



**Joint Guidance on Federal Title IX Regulations:  
Analysis of Section 106.44(d): Employee Administrative Leave**  
May 22, 2020

*Note:* This document focuses on a summary analysis of Section 106.44(d) of the 2020 Final Title IX Regulations,<sup>1</sup> specifically the procedures for administrative leave for employees. For a full overview of the changes from the Proposed Regulations, see *Title IX Text for Text Proposed to Final Comparison* and *Title IX Summary Proposed to Final Comparison*, available at [system.suny.edu/sci/tix2020](http://system.suny.edu/sci/tix2020)

**§106.44(d): Employee Administrative Leave**

Final Rule Section 106.44(d) applies only to a non-student employee-respondent and does not impair the right to impose an emergency removal of the employee under §106.44(c), discussed separately [here](#).

Unlike the emergency removal defined in §106.44(c), the process for putting a non-student employee-respondent on administrative leave can only begin after a formal complaint has been filed against the respondent and as the grievance process ensues under § 106.45. Administrative leave is meant for non-emergency situations.

§106.44(d) does not define the permissible terms and conditions of the administrative leave (i.e., whether with or without pay and benefits). The administrative leave is designed to effectuate a temporary separation of the non-student employee, while the grievance process ensues under its reasonably prompt time frame. The employee’s rights under Title VII, Section 504 of the Rehabilitation Act, Americans with Disabilities Act, or applicable employment laws must be respected.

While an institution can place a student-employee on an administrative leave in a non-emergency situation, it may not do so under §106.44(d). Rather, the decision must be evaluated and undertaken under other applicable provisions in the regulations. The placement of a student employee on an administrative leave may be appropriate to provide supportive measures to the complainant, but must not unreasonably burden the respondent. Particularly, the Department writes that the placement of a student employee on administrative leave could jeopardize or impair their access to educational benefits and opportunities in such a way that alternative and less restrictive measures would be more appropriate.

Where an institution does put a student-employee on administrative leave, the Department advises that the terms and conditions of the leave should fully consider the continuation of the

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<sup>1</sup> The effective date for 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.

student's pay to avoid financial impacts prior to the completion of a grievance process. 85 Fed. Reg. 30026, 30236 (May 19, 2020).

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