



## Joint Guidance on Federal Title IX Regulations: Summary Analysis of Sections § 106.45(b)94): Consolidation of Complaints

May 22, 2020

*Note:* This document focuses on a summary analysis of the 2020 Final Title IX Regulations, §106.45(b)(4) relating to consolidation of complaints. For a full overview of the changes and a comparison with the Proposed Rule, see *Title IX Text for Text Proposed to Final Comparison* and *Title IX Summary Proposed to Final Comparison* at [system.suny.edu/sci/tix2020](http://system.suny.edu/sci/tix2020)

### **§106.45(b)(4) - Consolidation of complaints**

The Final Rule adds a new section 106.45(b)(4) allowing, but not requiring, the consolidation of formal complaints arising out of the same factual circumstances in two instances:

- Where there is more than one complainant or respondent;
- Where a cross-complaint has been filed by a respondent against a complainant.

This generally reflects existing institutional practice, through which a single investigatory and adjudicatory process may be used where it arises from the same incident and parties.

In such cases, there is no “lead complainant” who would be sent the notices and evidence for review; each party (and their advisor, if elected) would independently receive this information. 85 Fed. Reg. 30026, 30307 (May 19, 2020). Still, institutions need only create one investigative report in such multi-party cases. The Department indicates that “[i]n the context of a grievance process that involves multiple complainants, multiple respondents, or both, a recipient may issue a single investigative report.” *Id.* at 30309.

All parties to a consolidated complaint will also receive the same written determination. The Department explains that if the sexual harassment allegations “arise out of the same facts or circumstances, the parties must receive the same written determination regarding responsibility under § 106.45(b)(7), although the determination of responsibility may be different with respect to each allegation depending on the facts.” 85 Fed. Reg. at 30436. The written determination must be provided simultaneously to the parties and may not be redacted. *Id.*

Note that in the event of a “cross-complaint,” each party is entitled to the rights attached to their respective status. In other words, a respondent who files a cross-complaint against the complainant would be entitled to request supportive measures that otherwise would be reserved to the complainant. Likewise, evidentiary exclusions such as the “rape shield” provision would apply to the respondent in their status as complainant. 85 Fed. Reg. at 30352.

It should additionally be noted that, in adding this section, the Department abandoned a proposed requirement that the Title IX Coordinator file a formal complaint when they have actual knowledge of reports by multiple complainants of conduct by the same respondent. *See NPRM* §106.44(b)(2).

---

The Joint Guidance on the 2020 Title IX Regulations is prepared as a service by in-house and firm attorneys, but does not represent legal advice. The Joint Guidance is compliance advice and no attorney/client relationship is formed with any contributor or their organization. Legal advice for specific situations may depend upon state law and federal and state case law and readers are advised to seek the advice of counsel. The Joint Guidance is available absolutely free pursuant to a [Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International license](#) (meaning that all educational institutions are free to use, customize, adapt, and re-share the content, with proper attribution, for non-commercial purposes, but the content may not be sold).