



**Joint Guidance on Federal Title IX Regulations**  
**Analysis on Section 106.8:**  
**Designation of a Coordinator, Dissemination of Policy and Adoption of Grievance**  
**Procedures**

July 9, 2020 (Updated July 15, 2020)

*Note:* This document focuses on a summary analysis of Section 106.8(a) – (d) of the 2020 final Title IX Regulations (the “Final Rule”);<sup>1</sup> specifically, the requirements related to identifying a Title IX coordinator, dissemination of the institution’s Title IX policy, the requirement to adopt and publish a grievance procedure to provide prompt and equitable resolution of student-employee complaints, and the application of the Title IX Regulations outside the United States. For a full overview of the changes from the Proposed Regulations, see *Title IX Text for Text Proposed to Title IX Summary Proposed to Final Comparison*, available at [https://system.suny.edu/media/suny/content-assets/documents/sci/tix2020/TIX-Regulations-Text-for-Text-Comparison-Chart\\_v2.pdf](https://system.suny.edu/media/suny/content-assets/documents/sci/tix2020/TIX-Regulations-Text-for-Text-Comparison-Chart_v2.pdf)

**106.8: Designation of Coordinator, Dissemination of Policy, and Adoption of Grievance Procedures.**

As a brief summary, the Final Rule made the following changes to the current versions of §§ 106.8 and 106.9:

- Current §§ 106.8 and 106.9 are combined into the Final Rule version of § 106.8(a) – (d).
- The Final Rule defines the person or persons “designated by the recipient” to coordinate the Title IX response as the “Title IX Coordinator” in § 106.8(a);
- The new version of § 106.8(a) requires the recipient to “designate” *and* “authorize” an employee to coordinate a recipient’s response under Title IX;
- The Final Rule requires the Title IX Coordinator’s information to be displayed prominently on the recipient’s website (*see* 34 C.F.R. § 106.8(b)(2)(i)) and the Title IX Coordinator’s contact information must include an email address (34 C.F.R. § 106.8(a).);
- The Final Rule states that any person can report sex discrimination, including sexual harassment, using the contact information for the Title IX Coordinator or coordinators, even outside of business hours;

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<sup>1</sup> The effective date of these Regulations will be August 14, 2020 and will apply prospectively. The Department has stated it will provide technical assistance during the transition period and after the effective date.



- The Final Rule expands the list of individuals who must receive notice of the recipient’s statement of policy and narrows the types of publications in which this notice must appear; and
- The Final Rule requires the recipient to adopt grievance procedures: (1) a “prompt and equitable” grievance procedure for sex discrimination and (2) specific formal procedures to adjudicate cases involving sexual harassment (as defined in the Final Rule) as outlined in § 106.45.

### Discussion of Specific Changes

1. *The current §§ 106.8 and 106.9 are combined into the Final Rule version of § 106.8(a) – (d).*

The Final Rule combines the current versions of § 106.8 (Designation of responsible employee and adoption of grievance procedures) and § 106.9 (Dissemination of policy), which require the recipient to identify a responsible employee to coordinate the recipient’s efforts to comply with the Title IX Regulations (Part 106), to adopt an equitable grievance procedure, to notify enumerated constituents that the recipient does not to discriminate in its education program or activity, employment, and admissions, and to provide the contact information for the responsible employee and the Assistant Secretary to report concerns about the recipient’s application of Title IX. These requirements are merged into the new version of § 106.8 and are modified as described below.

2. *The Final Rule defines the Title IX Coordinator and outlines that position’s responsibilities and required publication of the Title IX Coordinator’s contact information.*

While the current version of § 106.8 requires a recipient of federal funds to designate an employee responsible for coordinating the recipient’s efforts in complying with Title IX, it does not use the term “Title IX Coordinator” to define that position. *See* 34 C.F.R. § 106.8(a). The Final Rule does (as institutions and stakeholders have been for some time). The Final Rule also permits more than one employee to “coordinate its efforts to comply with and carry out the responsibilities under [the Title IX Regulations].” *Id.*

The Final Rule also modifies the current version of § 106.9. The current version permits the Title IX Coordinator to “[conduct] any investigation under any complaint communicated” to the recipient which alleges “noncompliance” with the Title IX Regulations or reports any conduct prohibited by the Title IX Regulations. *Id.* In short, the Title IX Coordinator, under the current version of the regulations, is expressly permitted to investigate complaints on behalf of the recipient.

The Final Rule version of § 106.8(a) appears to separate the investigative role from the Title IX Coordinator functions. While the pre-Final Rule version of § 106.8(a) does mention conducting



investigations as one of the Title IX Coordinator’s express responsibilities, that portion has been removed from the Final Rule version of § 106.8(a). And, other sections of the Final Rule support this interpretation of the Title IX Coordinator’s job by separating out the roles of Title IX Coordinators, investigators, decision makers, and those that facilitate informal resolutions, and create distinct conflict of interest rules regarding each of these roles. *See* 34 C.F.R. § 106.45. But the Department does note in the Preamble that the Title IX Coordinator could also serve as the Title IX investigator. 85 Fed. Reg. 30026, 30135 fn. 596 (May 19, 2020). As it relates to the formal investigative process under § 106.45, the Title IX Coordinator is responsible for coordinating that recipient’s response, including overseeing the investigation, but not conducting it, as this must be done by an investigator. *Id.*

A recipient must identify the Title IX coordinator and must identify that person by their name or title. *See* 34 C.F.R. § 106.8(a). Under the current version of § 106.8, the recipient must notify all of its “students and employees” of the Title IX coordinator’s “name, office address and telephone number.” 34 C.F.R. § 106.8(a). The Final Rule broadens this group to include “applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient[.]” In addition to the name or title, office address, and telephone number of the Title IX Coordinator(s), the new regulation requires that Title IX Coordinator’s electronic mail address must also be published in the notice. *See* 34 C.F.R. § 106.8. The Final Rule adds “legal guardians” of elementary and secondary students and removes “sources of referral of application for admission and employment” from the list of individuals who must receive notice of the policy.

The contact information becomes critical as the Final Rule requires the Title IX coordinator or coordinators to be the primary reporting pathway of complaints of sexual harassment and discrimination under Title IX.

- 3. The Final Rule narrows the publications in which the notice of policy must appear and expands the types of publications prohibited from depicting the differential treatment of applicants, students, or employees on the basis of sex.*

Similar to the NPRM, the Final Rule requires that the institution’s statement of policy be listed on its website, if any, and in “each handbook or catalog” provided to “applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient.” 34 C.F.R. § 106.8(b).

In a change from the Title IX regulations in place before this rulemaking, however, the Final Rule removes 34 C.F.R. § 106.9(b), which required that Title IX policy information be “prominently” included “in each announcement, bulletin, catalog, or application form which it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in



connection with the recruitment of students or employees.” See, 85 Fed. Reg. 30026, 30466 (May 19, 2020) (referring to now-removed 34 C.F.R. § 106.9(b)(1)).

Yet, similar to the now-removed prohibition under § 106.9(b) of using or distributing “a publication [including an announcement, bulletin, catalog, or application form] which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part,” the New Rule modifies and expands this prohibition to any publication stating:

A recipient must not use or distribute *a publication* stating that the recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by *title IX or this part*.

34 C.F.R. § 106.8(b)(2)(ii) (emphasis added). However, it is important to note that under the Final Rule a prohibited publication is one that *states* that the recipient treats community members and applicants differently on the basis of sex – with certain exceptions outlined under Title IX or its related regulation, while the current version bars the use or distribution of publications that “suggest, by text or illustration” that it treats these individuals differently.

4. *The Final Rule requires the recipient to adopt two grievance procedures: (1) the “prompt and equitable” grievance procedure for sex discrimination that was required under the old version of this regulation and remains in place, and (2) specific formal procedures to adjudicate cases involving sexual harassment (as defined in the Final Rule) as outlined in § 106.45.*

The requirement to have two grievance procedures is found in the New Rule version of § 106.8(c):

(c) Adoption of grievance procedures. ***A recipient must adopt and publish 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.*** A recipient must provide to persons entitled to a notification under paragraph (a) of this section notice of the recipient's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond.

34 C.F.R. § 106.8(c) (emphasis added).

Before the issuance of the Final Rule, § 106.8(c) required a “prompt and equitable” resolution procedure that would apply to all forms of discrimination prohibited under Title IX, including sexual harassment, but also discrimination in pay, admissions, athletics, and other circumstances. The Final Rule makes clear that this existing procedure for “any action that would be prohibited”



under Title IX continues, but must be joined by a second process that specifically applies to formal complaints brought under § 106.45 for “sexual harassment” defined under § 106.30.

Notably, Title IX retaliation claims appear to fall under the former “prompt and equitable” process for general discrimination claims, rather than the new § 106.45 process for sexual harassment claims. The Final Rule references a different grievance procedure than § 106.45 when it states that claims of retaliation can proceed under the “prompt and equitable” process used to address “sex discrimination”:

Retaliation prohibited. 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. 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. The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. ***Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under § 106.8(c).***

34 C.F.R. § 106.71 (emphasis added).

5. *The Final Rule version of § 106.8(d) states that the formal resolution process in § 106.45 does not apply outside the United States.*

The final version of the regulations also requires that the institution adopt and publish grievance procedures that provide a prompt and equitable resolution of student and employee complaints and that complies with the formal complaint procedures described in §§ 106.30, 106.45. Tracking the statutory language found in 20 U.S.C. § 1681(a), the final version of § 106.8(d) states that the Title IX policy and grievance procedures discussed above apply only to “sex discrimination occurring against a person in the United States.”

The Preamble offers support for the position that Title IX does not have extraterritorial application. The Department of Education cites “the presumption against extraterritoriality reinforced by



Supreme Court decisions and the plain language in the Title IX statute limiting protections to persons ‘in the United States,’” in finding that it does not have “authority to declare that the presumption against extraterritoriality has been overcome, absent further congressional or Supreme Court direction on this issue.” See *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 FR 30026-01, pp. 30207-8.

The Department notes that it has practical concerns about “the difficulties [the institution would have] interviewing witnesses and gathering evidence in foreign locations where sexual misconduct may have occurred.” *Id.* And that “[r]ecipients may not be in the best position to effectively investigate alleged sexual misconduct in other countries. Such practical considerations weigh in favor of the Department looking to Congress to expressly state whether Congress intends for Title IX to apply in foreign locations.” *Id.*

While the Final Rule does not prevent recipients from “initiating a student conduct proceeding or offering supportive measures to address sexual misconduct against a person outside the United States” such allegations fall outside the recipient’s Title IX jurisdiction. The Department does suggest that “the final regulations [do not] leave students studying abroad with no recourse in the event of sexual harassment or sexual assault. Recipients remain free to adopt disciplinary systems to address sexual misconduct committed outside the United States, to protect their students from such harm, and to offer supportive measures such as mental health counseling or academic adjustments for students impacted by misconduct committed abroad.” *Id.* In sum, the Department greenlights the use of a non-Title IX grievance procedure to respond to reports of sexual misconduct occurring outside the United States.

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