



Summary Comparison of the Proposed and Final Rule:
34 CFR PART 106: NONDISCRIMINATION ON THE BASIS OF SEX
IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE
 Date Final Regulations Released (Unofficial): May 6, 2020
 Date Regulations are Effective: August 14, 2020

This chart is a quick reference guide for major substantive issues in the Final Rule, including areas where the Final Rule and the Notice of Proposed Rulemaking are significantly different. Additionally, the Joint Guidance team is developing detailed reviews of each section of the Final Rule, which will be published at <https://system.suny.edu/sci/tix2020>. For the exact text of each section, readers are advised to refer to the original text of the (unofficial) Final Rule at <http://Bit.ly/2020TIX> (scroll to page 2008) and may also consult our companion **Text-to-Text Comparison chart** on the Joint Guidance homepage.

Publication Date: May 7, 2020 (Version 1)

<u>Issue</u>	<u>Proposed Regulation</u>	<u>Final Regulation</u>
Definitions:	<ul style="list-style-type: none"> • “Sexual harassment” means either (1) an employee of the institution conditioning the provision of an aid, benefit or service of the college on an individual’s participation in unwelcome sexual conduct; or (2) unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it denies a person access to the institution’s education program or activity; or (3) “sexual 	<ul style="list-style-type: none"> • “Sexual harassment” means conduct on the basis of sex that satisfies one of more of the following: (1) an employee of the institution conditioning the provision of an aid, benefit or service of the college on an individual’s participation in unwelcome sexual conduct; (2) unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it denies a person access to the institution’s education program or activity; or (3)

	<p>assault” as defined in 34 CFR 668.46(a), implementing the Clery Act.</p> <ul style="list-style-type: none">● Complainant: an individual who has reported being the victim of conduct that could constitute sexual harassment, or on whose behalf the Title IX Coordinator has filed a formal complaint. Additionally, for purposes of this proposed subsection, the person to whom the individual has reported must be the Title IX Coordinator or another person to whom notice of sexual harassment results in the college’s actual knowledge under section 106.44(e)(6).● Respondent: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.● Supportive measures: non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge, to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve access to the institution’s education program or activity, without unreasonably burdening the other party; protect the safety of all parties and the institution’s educational environment; and deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between	<p>“sexual assault” (as defined in the Clery Act), “dating violence,” “domestic violence,” or “stalking” as defined (all as defined in VAWA).</p> <ul style="list-style-type: none">● Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment. (NOTE: Parents and guardians who have a legal right to act on behalf of parties may do so, including by filing formal complaints).● Respondent: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.● Supportive measures: non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the institution’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the institution’s educational environment, or deter sexual harassment. Supportive measures may include 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, and other similar measures. The institution must maintain as confidential any supportive measures provided to the complainant or
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	<p>the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The institution must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.</p>	<p>respondent, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.</p>
<p><i>I. Responding to sexual harassment:</i></p>		
<p>Adoption of standards from Supreme Court Case Law</p>	<ul style="list-style-type: none"> • An institution with <i>actual knowledge</i> of sexual harassment in an <i>education program or activity</i> of the institution against a person <i>in the United States</i> must respond in a manner that is <i>not deliberately indifferent</i>. • “<i>Actual knowledge</i>” is notice of sexual harassment or allegations of sexual harassment provided to an official of the institution who has authority to institute corrective measures on behalf of the institution. Constructive knowledge, imputation of knowledge, knowledge only by the respondent (as the accused person), and knowledge by an official with no authority to institute corrective measures are each insufficient. Title IX Coordinators are always deemed to be officials with authority to take corrective action. 	<ul style="list-style-type: none"> • A institution with <i>actual knowledge</i> of sexual harassment in an <i>education program or activity</i> of the institution against a person <i>in the United States</i> must respond <i>promptly</i> in a manner that is <i>not deliberately indifferent</i>. • “<i>Actual knowledge</i>” is notice of sexual harassment or allegations of sexual harassment provided to an official of a college who has authority to institute corrective measures on behalf of the college, or any employee of an elementary and secondary school. Constructive knowledge, imputation of knowledge, knowledge only by the respondent (as the accused person), and knowledge by any official other than those mentioned above are each insufficient. Title IX Coordinators are always deemed to be officials with authority to take corrective action.

	<ul style="list-style-type: none"> • An institution is “deliberately indifferent” if its response to sexual harassment is clearly unreasonable in light of the known circumstances. 	<ul style="list-style-type: none"> ○ “Notice” includes but is not limited to a report of sexual harassment to the Title IX Coordinator. • A institution is “deliberately indifferent” if its response to sexual harassment is clearly unreasonable in light of the known circumstances. • Education program or activity includes locations, events, or circumstances over which the institution exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a institution.
<p>Mandated responses and any accompanying safe harbor</p>	<ul style="list-style-type: none"> • Institutions must follow the procedures/remedies consistent with these regulations in response to a formal complaint with allegations of conduct within its education program or activity. <ul style="list-style-type: none"> ○ A formal complaint is a document signed by a complainant or by the Title IX Coordinator alleging sexual harassment against a respondent and requesting initiation of the institution’s grievance procedure. ○ Title IX Coordinator must initiate a formal complaint when the institution has actual knowledge of reports by multiple complainants of conduct by the same respondent that could constitute sexual harassment. 	<ul style="list-style-type: none"> • Institutions must follow the procedures/remedies consistent with these regulations in response to a formal complaint with allegations of conduct within its education program or activity. <ul style="list-style-type: none"> ○ A formal complaint is a document signed by a complainant or by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the institution investigate the allegation of sexual harassment. ○ At the time of filing of a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the institution with which the formal complaint is filed. ○ The formal complaint may be filed with the Title IX Coordinator in person, by mail, or by

	<ul style="list-style-type: none">• These procedures are laid out in § 106.45 of the new regulations (§ II. in this summary).• If the institution follows these procedures, the institution’s response will not be found to be deliberately indifferent.• In the absence of a formal complaint, an institution is not deliberately indifferent when it implements supportive measures designed to effectively restore or preserve access to the education program or activity.• An institution's determination regarding responsibility will not be evidence of deliberate indifference merely because OCR reaches a different determination based on an independent weighing of the evidence.	<p>electronic mail, or any additional method designated by the recipient.</p> <ul style="list-style-type: none">• These procedures are laid out in § 106.45 of the new regulations (§ II. in this summary).• NOTE: “Safe Harbor” provisions removed• With or without a formal complaint an institution must offer supportive measures to a complainant, and follow a grievance process consistent with these regulations before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent.<ul style="list-style-type: none">◦ The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant’s wishes with respect to these measures, inform the complainant of the availability of these measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.• The Department may not deem an institution to have satisfied its duty to not be deliberately indifferent based on the recipient’s restriction of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.• An institution's determination regarding responsibility will not be evidence of deliberate indifference merely because OCR reaches a different determination based on an independent weighing of the evidence.
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<p>Emergency removals</p>	<ul style="list-style-type: none"> • These regulations do not preclude institutions from removing a respondent from an education program or activity on an emergency basis, provided that: (1) the institution undertakes an individualized safety and risk analysis; (2) determines that an immediate threat to the health or safety of students or employees justifies removal; and (3) provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. • NOTE: these requirements shall not be construed to modify any rights under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), or Title II of the Americans with Disabilities Act (ADA). Thus, the removal of a student on an emergency basis under section 106.44(c) may occur, but only to the extent that such removal conforms with the requirements of the IDEA, Section 504 and Title II of the ADA. 	<ul style="list-style-type: none"> • These regulations do not preclude institutions from removing a respondent from an education program or activity on an emergency basis, provided that: (1) the institution undertakes an individualized safety and risk analysis; (2) determines that an immediate physical threat to the health or safety of students or others arising from the alleged sexual harassment justifies removal; and (3) provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. • NOTE: these requirements shall not be construed to modify any rights under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), or the Americans with Disabilities Act (ADA). Thus, the removal of a student on an emergency basis under section 106.44(c) may occur, but only to the extent that such removal conforms with the requirements of the IDEA, Section 504, and the ADA.
<p>Use of administrative leave</p>	<ul style="list-style-type: none"> • These regulations do not preclude institutions from placing a non-student employee respondent on administrative leave during the pendency of an investigation. 	<ul style="list-style-type: none"> • These regulations do not preclude institutions from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with these regulations. • NOTE: this provision shall not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 (Section 504) or the Americans with Disabilities Act (ADA). Thus, administrative leave may occur, but only to the extent that it conforms with the requirements of Section 504 and the ADA.

II. Grievance procedures for formal complaints of sexual harassment:		
Definition of discrimination based on sex	<ul style="list-style-type: none"> An institution's treatment of either a complainant or a respondent may constitute discrimination on the basis of sex under Title IX. 	<ul style="list-style-type: none"> A institution's treatment of either a complainant or a respondent may constitute discrimination on the basis of sex under Title IX.
General requirements for grievance procedures	<p>Grievance procedures must:</p> <ul style="list-style-type: none"> Treat complainants and respondents equitably; Include remedies for the complainant when a finding of responsibility has been made, with such remedies designed to restore or preserve access to the institution's education program or activity; Provide due process protections for the respondent before any disciplinary sanctions are imposed; Require an investigation of the allegations and an objective evaluation of all relevant evidence - both inculpatory and exculpatory; Provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness; Require that any individual designated as a coordinator, investigator, or adjudicator not have a conflict of interest or bias for or against complainants and respondents generally and/or any individual party; 	<p>Grievance procedures must:</p> <ul style="list-style-type: none"> Treat complainants and respondents equitably; Include remedies for the complainant when a finding of responsibility has been made, with such remedies designed to restore or preserve equal access to the institution's education program or activity; <ul style="list-style-type: none"> Remedies can include individualized supportive measures but need not be non-disciplinary and need not avoid burdening the respondent; Require an objective evaluation of all relevant evidence - both inculpatory and exculpatory; Provide credibility determinations that are not based on a person's status as a complainant, respondent, or witness; Require that any individual designated as a coordinator, investigator, or adjudicator, or any person designated to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants and respondents generally and/or any individual party;

	<ul style="list-style-type: none"> ● Ensure that training on sexual harassment and how to conduct an investigation and grievance process is provided to all coordinators, investigators, and decision-makers—including hearings, if applicable—that protect the safety of students, ensure due process protections for all parties, and promote accountability; ● Ensure that any training materials not rely on sex stereotypes and instead promote impartial investigations/adjudications; ● Include a presumption that the respondent is not responsible for the alleged conduct until a determination is made; ● Include reasonably prompt time frames, including a process that allows for the extension of time frames for good cause with written notice to the parties of the delay or extension, and the reasons for the action (delays caused solely by administrative needs are insufficient to satisfy this standard); <ul style="list-style-type: none"> - Good cause may include the absence of the parties or witnesses, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities; ● List all of the possible sanctions and remedies that the institution may impose following any determination of responsibility; 	<ul style="list-style-type: none"> ● Ensure that training on sexual harassment, the scope of the institution’s education program activity, and how to conduct an investigation and grievance process is provided to all coordinators, investigators, decision-makers and any person who facilitates an informal resolution —including hearings, appeals, and informal resolution processes, as applicable—that includes how to serve impartially, including by avoiding prejudgment, conflicts of interest, and bias; ● Ensure decision-makers receive training on any technology to be used at a live hearing, and training on issues of relevance and evidence, including that the complainant’s sexual predisposition and sexual behavior are not relevant; ● Ensure investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence; ● Ensure training materials not rely on sex stereotypes and promote impartial investigations and adjudications; ● Include a presumption that the respondent is not responsible for the alleged conduct until a determination is made; ● Include reasonably prompt time frames, including for filing and resolving appeals and informal resolution processes, if offered, including a process that allows for temporary delay of the grievance process or extensions for good cause with written notice to both parties with the reasons for the delay
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	<ul style="list-style-type: none"> ● Describe the standard of evidence to be used to determine responsibility; ● Include the procedures and permissible bases for the parties to appeal the determination regarding responsibility; and ● Describe the range of supportive measures available to complainants and respondents. 	<ul style="list-style-type: none"> ○ Good cause may include the absence of a party, an advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities; ● Describe the range of or list possible disciplinary sanctions and remedies the institution may implement; ● State the standard of evidence to be used and apply the same standard to formal complaints against students as formal complaints against employees, and all formal complaints of sexual harassment; ● Include the procedures and permissible bases for appeal; ● Describe the range of supportive measures available to parties; and ● Prohibit questions seeking information and use of evidence that is protected under a legally recognized privilege, absent waiver of the privilege.
<p>Notice to the parties</p>	<ul style="list-style-type: none"> ● Upon receipt of a formal complaint, an institution must provide written notice to the parties of the allegation <u>and</u> of the institution’s grievance procedures. ● The notice must include sufficient details (such as identities of the parties involved in the incident, if known, the specific section of the 	<ul style="list-style-type: none"> ● Upon receipt of a formal complaint, an institution must provide written notice to the parties of the allegation <u>and</u> of the institution’s grievance procedures. ● The notice must include sufficient details (such as identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged

	<p>institution's policy allegedly violated, the conduct allegedly constituting sexual harassment under this part and under the institution's policy, and the date and location of the alleged incident, if known) and provide sufficient time to prepare a response before any initial interview.</p> <ul style="list-style-type: none"> • The notice must include a statement that the respondent is presumed not responsible until a determination is made and that such determination is made at the conclusion of the grievance process. • The notice must inform the parties that they may request to inspect and review the evidence. • The notice must inform the parties of any provision in the institution's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. • If the institution later decides to investigate allegations not included in the initial notice, it must provide notice of the additional allegations to the parties. 	<p>incident, if known) and provide sufficient time to prepare a response before any initial interview.</p> <ul style="list-style-type: none"> • The notice must include a statement that the respondent is presumed not responsible until a determination is made and that such determination is made at the conclusion of the grievance process. • The notice must inform the parties that they may have an advisor of their choice, who may but is not required to be, an attorney. • The notice must inform parties they may inspect and review evidence. • The notice must inform the parties of any provision in the institution's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. • If the institution later decides to investigate allegations not included in the initial notice, it must provide notice of the additional allegations to the parties.
<p>Procedures for investigations</p>	<ul style="list-style-type: none"> • Institution must conduct an investigation of the allegations in a formal complaint. • If the conduct alleged would not meet the definition of sexual harassment even if proved or did not occur within the institution's program or 	<ul style="list-style-type: none"> • Institution must conduct an investigation of the allegations in a formal complaint. • If the conduct alleged would not meet the definition of sexual harassment even if proved or did not occur within the institution's program or activity, or did not

	<p>activity, the institution must terminate its grievance process with regard to that conduct.</p> <p>When investigating a formal complaint, an institution must:</p> <ul style="list-style-type: none"> • Ensure that the burden of proof and the gathering of evidence sufficient to reach a determination is not placed on the parties; • Provide equal opportunities for the parties to present witnesses and other inculpatory and exculpatory evidence; • Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence; • Provide the parties with the same opportunities to have others present during any related meetings or other proceedings (cannot restrict who is advisor of choice, but can restrict participation of advisor of choice so long as the restrictions apply equally to both parties); • Provide written notice of the date, time, location, participants, and purpose of any hearing, investigative interview, or other meeting with a party, with sufficient time for the party to prepare; • Provide equal opportunity to both parties to pose all relevant questions to the other 	<p>occur against a person in the United States, the institution must terminate its grievance process with regard to that conduct.</p> <ul style="list-style-type: none"> • An institution may dismiss a formal complaint if a complainant notifies the Title IX coordinator in writing that the complainant would like to withdraw the formal complaint; the respondent is no longer enrolled or employed; or specific circumstances prevent the institution from gathering evidence sufficient to reach a determination. • An institution may consolidate formal complaints where the allegations of sexual harassment arise out of the same facts or circumstances. <p>When investigating a formal complaint, an institution must:</p> <ul style="list-style-type: none"> • Ensure that the burden of proof and the gathering of evidence sufficient to reach a determination is not placed on the parties; • NOT access, consider, disclose, or otherwise use a party's records maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional which are made and maintained in connection with the provision of treatment to the party, absent written consent; • Provide equal opportunities for the parties to present witnesses and other inculpatory and exculpatory evidence;
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	<p>party and to witnesses, and explain any decision to exclude questions as not relevant.</p> <ul style="list-style-type: none"> ● Provide equal access to the evidence the institution intends to rely upon in reaching a determination, and provide an equal opportunity to respond to that evidence prior to a responsibility determination; ● Promptly disclose to a complainant or respondent, upon request, any evidence obtained as part of the investigation; and ● Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, provide a copy of the report to the parties for their review and written response. ● Prior to completion of the investigative report, the institution must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format, such as a file sharing platform, that restricts the parties and advisors from downloading or copying the evidence, and the parties shall have at least ten days to submit a written response, which the investigator will consider prior to completion of the investigative report. 	<ul style="list-style-type: none"> ● Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. ● Provide the parties with the same opportunities to have others present during any related meetings or other proceeding. The institution cannot restrict who is advisor of choice, but can restrict the participation of advisor of choice (except regarding cross-examination requirement, below) so long as the restrictions apply equally to both parties. ● Provide written notice of the date, time, location, participants, and purpose of any hearing, investigative interview, or other meeting with a party, with sufficient time for the party to prepare. ● Provide equal opportunity to both parties to pose all relevant questions to the other party and to witnesses, and explain any decision to exclude questions as not relevant. ● Create an investigative report that fairly summarizes relevant evidence at least 10 days prior to a hearing or other time of determination regarding responsibility, provide a copy of the report to the parties for their review and written response. ● Prior to completion of the investigative report, the institution must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or hard copy, and the parties shall have at least ten days to submit a written response, which the investigator will consider prior to completion of the investigative report.
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<p>Hearings and Cross Examination</p>	<ul style="list-style-type: none"> ● Institutions must provide for a live hearing. <ul style="list-style-type: none"> ○ The decision maker must permit each party to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility; ○ Such cross-examination must be conducted by the party’s advisor of choice (even if an attorney), and parties to simultaneously see and hear the party answering questions. ○ The decision-maker must explain to the party’s advisor asking cross-examination questions any decision to exclude questions as not relevant. ○ If a party or witness does not submit to cross-examination at the hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility; ○ The institution must make all such evidence subject herein available to the parties’ inspection and review at any hearing to give each party equal opportunity to refer to such evidence during the hearing, 	<ul style="list-style-type: none"> ● Postsecondary institutions must provide for a live hearing, but it is <u>optional</u> for K-12 institutions <ul style="list-style-type: none"> ○ The decision-maker must permit each party’s advisor to ask the other party and any witnesses relevant questions and follow-up questions, including those challenging credibility. ○ Such cross-examination must be conducted directly, orally, and in real time by the party’s advisor of choice (even if an attorney) and never by a party personally, notwithstanding the discretion of the college to otherwise restrict the extent of said advisor’s participation. ○ At the request of either party, the college must provide for the live hearing to occur with the parties in separate rooms, with technology enabling the decision-maker(s) to see and hear the party or witness answering. ○ Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Final Rule does not define “relevant,” but a question appears to be “relevant” under the Rule if it tends to
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	including for purposes of cross-examination;	<p>prove or disprove the issue of responsibility.</p> <ul style="list-style-type: none"> o If a party does not have an advisor present at the live hearing, the college must provide without fee or charge to that party, an advisor of the college's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. o All cross-examination must exclude evidence of the complainant's sexual behavior or predisposition, unless such evidence about the complainant's sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the evidence concerns specific incidents of the complainant's sexual behavior with respect to the respondent and is offered to prove consent. o If a party or witness does not submit to this cross-examination, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination questions. o Live hearings may be conducted with all parties physically present at the same
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		<p>geographic location, or, at the college's discretion, participants may appear virtually with technology enabling participants to simultaneously see and hear each other.</p> <ul style="list-style-type: none"> o College must create an audio or audiovisual recording, or transcript of any live hearing and make it available to the parties.
Evidentiary standards	<ul style="list-style-type: none"> • Must apply either a preponderance of the evidence or a clear and convincing evidence standard. • May use preponderance of the evidence ONLY IF that is the standard used for ALL other discriminatory harassment complaints. • Must use the same standard of evidence for complaints against students as for complaints against employees, including faculty. 	<ul style="list-style-type: none"> • Must apply either a preponderance of the evidence standard or a clear and convincing evidence standard. • Must use the same standard of evidence for complaints against students as for complaints against employees, including faculty.
Determination regarding responsibility	<ul style="list-style-type: none"> • Decision makers, who cannot be the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility applying the appropriate standard of evidence. • Written determination must include: <ul style="list-style-type: none"> o Identification of the section(s) of the institution's sexual misconduct policy alleged to have been violated; o A description of all procedural steps taken, including any notifications to the 	<ul style="list-style-type: none"> • Decision makers, who cannot be the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. • Written determination must include: <ul style="list-style-type: none"> o Identification of the allegations potentially constituting sexual harassment; o A description of all procedural steps taken, including any notifications to the parties, interviews, site visits, evidence gathering, and hearings;

	<ul style="list-style-type: none"> parties, interviews, site visits, evidence gathering, and hearings; o Findings of fact supporting the determination; o Conclusions regarding the application of the institution's policy to the facts; o A statement of and rationale for each allegation, including the determination of responsibility, any sanctions imposed on respondent, and any remedies provided to complainant; and o Procedures and permissible bases for appeal (if available). 	<ul style="list-style-type: none"> o Findings of fact supporting the determination; o Conclusions regarding the application of the institution's code of conduct to the facts; o A statement of and rationale for each allegation, including the determination of responsibility, any sanctions imposed on respondent, and whether remedies designed to restore or preserve equal access to the institution's education program or activity will be provided by the institution to the complainant; and o Procedures and permissible bases for appeal.
Timing of providing determination to parties	<ul style="list-style-type: none"> ● Written determination must be provided to both parties simultaneously. 	<ul style="list-style-type: none"> ● Written determination must be provided to both parties simultaneously.
Procedures for appeals	<ul style="list-style-type: none"> ● Appeal rights are not required. ● If an appeal process is offered, it must allow both parties to do so. ● In all appeals, the institution must: <ul style="list-style-type: none"> o notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties; o ensure that the appeal decision-maker is not the same person as any investigator(s) or decision-maker(s) that reached the determination regarding responsibility; 	<ul style="list-style-type: none"> ● Appeal rights are required and must be offered to both parties on the following bases: <ul style="list-style-type: none"> o procedural irregularity affected the outcome; o new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome; and/or o the Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome o Optional: Other appeal grounds offered by the institution through its policies. ● Appeal rights may be offered to both parties on additional bases.

	<ul style="list-style-type: none"> o ensure that the appeal decision-maker complies with the standards set forth in section 106.45(b)(1)(iii); o give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome; o issue a written decision describing the result of the appeal and the rationale for the result; and o provide the written decision simultaneously to both parties. 	<ul style="list-style-type: none"> • In all appeals, the institution must: <ul style="list-style-type: none"> o notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties; o ensure that the appeal decision-maker is not the same person as the decision-maker(s) or investigator(s) that reached the determination regarding responsibility or dismissal, or the Title IX Coordinator; o Ensure that the appeal decision-maker complies with the standards set forth in section 106.45(b)(1)(iii); o 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 o provide the written decision simultaneously to both parties.
<p>Informal resolution procedures</p>	<ul style="list-style-type: none"> • At any time prior to reaching a determination of responsibility, the institution may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the institution obtains voluntary, written consent and provides the parties with a written notice. • The written notice must disclose: <ul style="list-style-type: none"> o The allegations. o Details of the informal resolution process, including when it may preclude the parties from resuming a formal complaint; and 	<ul style="list-style-type: none"> • An institution must not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints. • An institution may not require the parties to participate in informal resolution and may not offer informal resolution unless a formal complaint is filed. • At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

	<ul style="list-style-type: none"> o Any consequences resulting from participation in the informal process, including the records that will be maintained or could be shared. 	<ul style="list-style-type: none"> • An institution must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student. • Subject to those limitations, at any time prior to reaching a determination of responsibility, the institution may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the institution obtains voluntary, written consent and provides the parties with written notice. • The written notice must disclose: <ul style="list-style-type: none"> o The allegations; o The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and o Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
Recordkeeping procedures	<ul style="list-style-type: none"> • The institution must: (1) create, (2) make available to both the complainant and respondent; and (3) maintain for three years, records of: 	<ul style="list-style-type: none"> • The institution must maintain for seven years, records of: <ul style="list-style-type: none"> o The investigation, including any responsibility determination, any required recording or

	<ul style="list-style-type: none"> o The investigation, including any responsibility determination, any sanctions imposed on respondent, and any remedies provided to complainant; o Any appeal and its result; o Any informal resolution; and o All materials used to train investigators, adjudicators, and coordinators with regard to sexual harassment. <ul style="list-style-type: none"> ● The institution must also create and maintain for a period of three years any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment. The institution must also document bases for its conclusions and that it has taken measures designed to preserve access to the institution’s educational program or activity. 	<p>transcript,, any sanctions imposed on respondent, and any remedies provided to complainant;</p> <ul style="list-style-type: none"> o Any appeal and its result; o Any informal resolution and its results; and o All materials used to train investigators, adjudicators, and Title IX coordinators with regard to sexual harassment. The college must make these training materials available on its website or upon request for inspection by members of the public. <ul style="list-style-type: none"> ● The institution must also create and maintain for a period of seven years any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment. The institution must also document bases for its conclusions and that it has taken measures designed to preserve access to the institution’s educational program or activity.
<p>Retaliation</p>	<ul style="list-style-type: none"> ● Regulations do not speak directly to retaliation. Nothing restricts institutions from taking disciplinary action against a student or employee who intentionally submits a formal complaint in bad faith, or a student or employee who knowingly provides false information during the investigation or adjudication. 	<ul style="list-style-type: none"> ● Regulations prohibit intimidation, threats, coercion, or discrimination against any individual for purpose of interfering with any right or privilege secured by Title IX or the regulations, because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any investigation, proceeding or hearing. ● Institutions must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any

		<p>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 these regulations.</p> <ul style="list-style-type: none"> Complaints alleging retaliation may be filed using the procedures in these regulations.
III. Additional changes:		
Remedies	<ul style="list-style-type: none"> OCR will not assess monetary damages. 	<ul style="list-style-type: none"> Final regulations do not limit assessment of damages, and instead authorize any remedies consistent with 20 U.S.C 1682.
Constitutional protections	<ul style="list-style-type: none"> Nothing in these regulations require an institution to: <ul style="list-style-type: none"> Restrict any rights that are protected from governmental action by the First Amendment; Deprive an individual of rights that would otherwise be protected from governmental action under the Due Process Clause of the Fourteenth Amendment; or Restrict any other rights guaranteed against governmental action by the U.S. Constitution. 	<ul style="list-style-type: none"> Nothing in these regulations require an institution to: <ul style="list-style-type: none"> Restrict any rights that are protected from governmental action by the First Amendment; Deprive an individual of rights that would otherwise be protected from governmental action under the Due Process Clause of the Fourteenth Amendment; or Restrict any other rights guaranteed against governmental action by the U.S. Constitution.
Interaction with FERPA	<ul style="list-style-type: none"> The requirements of this part would override FERPA to the extent that they directly conflict. 	<ul style="list-style-type: none"> The requirements of this part would override FERPA to the extent that they directly conflict.

Interaction with Title VII	<ul style="list-style-type: none"> Nothing in these regulations should be read to limit an employee's rights under Title VII and its implementing regulations. 	<ul style="list-style-type: none"> Nothing in these regulations should be read to limit an employee's rights under Title VII and its implementing regulations.
Designation of coordinator; dissemination of policy; adoption of grievance procedures	<ul style="list-style-type: none"> Must designate at least one employee to coordinate its efforts. The campus must notify ALL of its students and employees of the name or title, office address, email address, and telephone number of the employee(s) designated. Regulations remove potentially unclear language in the existing regulation that could be read to require that the coordinator must be the one that handles the investigations and otherwise directly carries out the institution's responsibilities. Those duties are separated. Requirement to notify applicants for admission and employment, students, employees, and all unions that the institution does not discriminate on the basis of sex in the education program or activity that it operates and that it is required by Title IX and the regulation not to discriminate in such a manner. Must prominently display a statement of policy on its website, if any, and in each student or employee handbook or catalog that it makes available to persons entitled to notifications as described above. Requirement to adopt and publish the established grievance procedures and provide notice of these procedures, including how to 	<ul style="list-style-type: none"> Must designate at least one employee to coordinate its efforts, to be referred to as the Title IX Coordinator. The campus must notify ALL of its students and employees, as well as applicants for admission and employment, parents or legal guardians of elementary and secondary school students, and unions or professional organizations of the name or title, office address, email address, and telephone number of the Title IX Coordinator. Regulations remove potentially unclear language in the existing regulation that could be read to require that the coordinator must be the one that handles the investigations and otherwise directly carries out the institution's responsibilities. Those duties are separated. Final Regulations add that any person may report sex discrimination, including sexual harassment, in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Requirement to notify applicants for admission and employment, students, employees, parents of elementary or secondary school students, and all unions that the instituton does not discriminate on the basis of sex in the education program or activity that it

	<p>report and how to file or respond to a complaint, to students and employees.</p>	<p>operates and that it is required by Title IX and the regulation not to discriminate in such a manner.</p> <ul style="list-style-type: none"> • Must prominently display a statement of policy and contact information for the Title IX Coordinator on its website, if any, and in each student or employee handbook or catalog that it makes available to persons entitled to notifications as described above. • Requirement to adopt and publish the established grievance procedures and provide notice of these procedures, including how to report and how to file or respond to a complaint, to students and employees, applicants for admission or employment, unions, and parents of elementary or secondary school students.
Geography	<ul style="list-style-type: none"> • Response obligation limited to reports of incidents on campus or off campus but only within institution programs or activities. 	<ul style="list-style-type: none"> • Education program or activity includes locations, events, or circumstances over which the institution exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by an institution.
International reach of Title IX	<ul style="list-style-type: none"> • The requirement to adopt a policy and grievance procedure apply ONLY to exclusion from participation, denial of benefits, or discrimination on the basis of sex occurring against a person IN the United States. 	<ul style="list-style-type: none"> • The requirement to adopt a grievance procedure applies only to sex discrimination occurring against a person IN the United States.
Educational institutions controlled by religious organizations	<ul style="list-style-type: none"> • An institution that seeks assurance of the religious exemption may do so by submitting a letter identifying the provisions that conflict with the religious tenets of the institution, but is not required to do so. An institution may claim the 	<ul style="list-style-type: none"> • An institution that seeks assurance of the religious exemption may do so by submitting a letter identifying the provisions that conflict with the religious tenets of the institution, but is not required to do so. An institution may claim the exemption by submitting its letter after OCR initiates an investigation.

	exemption by submitting its letter after OCR initiates an investigation.	
Exercise of rights by parents and guardians of students	<ul style="list-style-type: none"> When a party is a minor or appointed a guardian, institutions have the discretion to look to state law or educational practices to determine whether the rights of the party shall be exercised by the parent(s), guardian(s) instead of or in addition to the party. 	<ul style="list-style-type: none"> Parents and guardians may act on behalf of parties if they already have the legal right to do so (i.e. party is a minor), including by filing formal complaints.

About the Joint Guidance

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.

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