflict
- Give both parties an opportunity to respond
- Notification of decision to both parties

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§ 106.45(b)(10) - RECORDKEEPING

 Case Materials

 Training materials

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"Title IX Grievance Procedures"



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**LOOKING AHEAD -
THE 2022
PROPOSED
REGULATIONS**



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**When will the Title IX
Regulations be
finalized?**



Not really sure!

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THE PROPOSED REGULATIONS

Just a draft

Current rules
**STILL IN
EFFECT**

Not about
athletics and
gender identity
(Separate NPRM)

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SCOPE OF TITLE IX - SEX DISCRIMINATION

<p>Sex Discrimination</p> <ul style="list-style-type: none"> • Gender, sexual orientation, & identity • Pregnancy & related conditions • Parental, family, or marital status • Applies to <ul style="list-style-type: none"> • Admission • Employment • Educational programs • Athletics 	<p>Sex-based Harassment</p> <ul style="list-style-type: none"> • Sexual Assault • Dating/Domestic Violence • Stalking • Hostile Environment • Quid Pro Quo • Harassment based on sex discrimination (see above)
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PROHIBITIONS

<p>Sex Discrimination</p> <ul style="list-style-type: none"> • Sex stereotypes • Sex characteristics • Pregnancy or related conditions • Sexual orientation • Gender identity 	<p>Sex-based harassment</p> <ul style="list-style-type: none"> • Sexual harassment: <ul style="list-style-type: none"> • Quid pro quo • Hostile environment • Sexual assault, dating violence, domestic violence, and stalking • Harassment based on sex discrimination (see above)
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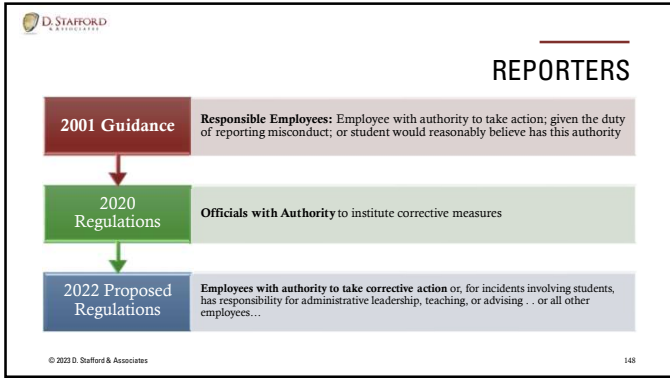


SEX-BASED HARASSMENT

<p style="text-align: center; font-weight: bold; background-color: #0070c0; color: white; padding: 5px;">Quid Pro Quo</p> <ul style="list-style-type: none"> • When an employee or other person authorized by a recipient to provide an aid, benefit, or service explicitly or impliedly conditions that aid, benefit or service on a person's participation in unwelcome sexual conduct 	<p style="text-align: center; font-weight: bold; background-color: #0070c0; color: white; padding: 5px;">Specific Offenses</p> <ul style="list-style-type: none"> • Sexual assault • Dating violence • Domestic violence • Stalking 	<p style="text-align: center; font-weight: bold; background-color: #0070c0; color: white; padding: 5px;">Hostile Environment</p> <ul style="list-style-type: none"> • Unwelcome sex-based conduct that is sufficiently severe or pervasive that, based on the totality of the circumstances and evaluated subjectively and objectively, it denies or limits a person's ability to participate in or benefit from the recipient's education program or activity
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REPORTING REQUIREMENTS (POST-SECONDARY)


Employee Role	Involving	Notify Title IX	Provide Title IX info
Confidential Employee	Student or Employee	No	Yes
Employee with ability to institute corrective measures	Student or Employee	Yes	
Employee responsible for administrative leadership, teaching, or advising	Student	Yes	
Employee responsible for administrative leadership, teaching, or advising	Employee	Yes	Yes
All other employees	Student or Employee	Yes	Yes

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NOTIFICATION REQUIREMENT

Must notify the Title IX Coordinator when the employee has information about conduct that may constitute sex discrimination under Title IX.


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LOCATION JURISDICTION CHANGES


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



Outside the US?




Off campus?



Still includes student orgs

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ADDITIONAL TIDBITS

Can have temporary supportive measures that “burden” a respondent (with some parameters)

While different treatment is permissible, cannot cause more than “de minimis harm”

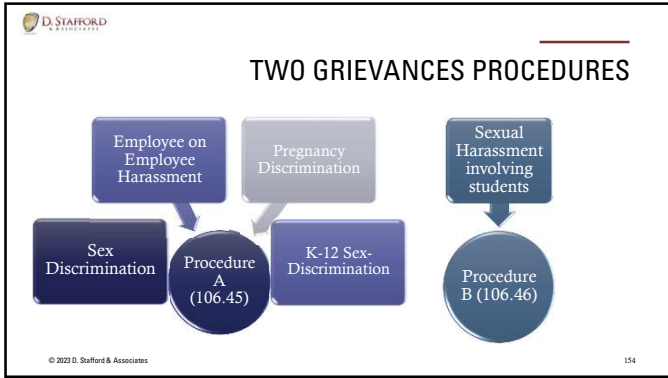
Permissive dismissal (not mandatory dismissal)

Complaint can be written or oral (and not formal)

Informal is option without “formal” complaint

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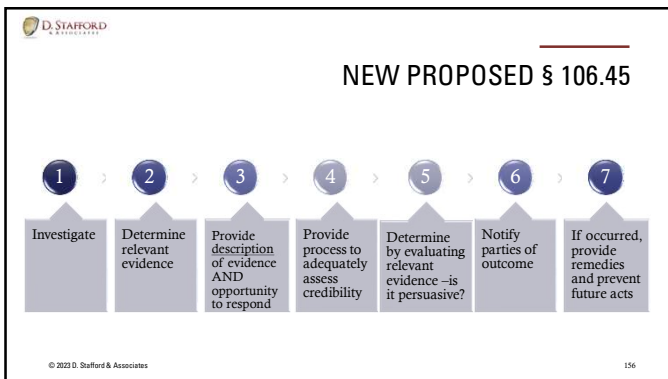
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COMPARING NOTICE

2020	NEW 106.45 (DOES NOT NEED TO BE IN WRITING!!!)	NEW 106.46
Grievance Procedures	YES	YES
"Sufficient details" (parties, conduct, date, location)	YES "Sufficient information"	YES "Sufficient information"
Statement that retaliation prohibited	YES	YES
Respondent is presumed not responsible		YES
Right to advisor of choice		YES
Right to inspect and review evidence		YES (Evidence OR summary in report with evidence by request)
Prohibition on false statements*		YES

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NEW PROPOSED § 106.46

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§ 106.46 - PROCESS FOR EVALUATING ALLEGATIONS AND ASSESSING CREDIBILITY

- NO REQUIREMENT FOR LIVE HEARING
- Decision-maker can ask questions at individual meetings or at live hearing
 - Relevant questions and follow-up questions including questions challenging credibility
 - Allow each party to propose relevant questions and follow-up questions
- If allow live hearing with advisor questions...
 - No questioning by parties
 - If a party does not respond to questions related to their credibility, the decision-maker must not rely on any statement of that party that supports that party's position.

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APPEALS (§ 106.46 ONLY)

- Procedural irregularity that would change the determination of whether sex-based harassment occurred
- New evidence that would change the outcome of the matter and that was not reasonably available at the time the determination of whether sex-based harassment occurred or dismissal was made
- Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that would change the outcome

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PREGNANCY AND PARENTAL STATUS

- Employees and students
- Lactation time and space
- Comparable treatment to temporary disabilities or conditions
- When an employee is informed of student pregnancy ... promptly inform that person of how to notify the Title IX Coordinator

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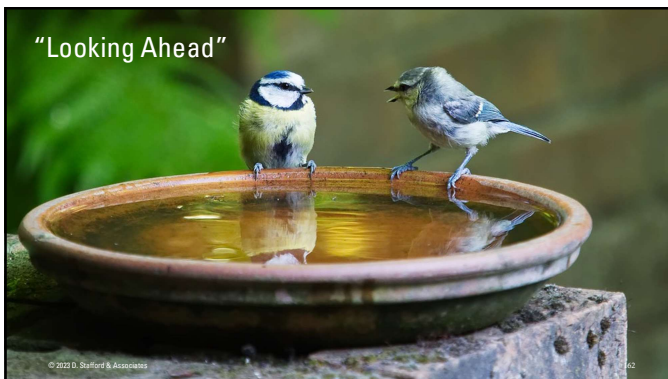
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PREGNANCY CONTINUED...

- When Title IX learns...must inform student
 - Prohibit sex discrimination
 - Reasonable modifications
 - Allow access to separate and comparable program or activity (but not require)
 - Allow voluntary leave of absence
 - Lactation space
 - Grievance procedures

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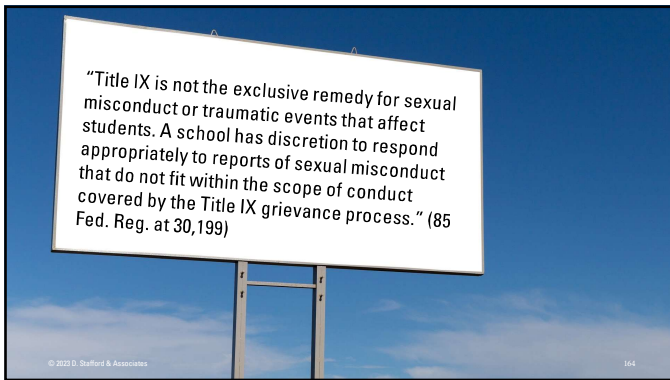
ADDRESSING "NON-TITLE IX" CASES



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"Title IX is not the exclusive remedy for sexual misconduct or traumatic events that affect students. A school has discretion to respond appropriately to reports of sexual misconduct that do not fit within the scope of conduct covered by the Title IX grievance process." (85 Fed. Reg. at 30,199)

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EXAMPLE BEHAVIORS OUTSIDE THE TITLE IX DEFINITIONS

- Administering a date rape drug
- Touching non-private body part with perpetrator's private body part

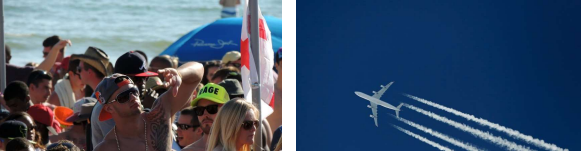
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LOCATIONS OUTSIDE THE DEFINITION

- Outside an education program or activity
- Outside the U.S.



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“Addressing Non-Title IX”



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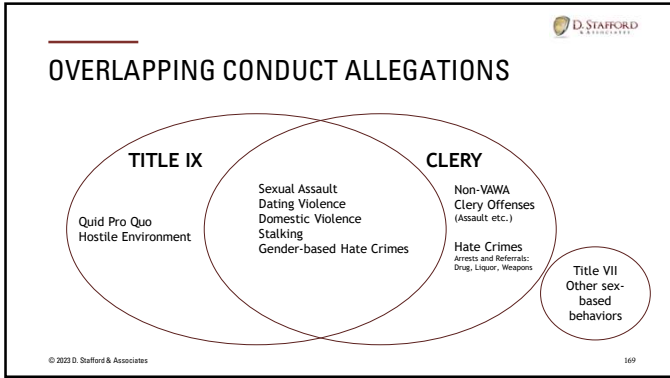
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VAWA PROCEDURAL REQUIREMENTS

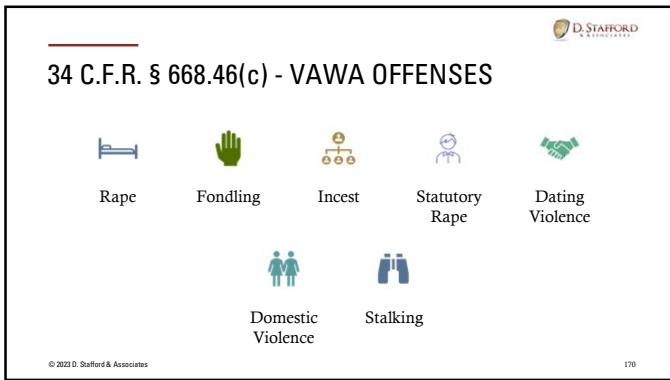


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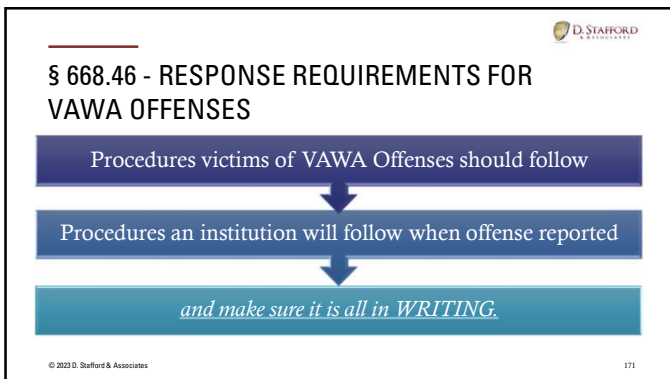
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§ 668.46(b)(11)vii) - WRITTEN EXPLANATION OF STUDENT OR EMPLOYEE'S RIGHTS

When a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options, as described in paragraphs (b)(11)(ii) through (vi) of this section. . .

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§ 668.46(b)(11)(ii) - WRITTEN EXPLANATION OF RIGHTS AND OPTIONS


- 1. The importance of preserving evidence** that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order
 - Not required but recommended: Where to obtain forensic exams, contact info, does not require police report and can have exam now, decide later
- 2. How and to whom the alleged offense should be reported**
 - List any person or organization that can assist the victim
 - Recommended: Also include community organizations

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§ 668.46(b)(11)(ii) - WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

- 3. Notification of the victim's option to**
 - Notify proper law enforcement authorities, including on-campus and local police
 - Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses
 - Decline to notify such authorities
- 4. The rights of victims and the institution's responsibilities for**
 - Orders of protection
 - "No contact" orders
 - Restraining orders
 - Similar lawful orders issued by a criminal, civil, tribal, or institutional

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§ 668.46(b)(11)(ii) - WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

5. To students AND employees about existing


- Counseling, health, mental health services
- Victim Advocacy
- Legal Assistance
- Visa and Immigration Assistance
- Student Financial Aid
- Other services available for victims

6. Options for, available assistance in, and how to request changes to (if requested and reasonably available)

- Academic, living, transportation, working

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§ 668.46(b)(11)(ii) - WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

7. Confidentiality


- Publicly available recordkeeping has no personally identifying information about the victim (not required for respondent but best practice in most cases)
- Accommodations and protective measures are confidential (to the extent they can be without impairing the ability to provide them)

8. Disciplinary Procedures

- An explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as required

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RESPONSE TO "ACTUAL KNOWLEDGE"








Title IX	Clery Act
<ul style="list-style-type: none"> • Contact the complainant • Offer and/or implement supportive measures • Explain the process for filing a formal complaint 	<ul style="list-style-type: none"> • Written explanation of victim's rights and options • Assess for Timely Warning Notice OR Emergency Notification

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CLERY ACT REQUIREMENTS FOR DISCIPLINARY PROCEEDINGS

-  Anticipated timelines ("reasonably prompt")
-  Decision-making process
-  How to and options for filing a school complaint (with contact info)
-  How school determines which process to use
-  Who makes decisions
-  Include employee procedures
-  Use procedures regardless of Clery geography

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§ 668.46(k)(2)(iii-iv)- ADVISORS

- *Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice*
- *Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties*

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INFORMAL RESOLUTIONS

<p>Title IX</p> <ul style="list-style-type: none"> • Can offer, but may not require • Not allowed for "employee on student" sexual harassment • Party may withdraw up to a point 	<p>Clery Act</p> <ul style="list-style-type: none"> • Written information about procedures the institution will follow for VAWA offenses (does not differentiate between formal vs informal)
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FORMAL COMPLAINT RIGHTS

<p>Title IX</p> <ul style="list-style-type: none"> • Treat equitably with goal to restore/preserve access to education; due process for respondent • Reasonably prompt time-frames 	<p>Clery Act</p> <ul style="list-style-type: none"> • Prompt, fair and impartial investigation and resolution <ul style="list-style-type: none"> • Anticipated timeframes • List <u>all</u> possible sanctions for each offense (employees and students) • Consistent with policy and transparent • Not required to list all protective measures
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WRITTEN DETERMINATION

<p>Title IX</p> <ul style="list-style-type: none"> • Identification of the allegations • Procedural steps taken from receipt through determination • Findings of fact supporting the determination • Conclusions regarding the application of code of conduct to the facts • Result (responsibility, rationale, sanctions, remedies for each allegation) • Appeals procedures • When results become final (post appeal) 	<p>Clery Act</p> <ul style="list-style-type: none"> • Result (include any sanctions and rationale for results and sanction) • Appeals procedures • Any change to the result • When such results become final
---	---

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§ 668.46(k)(2)(iii-iv) - BIAS FREE AND TRAINING FOR "OFFICIALS"

Annual training on the issues related to dating violence, domestic violence, sexual assault and stalking and on how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability

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APPEALS

Title IX

- Must offer both parties an appeal
- Based on specific grounds

Clery Act

- Not required (but must provide notice if allowed along with appeal procedures)
- Simultaneous written decision describing result, sanction, any changes to the result, when it becomes final

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"VAWA Procedural Requirements"



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VAWA EDUCATION REQUIREMENTS



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§ 668.46(j) - PROGRAMS TO PREVENT DATING VIOLENCE, DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND STALKING.

...an institution must include in its annual security report a statement of policy that addresses the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking.

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EDUCATION "MUSTS"

Institutional statement that prohibits VAWA offenses

Definition of VAWA offenses

Definition of consent


Bystander intervention

Risk Reduction

34 CFR 668.46(j)(1) 188

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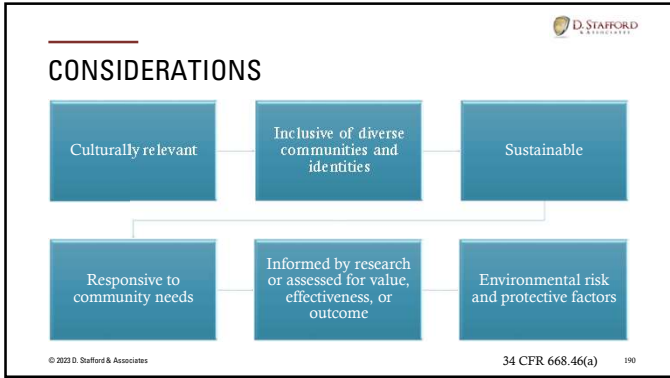
TYPES OF PROGRAMS

- Awareness programs
- Bystander Intervention
- Ongoing prevention and awareness campaigns
- Primary prevention program
- Risk reduction

34 CFR 668.46(j)(2) 189

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RECORDKEEPING

Name of Program	Date Held	Location Held	Prohibited Behavior Covered
Behind Closed Doors Skits	3/15/2022	Main Auditorium	DoV, DaV, SA & S*
Behind Closed Doors Skits	9/03/2022	Main Auditorium	DoV, DaV, SA & S*
Residence Hall Speaker Series-1	2/17/2022	Cole Residence Hall	DoV* DaV
Residence Hall Speaker Series-4	12/02/2022	Cole Residence Hall	S*
Clothesline Project	10/01/2022-10/05/2022	Student Commons Main Floor	DoV, DaV, SA *
Vagina Monologues	12/02/2022	Main Auditorium	SA*
Poetry Speak Out	3/19/2022	Student Commons Lounge	DoV, Dav*
Safe Zone Hate Crime Prevention	11/02/2022-11/04/2022	Office of Diversity & Inclusion	DoV, DaV, SA & Stalking (LGBTQ)

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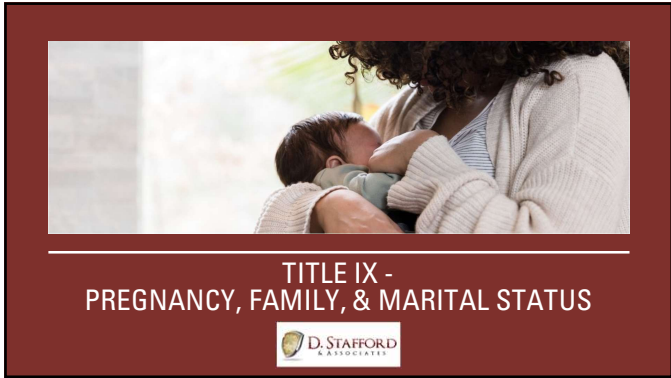
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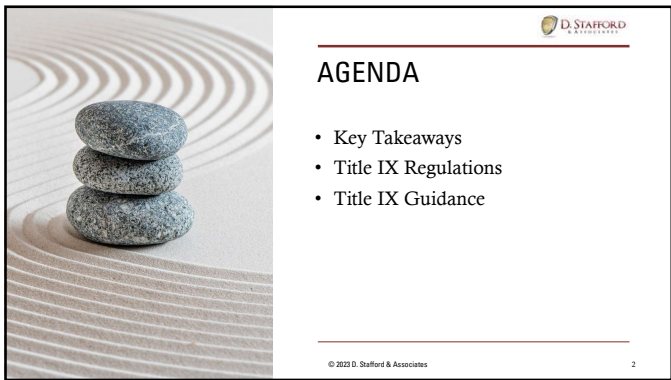
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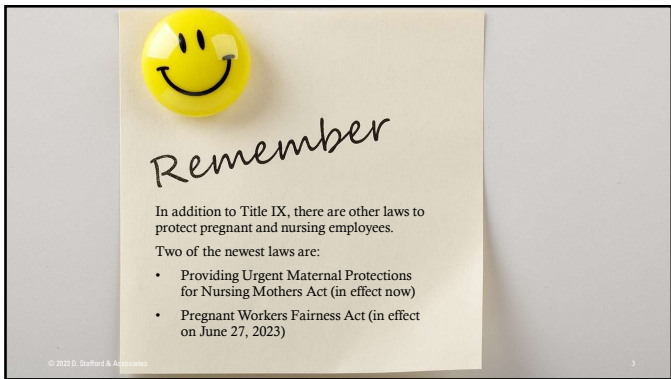
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Key Takeaways From the Proposed Title IX Regulations

- Refers to “any policy, practice, or procedure” rather than “any rule”
- Added “family” to “parental, family, or marital status”
- Provide definitions for “parental status” and “pregnancy or related conditions”
- Requirements for providing information by the Title IX Coordinator
- Provide comparable treatment to temporary disabilities or conditions
- Must have grievance procedures
- Ensure the availability of lactation spaces
- Must provide reasonable modifications

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TITLE IX REGULATIONS

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SUBPART C— DISCRIMINATION ON THE BASIS OF SEX IN ADMISSION AND RECRUITMENT PROHIBITED

§ 106.21 Admission
§ 106.37 Financial Assistance

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§ 106.21(c) PROHIBITIONS RELATING TO MARITAL OR PARENTAL STATUS

In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

- (1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;
- (2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;
- (3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and
- (4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

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§ 106.37(a) PROHIBITIONS RELATING TO MARITAL OR PARENTAL STATUS

Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

- (1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate;
- (2) Through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or
- (3) Apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

8

SUBPART D— DISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES PROHIBITED

§ 106.40 Marital or
Parental Status



9

§ 106.40(a) STATUS GENERALLY.

A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

10

§ 106.40(b) PREGNANCY AND RELATED CONDITIONS.

(1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the separate portion is comparable to that offered to non-pregnant students.

Continued...

11

§ 106.40(b) PREGNANCY AND RELATED CONDITIONS.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

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SUBPART E—
DISCRIMINATION ON
THE BASIS OF SEX IN
EMPLOYMENT IN
EDUCATION
PROGRAMS OR
ACTIVITIES
PROHIBITED

§ 106.57 Marital or
Parental Status
§ 106.60 Pre-employment
inquiries

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§ 106.57 (a) GENERAL.

A recipient shall not apply any policy or take any employment action:

- (1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or
- (2) Which 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.

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§ 106.57 (b) PREGNANCY.

A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

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§ 106.57 (c) PREGNANCY AS A TEMPORARY DISABILITY.

A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability 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.

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§ 106.57 (d) PREGNANCY LEAVE

In the case of a recipient which 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 shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she 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.

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§ 106.60 PRE-EMPLOYMENT INQUIRIES.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is “Miss or Mrs.”

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TITLE IX GUIDANCE




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U.S. Department of Education Office for Civil Rights

October 2022

Discrimination Based on Pregnancy and Related Conditions


A Resource for Students and Schools

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2013 (FIRST PUBLISHED IN JULY 1991)

D. STAFFORD & ASSOCIATES




U.S. DEPARTMENT OF EDUCATION

Supporting the Academic Success of Pregnant and Parenting Students

Under *Title IX* of the
Education Amendments of 1972

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MAY A SCHOOL REQUIRE A PREGNANT STUDENT TO PARTICIPATE IN A SEPARATE PROGRAM FOR PREGNANT STUDENTS?


No. Any such requirement would violate *Title IX*. A school may offer separate programs or schools for a pregnant student, but participation in those programs or schools must be completely voluntary. A school may provide information to its students about the availability of an alternative program, but it may not pressure a pregnant student to attend that program. A pregnant student must be allowed to remain in her regular classes and school if she so chooses.

If a school offers a voluntary alternative program, that program must provide academic, extracurricular, and enrichment opportunities comparable to those provided to the students in the regular school program. Although an alternative program need not be identical to the regular school program in the specific courses or range of courses, if it provides only vocational-track courses, with no opportunity for advanced academic or college-preparatory classes, it would not be considered comparable. It is critical to provide clear information about what courses are available, how credits are transferred between the regular program and alternative program, and how the student can meet graduation requirements. This helps ensure that any separate programs offered to a pregnant student are both voluntary and comparable to the regular program.”

(OCR, 2013)

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MAY A SCHOOL REQUIRE A PREGNANT STUDENT TO OBTAIN A DOCTOR'S PERMISSION BEFORE ALLOWING HER TO ATTEND SCHOOL LATE IN HER PREGNANCY IF THE SCHOOL IS WORRIED ABOUT THE STUDENT'S HEALTH OR SAFETY?

Schools cannot require a pregnant student to produce a doctor's note in order to stay in school or participate in activities, including interscholastic sports, unless the same requirement to obtain a doctor's note applies to all students being treated by a doctor. That is, schools cannot treat a pregnant student differently from other students being cared for by a doctor, even when a student is in the later stages of pregnancy; schools should not presume that a pregnant student is unable to attend school or participate in school activities.

(OCR, 2013)

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CAN HARASSING A STUDENT BECAUSE OF PREGNANCY VIOLATE *TITLE IX*?

Yes. *Title IX* prohibits harassment of students based on sex, including harassment because of pregnancy or related conditions. Harassing conduct can take many forms, including verbal acts and name-calling, graphic and written statements, and other conduct that may be humiliating or physically threatening or harmful. Particular actions that could constitute prohibited harassment include making sexual comments or jokes about a student's pregnancy, calling a pregnant student sexually charged names, spreading rumors about her sexual activity, and making sexual propositions or gestures. Schools must take prompt and effective steps reasonably calculated to end pregnancy-related harassment, prevent its recurrence, and eliminate any hostile environment created by the harassment. The school violates *Title IX* if sexual harassment or other pregnancy-related harassment by employees, students, or third parties is sufficiently serious that it interferes with a student's ability to benefit from or participate in the school's program, and the harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees.

(OCR, 2013)

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WHAT TYPES OF ASSISTANCE MUST A SCHOOL PROVIDE TO A PREGNANT STUDENT AT SCHOOL?

To ensure a pregnant student's access to its educational program, when necessary, a school must make adjustments to the regular program that are reasonable and responsive to the student's temporary pregnancy status. For example, a school might be required to provide a larger desk, allow frequent trips to the bathroom, or permit temporary access to elevators.

(OCR, 2013)

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IN ADDITION TO ALLOWING A PREGNANT STUDENT TO ATTEND CLASSES, DOES A SCHOOL NEED TO ALLOW HER TO PARTICIPATE IN SCHOOL CLUBS, CLASS ACTIVITIES, INTERSCHOLASTIC SPORTS, AND OTHER SCHOOL-SPONSORED ORGANIZATIONS?

Yes. *Title IX* prohibits a school from excluding a pregnant student from any part of its educational program, including all extracurricular activities, such as school clubs, academic societies, honors programs, homecoming court, or interscholastic sports. A pregnant student must also be eligible to hold leadership positions in these activities. In addition, a pregnant student may not be excluded from an activity that is part of the school's educational program even if the activity is not operated directly by the school. For example, an after-school program run by a local nonprofit agency that rents the school's facilities at a reduced rate and is advertised and promoted by the school may not exclude a pregnant student from enrolling.

(OCR, 2013)

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DOES A SCHOOL HAVE TO EXCUSE A STUDENT'S ABSENCES DUE TO PREGNANCY OR CHILDBIRTH?


Yes. *Title IX* requires a school to excuse a student's absences due to pregnancy or related conditions, including recovery from childbirth, for as long as the student's doctor deems the absences to be medically necessary. When the student returns to school, she must be reinstated to the status she held when the leave began, which should include giving her the opportunity to make up any work missed. A school may offer the student alternatives to making up missed work, such as retaking a semester, taking part in an online course credit recovery program, or allowing the student additional time in a program to continue at the same pace and finish at a later date, especially after longer periods of leave. The student should be allowed to choose how to make up the work.

If the school requires students with other medical conditions to submit a doctor's note, it may require the same from a pregnant student.

(OCR, 2013)

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DOES A SCHOOL NEED TO PROVIDE SPECIAL SERVICES TO A PREGNANT STUDENT?

Title IX requires a school to provide the same special services to a pregnant student that it provides to students with temporary medical conditions. For example, if a school provides at-home instruction or tutoring to students who miss school because of temporary medical conditions, it must do the same for a student who misses school because of pregnancy or childbirth.

(OCR, 2013)

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WHAT IF SOME TEACHERS AT A SCHOOL HAVE THEIR OWN POLICIES ABOUT CLASS ATTENDANCE AND MAKE-UP WORK?

Every school that receives federal financial assistance is bound by *Title IX*. Schools must ensure that the policies and practices of individual teachers do not discriminate against pregnant students. For example, a teacher may not refuse to allow a student to submit work after a deadline that she missed because of absences due to pregnancy or childbirth. Additionally, if a teacher's grading is based in part on class attendance or participation, the student should be allowed to earn the credits she missed so that she can be reinstated to the status she had before the leave. Schools should ensure that their teachers and staff are aware of and follow *Title IX* requirements.

(OCR, 2013)

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WHAT PROCEDURES MUST A SCHOOL DISTRICT HAVE IN PLACE RELATED TO DISCRIMINATION ON THE BASIS OF SEX, INCLUDING DISCRIMINATION RELATED TO PREGNANCY AND PARENTAL STATUS?


School districts must adopt and publish grievance procedures for students to file complaints of sex discrimination, including discrimination related to pregnancy or parental status. The grievance process should provide a mechanism for school districts to investigate and evaluate complaints and must provide for prompt and equitable resolution of complaints. School districts should make sure that their grievance procedures are widely distributed and understandable by students, parents, and employees.

A school district must also designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the law. The coordinator's responsibilities include overseeing all *Title IX* complaints, including those alleging discrimination against pregnant and parenting students, and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. The *Title IX* coordinator must have adequate training in *Title IX* requirements and must be able to explain the operation of the district's grievance procedures. A school district must notify all students and employees of the name, office address, and telephone number of its *Title IX* coordinator(s).

(OCR, 2013)

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WHAT PROCEDURES MUST A SCHOOL DISTRICT HAVE IN PLACE RELATED TO DISCRIMINATION ON THE BASIS OF SEX, INCLUDING DISCRIMINATION RELATED TO PREGNANCY AND PARENTAL STATUS?

In addition, a school district must publish a notice that it does not discriminate on the basis of sex in its educational programs or activities. The notice must also state that inquiries concerning the application of *Title IX* and its implementing regulations may be referred to the *Title IX* coordinator or to OCR. The notice must be displayed prominently in each announcement, bulletin, catalog, or application form used in connection with the recruitment of students or employees. *Title IX* does not require a school district to adopt a policy specifically prohibiting discrimination against pregnant or parenting students, but OCR recommends that a school district's nondiscrimination policy makes clear that prohibited sex discrimination covers discrimination against pregnant and parenting students.

(OCR, 2013)

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HOW DO I ENFORCE MY RIGHTS UNDER *TITLE IX*?

If you wish to file a complaint of discrimination with OCR, you may use the online complaint form available at <http://www.ed.gov/ocr/complaintintro.html>. If filing your complaint online, you will need to provide an original signature by mail, which may be done by printing and mailing the consent form linked at the bottom of the online complaint form.

Alternatively, you may send a letter to the OCR enforcement office responsible for the state in which the school is located. To find out which enforcement office is responsible for your state and to get contact information for it, call 1-800-421-3481, or check OCR's website at http://ed.gov/ocr/CYAPPS/OCR_contacts.cfm. In your letter, you should provide us with the name of the school or school district you are complaining about, the name of the person who has been discriminated against, a description of the events or actions that you believe constitute discrimination, and the date(s) on which the events or actions occurred. You should sign and date your letter and provide your contact information so we can reach you by phone, letter, and email.

The complaint must be filed with OCR within 180 days from the date of the incident that is the basis of your complaint, although there may be limited exceptions that would allow additional time. You are not required to use a school district's grievance procedures before filing a complaint with OCR. Note that it is unlawful for a school to retaliate against an individual for bringing concerns about the rights of a pregnant and parenting student to a school's attention, making a complaint to OCR, or otherwise participating in an OCR investigation or proceeding.

You also may have the right to file suit in court claiming that a school violated *Title IX*. You need not file a complaint with OCR before filing a suit in court. If you file a suit in court, OCR will close any complaint you filed with OCR that involves the same allegations against the same school. OCR cannot represent you in court. Thus, if you wish to file a court action, you must do so through your own attorney or on your own through the court's clerk's office. You may not file your complaint with OCR within 60 days following the termination of the court proceeding if there was no decision on the merits or settlement of your complaint allegations.

(OCR, 2013)

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Title IX Selected Excerpts Regarding Parental, Family, or Marital Status

650 PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

SUBPART A – Introduction

106.2 Definitions. (New Additions)

Parental status, as used in §§ 106.21(c)(2)(i), 106.37(a)(3), 106.40(a), and 106.57(a)(1), means the status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

- (1) A biological parent;
- (2) An adoptive parent;
- (3) A foster parent;
- (4) A stepparent;
- (5) A legal custodian or guardian;
- (6) In loco parentis with respect to such a person; or
- (7) Actively seeking legal custody, guardianship, visitation, or adoption of such a person.

Pregnancy or related conditions means:

- (1) Pregnancy, childbirth, termination of pregnancy, or lactation;
- (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- (3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions.

SUBPART C – Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

106.21 Admissions. (Revision)

(c) *Parental, family, or marital status; pregnancy or related conditions.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

- (1) Must treat pregnancy or 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; and
- (2) Must not:

- (i) Adopt or apply any policy, practice, or procedure concerning the current, potential, or past parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;
- (ii) Discriminate against any person on the basis of current, potential, or past pregnancy or related conditions, or establish or follow any policy, practice, or procedure that so discriminates; and
- (iii) Make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is “Miss or Mrs.” A recipient may ask an applicant to self identify their sex, but only if this question is asked of all applicants and if the response is not used as a basis for discrimination prohibited by this part.

106.37(a) Prohibitions relating to marital or parental status (No Recommended Changes)

106.40 Parental, family, or marital status; pregnancy or related conditions. (Major Revision)

(a) *Status generally.* A recipient must not adopt or apply any policy, practice, or procedure concerning a student’s current, potential, or past parental, family, or marital status that treats students differently on the basis of sex.

(b) *Pregnancy or related conditions.*

(1) *Nondiscrimination.* A recipient 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. A recipient may permit a student based on pregnancy or related conditions to participate voluntarily in a separate portion of its education program or activity provided the recipient ensures that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions.

(2) *Requirement for recipient to provide information.* A recipient must ensure that when any employee is informed of a student’s pregnancy or related conditions by the student or a person who has a legal right to act on behalf of the student, the employee promptly informs that person of how the person may notify the Title IX Coordinator of the student’s pregnancy or related conditions for assistance and provides contact information for the Title IX Coordinator, unless the employee reasonably believes the Title IX Coordinator has already been notified.

(3) *Specific actions to prevent discrimination and ensure equal access.* Once a student, or a person who has a legal right to act on behalf of the student, notifies the Title IX Coordinator of the student’s pregnancy or related conditions, the Title IX Coordinator must promptly:

(i) Inform the student, and if applicable the person who notified the Title IX Coordinator, of the recipient’s obligations to:

- (A) Prohibit sex discrimination under this part, including sex-based harassment;
- (B) Provide the student with the option of reasonable modifications to the recipient’s policies, practices, or procedures because of pregnancy or related conditions, under paragraphs (b)(3)(ii) and (b)(4) of this section;
- (C) Allow access, on a voluntary basis, to any separate and comparable portion of the recipient’s education program or activity under paragraph (b)(1) of this section;
- (D) Allow a voluntary leave of absence under paragraph (b)(3)(iii) of this section;
- (E) Ensure the availability of lactation space under paragraph (b)(3)(iv) of this section; and

- (F) Maintain grievance procedures that provide for the prompt and equitable resolution of complaints of sex discrimination, including sex-based harassment, under § 106.45, and if applicable § 106.46.
- (ii) Provide the student with voluntary reasonable modifications to the recipient's policies, practices, or procedures because of pregnancy or related conditions, under paragraph (b)(4) of this section.
 - (iii) Allow the student a voluntary leave of absence from the recipient's education program or activity to cover, at minimum, the period of time deemed medically necessary by the student's physician or other licensed healthcare provider. To the extent that a recipient maintains a leave policy for students that allows a greater period of time than the medically necessary period, the recipient must permit the student to take leave under that policy instead if the student so chooses. Upon the student's return to the recipient's education program or activity, the student must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the leave began.
 - (iv) Ensure the availability of 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 a student for expressing breast milk or breastfeeding as needed.
- (4) *Reasonable modifications for students because of pregnancy or related conditions.* Reasonable modifications to the recipient's policies, practices, or procedures for a student because of pregnancy or related conditions, for purposes of this section:
- (i) Must be provided on an individualized and voluntary basis depending on the student's needs when necessary to prevent discrimination and ensure equal access to the recipient's education program or activity, unless the recipient can demonstrate that making the modification would fundamentally alter the recipient's education program or activity. A fundamental alteration is a change that is so significant that it alters the essential nature of the recipient's education program or activity;
 - (ii) Must be effectively implemented, coordinated, and documented by the Title IX Coordinator; and
 - (iii) May include but are not limited to breaks during class to attend to related health needs, expressing breast milk, or breastfeeding; intermittent absences to attend medical appointments; access to online or other homebound education; changes in schedule or course sequence; extension of time for coursework and rescheduling of tests and examinations; counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access; or other appropriate changes to policies, practices, or procedures.
- (5) *Comparable treatment to temporary disabilities or conditions.* To the extent not otherwise addressed in paragraph (b)(3) of this section, a recipient must treat pregnancy or 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 benefit, service, plan, or policy the recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's education program or activity.
- (6) *Certification to participate.* A recipient may not require a student who is pregnant or has related conditions to provide certification from a physician or other licensed healthcare provider that the student is physically able to participate in the recipient's class, program, or extracurricular activity unless:

- (i) The certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;
- (ii) The recipient requires such certification of all students participating in the class, program, or extracurricular activity; and
- (iii) The information obtained is not used as a basis for discrimination prohibited by this part.

SUBPART E – Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

106.51 Employment. (New Addition)

- (6) Granting and return from leaves of absence, leave for pregnancy or related conditions, leave for persons of either sex to care for children or dependents, or any other leave;

106.57 Parental, family, or marital status; pregnancy or related conditions. (Major Revisions)

- (a) *Status generally.* A recipient shall not adopt or apply 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) Which 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.
- (b) *Pregnancy or related conditions.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of current, potential, or past pregnancy or related conditions.
- (c) *Comparable treatment to temporary disabilities or conditions.* A recipient shall treat pregnancy or related conditions or any temporary disability resulting therefrom as any other temporary disability 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.
- (d) *Pregnancy leave.* 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 shall 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.
- (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 the availability of 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.

106.60 Pre-employment inquiries. (Revision)


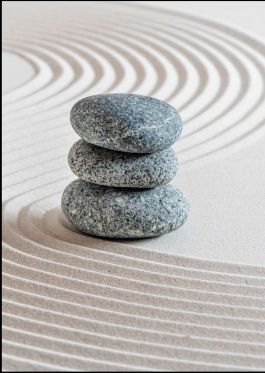
- (a) *Marital status.* A recipient must not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is “Miss or Mrs.”
- (b) *Sex.* A recipient may ask an applicant for employment to self-identify their sex, but only if this question is asked of all applicants and if the response is not used as a basis for discrimination prohibited by this part.



**TITLE IX -
MANAGING REPORTS AND COMPLAINTS**



1



AGENDA

- Intake & Initial Meetings
- Notice
- Consolidation
- Dismissals
- Investigation Stage
- Reports
- Formal Resolution
- Informal Resolution

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2

**INTAKE &
INITIAL
MEETINGS**



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3



4

CASE STUDY - NURSING

Submission Date: October 26
Reported by: Alex Smith
Parties involved: Alex Smith, student - complainant; Karen Hartman, faculty - respondent, Maria Jones, student - respondent

I am in the nursing program and am being sexually harassed by my teacher, Karen Hartman, and another student, Maria Jones. Since the beginning of the semester, Hartman has made comments to me about being the only male in the class. She yells at me more than other students and is always calling me stupid in front of other students. I went to her office hours to talk to her about it. She told me that she had to treat me like this because I needed to be ready for how people will treat me as a male nurse.

Hartman used to make comments about how cute I looked or about the clothes I was wearing. The comments made me uncomfortable, but at least, they were positive. That changed after I met with her. I don't know if she was upset with being confronted or if she saw my boyfriend waiting in the hall for me. Ever since she has made negative comments about my looks and frequently gives me a disapproving look. Continued...

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REFERRAL CONTINUED,

Maria Jones is another student in the class. Maria is tight with Hartman. She is always staying after class, and whenever Hartman needs help, she asks Maria. I have tried to keep to myself, but Maria comes up and is always asking about my private life. Around the time of my meeting with Hartman, Maria started asking about my sex life and if I would be willing to "change teams." She comes up behind me and grabs my butt. Hartman has seen this and has done nothing.

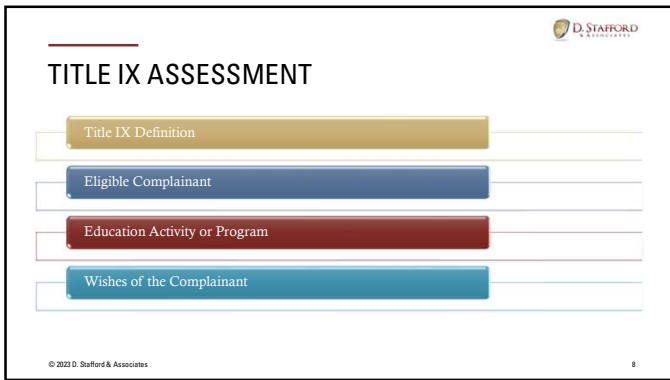
I have seen Maria and Hartman talk to other students in the class. People who were once my friends don't talk to me anymore. One of them told me that they were told to stay away from me or that their career would be over before it even started.

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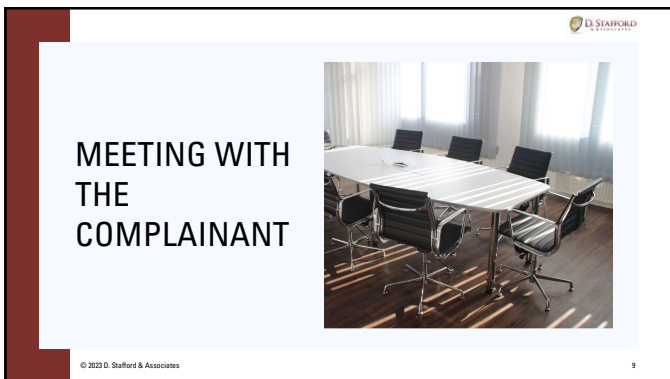
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9



PREPARATION

1

READ THE REPORT

- Real-time In-person reports?

2

Learn about the party

- Year, major, grades, department, organizations


3

Set the Space

- Accessible?
- Table or behind a desk?
- Tissues
- Fidget toys

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MATERIALS

Policy


Rights and Options

Flowcharts

FERPA waiver

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COMPLAINANT CHECKLIST

Policy and Procedures

Reporting options

Medical attention

Preserving evidence

Supportive measures

On-off campus resources

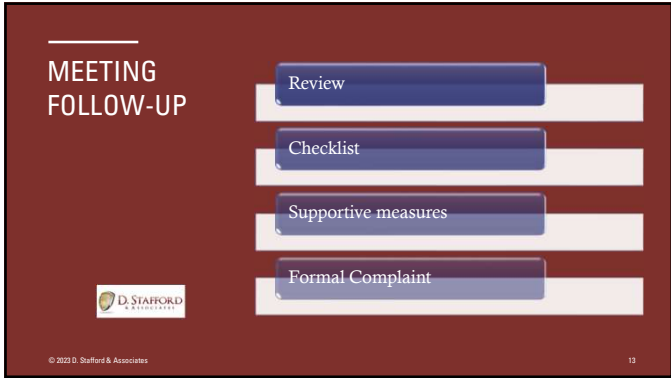
Mutual no-contact orders

Right to an advisor

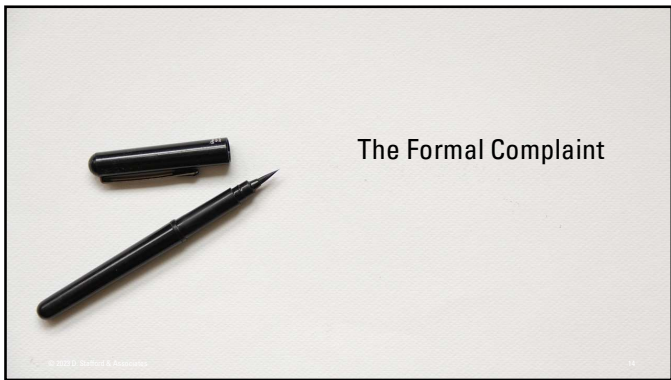
Free from retaliation

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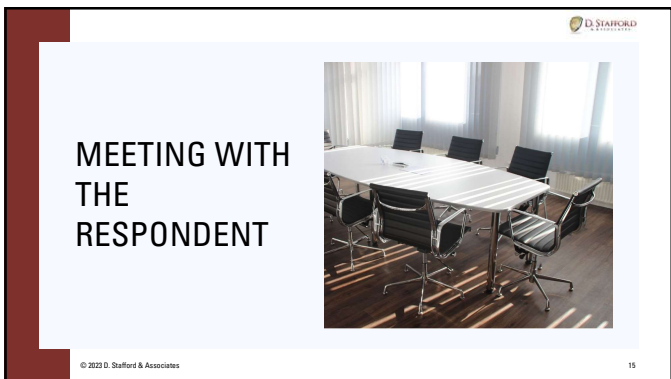
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15



PREPARATION

1

Review notes from the Complainant's meeting

2

Learn about the party

- Year, major, grades, department, organizations


3

Set the Space

- Accessible?
- Table or behind a desk?
- Tissues
- Fidget toys

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MATERIALS

Policy


Rights and Options

Flowcharts

FERPA waiver

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RESPONDENT CHECKLIST

Policy and Procedures

Preserving evidence

Supportive measures

On-off campus resources

Mutual no-contact orders

Right to an advisor

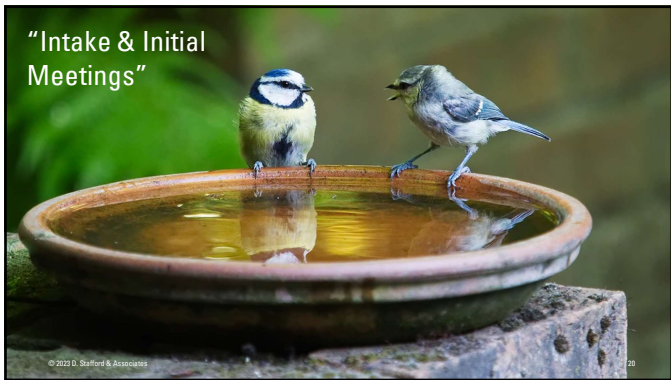
Free from retaliation

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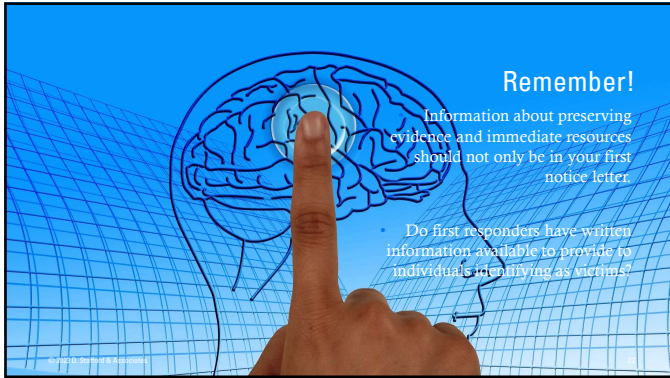
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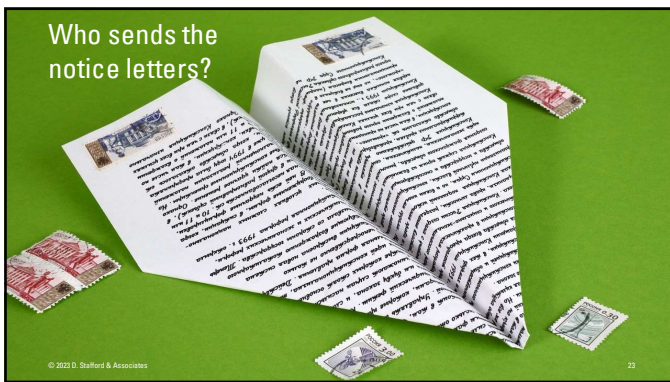
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PRE-COMPLAINT NOTICES TO THE COMPLAINANT

Notice of Report/Request for Intake

- Report may be from complainant or third party
- May follow an initial phone call to inform the complainant
- Set up a meeting to discuss supportive measures and options; right to an advisor; provide explanation of rights and options; refer to policy

Notice of Case Closure

- Complainant has declined to sign a formal complaint
- Complainant has not responded to outreach

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NOTICE OF ALLEGATION TO COMPLAINANT & RESPONDENT

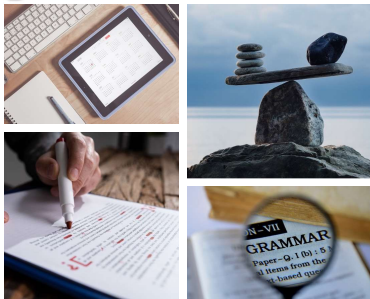
- Identities of parties, if known
- Conduct allegedly constituting sexual harassment
- Allegations may be updated during the course of the investigation
- Date and location, if known
- Respondent is presumed not responsible
- Advisor of choice
- May inspect and review evidence
- Prohibit false statements

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NOTICE OF INVESTIGATION TO COMPLAINANT & RESPONDENT

- May be combined with notice of allegation
- Must give sufficient time to prepare for participation
- Provide date, time, location, and purpose of all meetings
- Names of investigator(s) and how to raise a claim of bias or conflict of interest
- Any requests for information, such as witnesses
- Provide any known parties or witnesses


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COMMON PITFALLS WITH NOTICES OF ALLEGATION & INVESTIGATION

- Dates - incorrect or not broad enough
- Description of behaviors is too specific or too narrow
- Typos
- Poor grammar

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 **INVESTIGATIVE REPORT NOTICES**

Notice of Preliminary Report (evidence-sharing)


- All evidence directly related to the allegation(s)
- Sent prior to the completion of the investigative report
- Parties have at least 10 days to submit a written response for consideration by the investigator(s)

Notice of Final Report and Hearing

- Fairly summarizes relevant evidence
- Sent at least 10 days prior to the hearing
- Date, time, location, participants, and purpose of hearing
- Option to request separate rooms with appropriate technology
- Explanation of cross-examination including providing an advisor if none

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 **DETERMINATION NOTICE**

Notice of Written Determination

- Allegations potentially constituting sexual harassment
- Procedural steps
- Findings of fact supporting the determination
- Conclusions regarding the application of policy
- Statement of and rationale for the result of each allegation
- Sanctions and/or remedies
- Appeal procedures
- Determination becomes final after the appeal decision or if no appeal is filed

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 **APPEAL NOTICES**

Notice of Appeal Submission

- Notification to both parties that an appeal has been submitted
- Give both parties a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome

Notice of Appeal Decision


- Result of the appeal and the rationale for the result

Notice of No Appeal Submitted

- No appeals have been filed and decision is final

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 **INFORMAL RESOLUTION NOTICE**

Notice of Informal Resolution

- Allegations
- Requirements for informal resolution including the right to withdraw from the informal resolution process prior to agreeing to the resolution
- Any consequences
- Obtain voluntary, written consent

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 **ADDITIONAL PARTY NOTICES**

Notice of Dismissal of Formal Complaint

- No longer falls under Title IX
- Complainant withdraws from the process
- Indicate if it is referred elsewhere

Notice of Additional Allegations


- Notification of additional allegations based on new information
- Include previous information included in notice of allegation

Notice of Temporary Delay

- Explanation as to why the case is delayed (e.g., volume of witnesses)
- Anticipated timeline

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 **ADDITIONAL PARTY NOTICES**

Case Updates

No contact letters


Supportive measures

Change in investigator(s) or decision-maker(s)

Consolidation

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 **WITNESS NOTICES**

Notice of Investigation Interview

- Identified as a witness
- Date and location of the incident and involved parties
- Date, time, and location of the meeting
- Policy information

Notice of Hearing

- Date, time, and location of the hearing
- Notification that they are subject to questioning by the advisors and decisionmaker(s)

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WRITING THE NOTICE OF ALLEGATIONS & INVESTIGATIONS



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"Notice"



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HEARING CONSIDERATIONS

- Logistics
- Cross-examination
- Relevancy
- Participation
- Bias

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"Consolidation"




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DISMISSALS



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DISMISSALS

Must

- Does not constitute sexual harassment
- Not in educational program or activity
- Not in the United States


May

- Complainant withdraws complaint
- Respondent no longer enrolled
- Prevented from gathering evidence


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NOTIFICATION OF DISMISSAL



Written Notice



Reason(s) for Dismissal



Simultaneous to the Parties

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APPEAL OF DISMISSAL



Procedural Irregularity



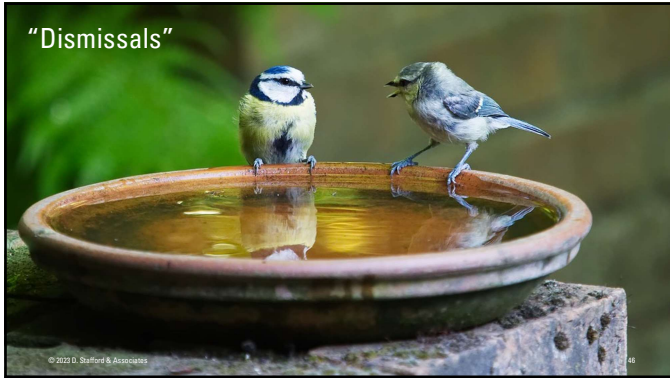
New Evidence



Bias or Conflict of Interest

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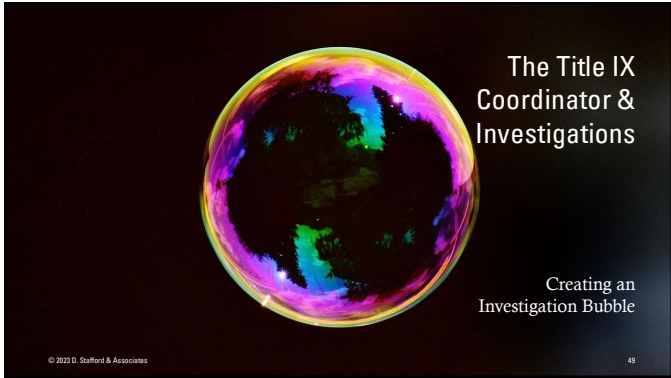
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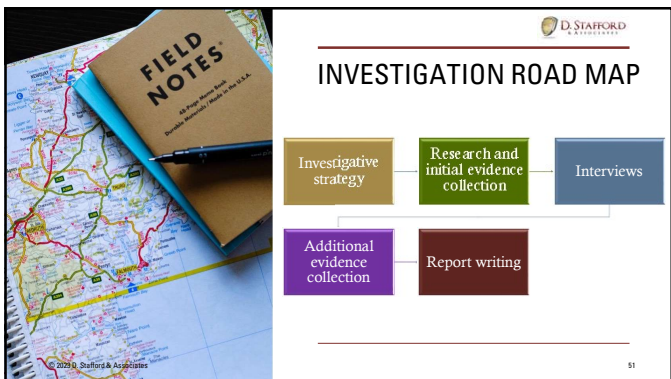
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EVIDENCE COLLECTION

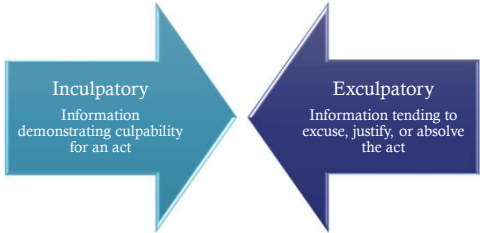


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EVIDENCE



Inculpatory
Information demonstrating culpability for an act


Exculpatory
Information tending to excuse, justify, or absolve the act

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TYPES OF EVIDENCE



Real evidence Demonstrative Documentary Testimonial

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EXAMPLES

Statements
(interviews, written, complaint, etc.)

Photographs

Text messages

Social media/dating apps posts/communications

Documents (diagrams, memos, letters, notes, phone logs, guest lists)

Voicemail

Investigator-created evidence (e.g., timeline)

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Managing Evidence Requests

Shopping List

1. Milk
2. Eggs
3. Cheese
4. Butter

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EVIDENCE EVALUATION

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INVESTIGATORS AS EVALUATORS OF EVIDENCE

- Developing lines of questioning
- Determining additional witnesses and evidence needed
- Utilizing evidence around credibility
- Identifying relevant evidence

"A postsecondary institution must provide a process... that enables the decisionmaker to adequately assess the credibility of the parties and witnesses" (2022 Proposed Title IX Regulations)

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CREDIBILITY OF THE STORY







Once Upon A Time...

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CORROBORATING EVIDENCE

 Physical	 Contemporaneous Documentation	 Personal Documents
 Admissions	 Eyewitness	 Outcry


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PLAUSIBILITY



Possible



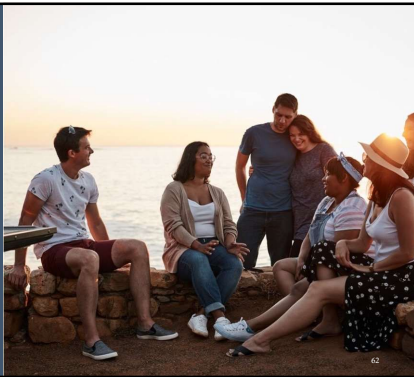
Believable

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CREDIBILITY OF THE STORYTELLER

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MOTIVATION

Afraid

Pressured

Revenge


History

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BIAS



Past Relationship



Identity



Internal Biases

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ABILITY TO PERCEIVE

Distance

Knowledge

Credentials


Competence

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ABILITY TO REMEMBER




Passage of Time




Alcohol



Trauma



Peripheral Details



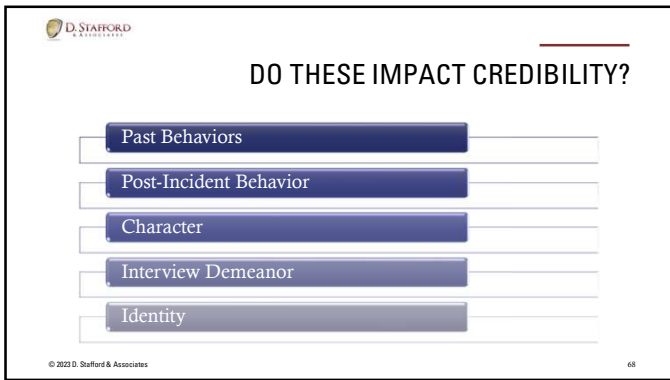
History of Memory

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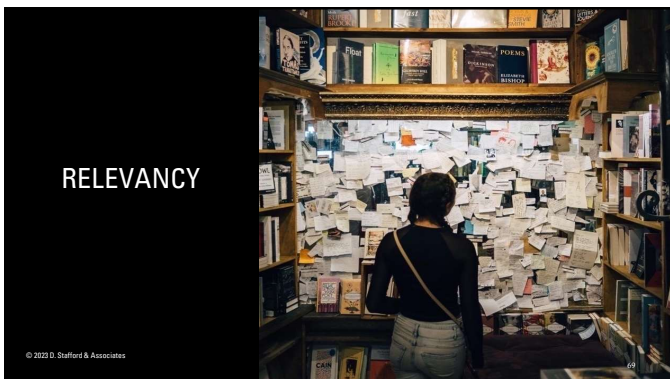
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69



WHEN IS EVIDENCE RELEVANT?


Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

- (Federal Rules of Evidence)

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KEY RELEVANCY POINTS

1

The evidence does not need to be conclusive

2


Is sufficient if it constitutes a link in the chain

3

Enough if in connection with other evidence, helps "a little"

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NOT RELEVANT (PER TITLE IX REGULATIONS)

Past Sexual Behavior

Complainant's sexual predisposition or prior sexual behavior unless...

- Offered to prove that someone other than the respondent committed the conduct alleged or
- Complainant's prior sexual behavior with respect to the respondent and are offered to prove consent

Privileged Information

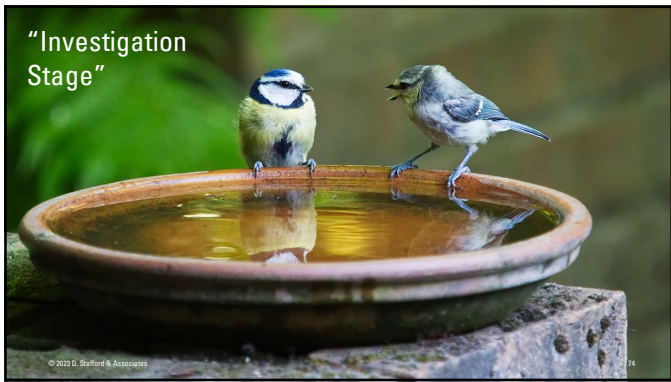
Physician, psychiatrist, psychologist records in connection with the provision of treatment to the party unless there is voluntary, written consent from the party whose record it is

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REPORT PURPOSES

Documentation of process

Compilation of evidence obtained

Summary of relevant evidence

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CASE DOCUMENTS

Pre-Investigation		Investigation		Decision
Formal Complaint (Complaint)	Notice of Investigation (NOIA)	Evidence Obtained (Preliminary Report)	Investigative Report (Final Report)	Written Determination

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INSPECT AND REVIEW STAGE

Evidence Packet is sent to parties and advisors

→

10 days to review and respond in writing

→

Investigator will consider prior to the completion of the report

106.45 (b)(5)(vi) 78

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FINAL INVESTIGATIVE REPORT



Written report summarizing relevant evidence



Sent to each party and the party's advisor (if one)



Sent at least 10 days prior to the hearing




Each party can provide a written response for the hearing

§ 106.45(b)(5)(vii)

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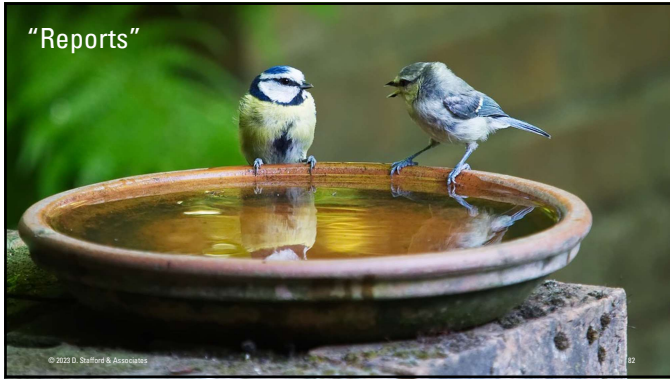
ELEMENTS OF A GOOD REPORT

PROOFREAD

- SPELLING
- GRAMMAR
- ACCURACY

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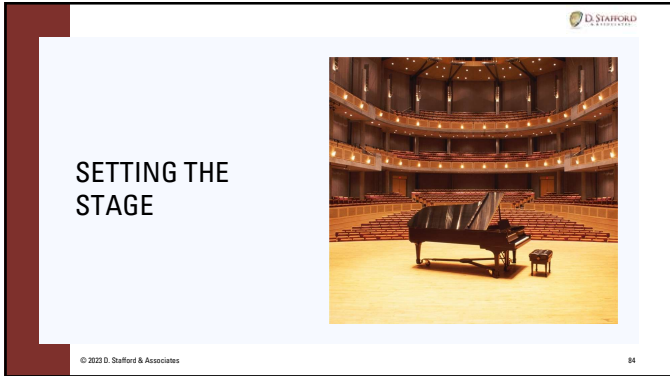
81



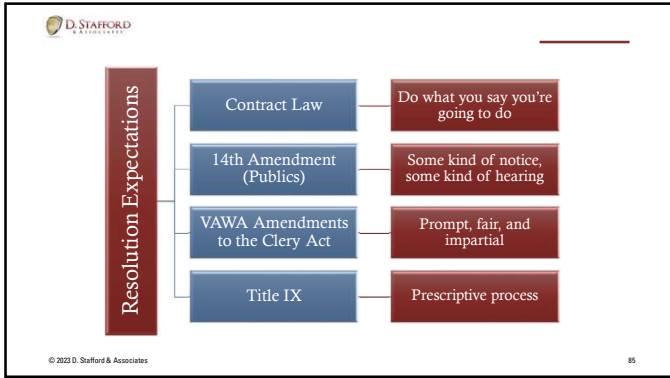
82



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84




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LIVE HEARING - TITLE IX REGULATIONS



Postsecondary - Must
K-12 - May



Make a recording or transcript
and make it available to
parties for review



Provide an advisor if a party
does not have one at the
hearing

§ 106.45(b)(6)

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Single Decision-maker
or Panel?

1 2 3

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IN-PERSON VS. VIRTUAL

Title IX regulations [§ 106.45(b)(6)(i)]:

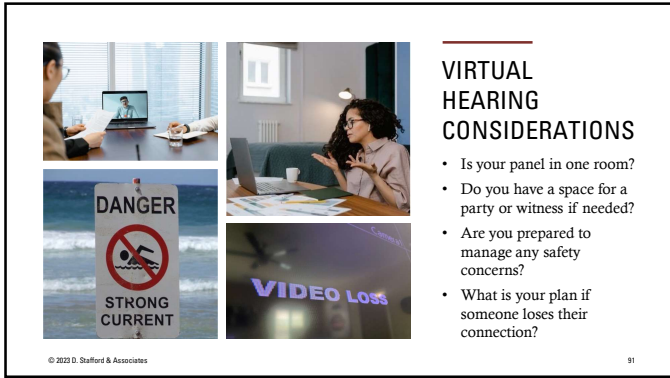
- May be conducted in person or virtually
- Either party may request a virtual hearing

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IN-PERSON HEARING CONSIDERATIONS

- How many rooms do you need?
- Are the rooms private?
- Are you prepared to manage any safety concerns?
- How are you going to manage the traffic?
- What is the technology to allow a party to be in a separate room?
- Are there any ADA considerations?

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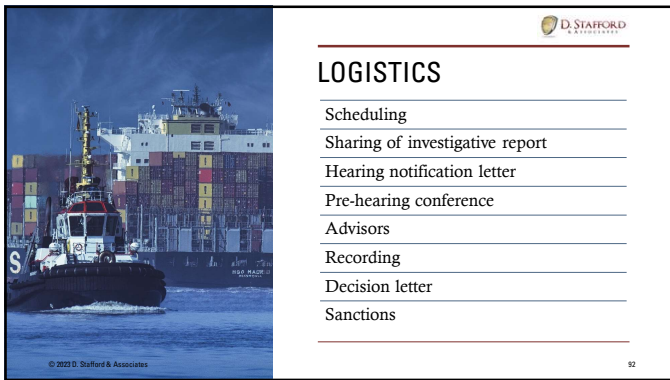


VIRTUAL HEARING CONSIDERATIONS

- Is your panel in one room?
- Do you have a space for a party or witness if needed?
- Are you prepared to manage any safety concerns?
- What is your plan if someone loses their connection?

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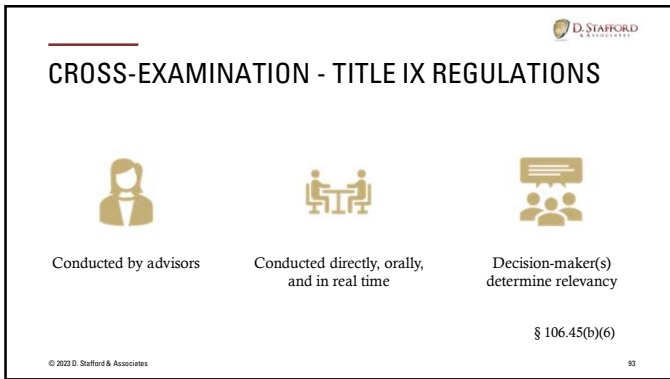


LOGISTICS


- Scheduling
- Sharing of investigative report
- Hearing notification letter
- Pre-hearing conference
- Advisors
- Recording
- Decision letter
- Sanctions

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CROSS-EXAMINATION - TITLE IX REGULATIONS



Conducted by advisors



Conducted directly, orally, and in real time




Decision-maker(s) determine relevancy


§ 106.45(b)(6)

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OPTIONAL COMPONENTS




Introductions




Reading Allegation



Review of Agenda




Opening/Closing Statements



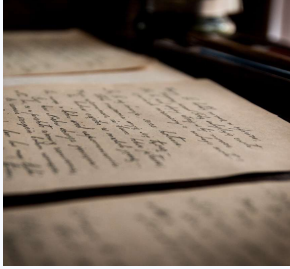
Decision-Maker Questions

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HEARING NOTICE




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HEARING NOTICE



Written




Date, time, location, names of the decision-makers and participants, and purpose




Sufficient time to prepare

§ 106.45(b)(5)(v) © 2023 D. Stafford & Associates


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HEARING NOTICE CONSIDERATIONS



Option to request a virtual hearing



Option to request for an advisor



Option to challenge decision-maker due to conflict of interest/bias


Provide a deadline for these items!

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TIMING CONSIDERATIONS

01

Parties have ten days to provide written response to report

02

Decision-maker(s) reviews report prior to hearing

03

Hearing

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PARTY PREPARATION



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PARTY PRE-CONFERENCE

Hearing agenda	Behavior expectations	Confirm advisor
Role of advisor	Cross-examination	Post-hearing

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HEARING DECISION-MAKER PREPARATION



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PRE-HEARING PREP

- Review notice of allegation and complaint
- Review policy and procedures
- Review final investigative report

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PRE-HEARING PREP

- Review party responses
- Develop clarifying questions related to relevant evidence summary
- Identify potential challenges and responses

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Staying Focused



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SAMPLE AGENDA

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SAMPLE AGENDA

1. Opening (Chair)
2. Purpose of the Hearing (Chair)
3. Review of the Hearing Process (Chair)
4. Questioning
5. Concluding Remarks (Chair)

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1. OPENING

- Convening date and case identifier
- Hearing is being recorded
- Introductions

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2. PURPOSE OF THE HEARING

- Administrative hearing to determine if a policy violation was committed
- Decision-Maker's role
- Not a court of law
- Behavior statement
- Acknowledgement of documents
- New evidence statement
- No determination of responsibility

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3. REVIEW OF THE HEARING PROCESS

- Virtual logistics, if applicable
- Advisor's role
- Order of questioning
- Review relevancy of question determination process

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4. QUESTIONING

- Determine the order of questioning
- Example:
 - Questions asked of the complainant (decision-maker and then respondent's advisor)
 - Questions asked of the respondent (decision-maker and then complainant's advisor)
 - Questions asked of the witnesses (decision-maker and then advisors)

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DECISION-MAKER QUESTIONS



Statement of Accuracy



Credibility



Clarity

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CROSS-EXAMINATION BY ADVISORS


Question by advisor


Relevancy determination by decision-maker

Answer by party or witness

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IRRELEVANT QUESTIONS


- Past sexual history
- Privileged information
- Repetitive question
- Not probative of material fact

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RELEVANCY DETERMINATIONS



Use logic and common sense




Maintain a neutral, objective position




A lengthy or complicated explanation is not needed

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5. CONCLUDING REMARKS

- Explain that the decision-maker will deliberate in private
- Explain that parties will receive the written decision
- Explain if the sanctions will arrive with the written decision or be decided by someone else
- Dismiss the participants

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What could go wrong?

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THE DECISION

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NOTIFICATION - TITLE IX REGULATIONS

Parties must be notified simultaneously

Final on the date the parties of notified of an appeal decision

Title IX Coordinator is responsible for remedies

§ 106.45(b)(7)

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WRITTEN DETERMINATION - TITLE IX REGULATIONS

- Identification of the allegations potentially constituting sexual harassment
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
- Findings of fact supporting the determination
- Conclusions regarding the application of the recipient's code of conduct to the facts
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant
- The recipient's procedures and permissible bases for the complainant and respondent to appeal

§ 106.45(b)(7)

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THE DETERMINATION

<p>Previously Shared Information</p> <ul style="list-style-type: none"> • Alleged allegations • Procedural steps up to the hearing <ul style="list-style-type: none"> • Notifications • Interviews with parties and witnesses • Site visits • Methods used to gather other evidence 	<p>New Information</p> <ul style="list-style-type: none"> • Procedural steps from the actual hearing • Findings of fact • Conclusions regarding the application of the policy • Statement regarding responsibility and rationale for each allegation • Any sanctions imposed • Any remedies for the Complainant imposed • Appeal procedures, including the grounds
---	--

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HEART OF THE DECISION LETTER

- Findings of fact
 - What were the behaviors?
- Conclusions regarding the application of the policy
 - Are the behaviors applicable to the policy??
- Statement regarding responsibility and rationale for each allegation
 - Why is it or is not a policy violation?

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THE APPEAL



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APPEALS - TITLE IX REGULATIONS

- Must offer an appeal to both parties:
 - Procedural irregularity that affected the outcome of the matter
 - New evidence, that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
 - The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter

§ 106.45(b)(8)

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APPEALS - TITLE IX REGULATIONS

- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- Ensure that the decision-maker(s) for the appeal complies with the standards set forth in paragraph (b)(1)(ii) of this section;
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- Issue a written decision describing the result of the appeal and the rationale for the result; and
- Provide the written decision simultaneously to both parties.


§ 106.45(b)(8)

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APPEALS ARE NOT...




A substitute for another's judgment



Political decisions

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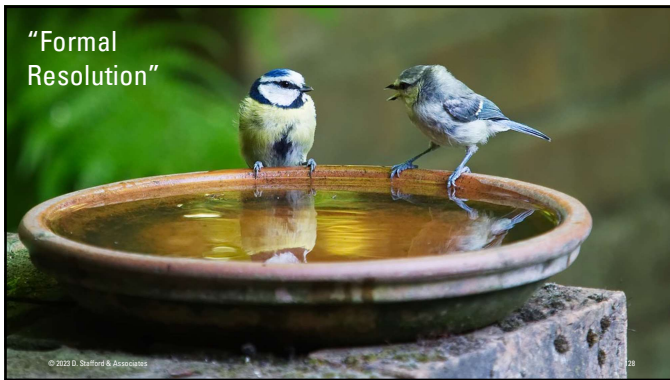


PROCEDURAL DETERMINATIONS

- Who is your decision-maker for appeals?
- Who is informing the parties of an appeal submission?
- Who is collecting the information and giving to the decision-maker for the appeal?
- Who is communicating with the parties?
- Timelines
 - Deadline for appeal
 - Submission of written statements
 - Written decision

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INFORMAL RESOLUTION - TITLE IX REGULATIONS


- Not required to offer
- A formal complaint must be filed before offering an informal resolution
- If offering:
 - Must provide a written notice (allegations, requirements of the informal resolution process, a party can withdraw prior to the final agreement and resume process, cannot resume process once finalized, any consequences from participating in informal process, what records are maintained or shared)
- Parties' voluntary, written consent must be obtained
- Cannot offer the informal resolution process when an employee is the respondent, and a student is the complainant

§ 106.45(b)(9)

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EXAMPLES OF INFORMAL RESOLUTIONS

- Mediation
- Restorative justice
- Agreements

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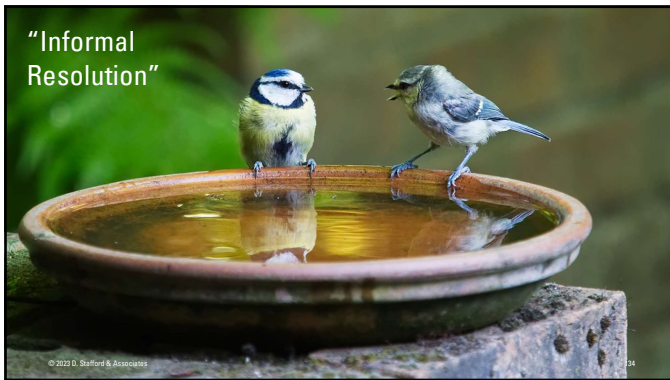
Under what circumstances would you offer informal resolution?

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