



**Text-to-Text Proposed-to-Final Rule Comparison:**  
**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

**Guidance Publication Date: May 7, 2020 (Version 2)**

Section	Proposed Regulations	Final Regulations
§ 106.3(a) Remedial action	<p><b>Black text</b> is the original Title IX regulation from the 1970s that the NPRM did not propose to amend.</p> <p><b>Blue text</b> is the language proposed to be added in the 2018 NPRM.</p>	<p><b>Black text</b> is the original Title IX regulation from the 1970s that the Final Rule did not amend.</p> <p><b>Blue text</b> is text that <b>has not changed</b> from the NPRM to the Final Rule.</p> <p><b>Red text</b> is language that was <b>added</b> during the notice-and-comment period following publication of the NPRM and included in the Final Rule.</p> <p>Language in the NPRM <b>removed</b> in the final rule is indicated with a <b>strike-through</b></p>
	<p>If the Assistant Secretary finds that a recipient has <b>violated this part</b>, such recipient shall take such remedial action as the Assistant Secretary deems necessary <b>to remedy the violation, which shall not</b></p>	<p>If the Assistant Secretary finds that a recipient has <del>violated this part</del>, discriminated against persons on the basis of sex in an education program or activity <b>under this part, or otherwise violated this part</b>, such recipient</p>

	include assessment of damages against the recipient. Nothing herein prohibits the Assistant Secretary from deeming necessary equitable relief to remedy a violation of this part.	<del>must take such remedial action as the Assistant Secretary deems necessary to remedy the violation, consistent with 20 U.S.C. 1682. which shall not include assessment of damages against the recipient. Nothing herein prohibits the Assistant Secretary from deeming necessary equitable relief to remedy a violation of this part.</del>
§ 106.6(d) Constitutional protections	Nothing in this part requires a recipient to:  (1) Restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution;  (2) Deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution; or  (3) Restrict any other rights guaranteed against government action by the U.S. Constitution.	Nothing in this part requires a recipient to:  (1) Restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution;  (2) Deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution; or  (3) Restrict any other rights guaranteed against government action by the U.S. Constitution.
§ 106.6(e) Effect of Section 444 of General Education Provisions Act (GEPA)/Family Educational Rights and Privacy Act (FERPA)	20 U.S.C. 1232g and 34 CFR Part 99. The obligation to comply with this part is not obviated or alleviated by the FERPA statute or regulations.	The obligation to comply with this part is not obviated or alleviated by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99.
§ 106.6(f) Title VII of the Civil Rights Act of 1964.	Nothing in this part shall be read in derogation of an employee's rights under title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. or any regulations promulgated thereunder.	Nothing in this part may be read in derogation of any individual's rights under title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. or any regulations promulgated thereunder.
§ 106.6(g) Exercise of rights by		Nothing in this part may be read in derogation of any legal right of a parent or guardian to act on behalf of a "complainant," "respondent,"

parents or guardians.		“party,” or other individual, subject to paragraph (e) of this section, including but not limited to filing a formal complaint.
§ 106.6(h) Preemptive Effect		To the extent of a conflict between State or local law and title IX as implemented by §§ 106.30, 106.44, and 106.45, the obligation to comply with §§ 106.30, 106.44, and 106.45 is not obviated or alleviated by any State or local law.
§ 106.8 (a) Designation of coordinator	Each recipient <b>must</b> designate at least one employee to coordinate its efforts to comply with its responsibilities under this part [ ]. The recipient must notify all its students and employees of the name or title, office address, <b>electronic mail address</b> , and telephone number of the employee or employees <b>designated</b> pursuant to this paragraph.	Each recipient <b>must</b> designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, <b>which employee must be referred to as the “Title IX Coordinator.”</b> The recipient must notify <b>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,</b> of the name or title, office address, <b>electronic mail address</b> , and telephone number of the employee or employees <b>designated as the Title IX Coordinator</b> pursuant to this paragraph. <b>Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or 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. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.</b>
§ 106.8 (b) Dissemination of policy	(1) Notification of policy. Each recipient must notify applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it 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 this part not to discriminate in such a manner. Such notification must state that the requirement not to discriminate in the education program or activity extends to employment and admission (unless Subpart C does not	(1) Notification of policy. Each recipient must notify persons entitled to a notification under paragraph (a) of this section <del>applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient</del> that the recipient 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 this part not to discriminate in such a manner. Such notification must state that the requirement not to discriminate in the education program or activity extends to <del>employment and</del> admission

<p>§ 106.8 (b) Dissemination of policy</p>	<p>apply to the recipient) and that inquiries about the application of title IX and this part to such recipient may be referred to the employee designated pursuant to section 106.8(a), to the Assistant Secretary, or both.</p> <p>(2) Publications.</p> <p>(i) Each recipient must prominently display a statement of the policy described in paragraph (b)(1) of this section on its website, if any, and in each handbook or catalog that it makes available to persons entitled to a notification under paragraph (b)(1) of this section.</p> <p>(ii) 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 this part.</p>	<p>(unless subpart C of this part does not apply) <b>and employment</b>, and that inquiries about the application of title IX and this part to such recipient may be referred to the <del>employee designated pursuant to paragraph (a) of this section</del>; recipient's Title IX Coordinator, to the Assistant Secretary, or both.</p> <p>(2) Publications.</p> <p>(i) Each recipient must prominently display <b>the contact information required to be listed for the Title IX Coordinator under paragraph (a) of this section and the policy</b> described in paragraph (b)(1) of this section on its website, if any, and in each handbook or catalog that it makes available to persons entitled to a notification under paragraph (a) of this section.</p> <p>(ii) 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 <b>by title IX</b> or this part.</p>
<p>§ 106.8 (c) Adoption of grievance procedures.</p>	<p>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 of formal complaints as defined in section 106.44(e)(5). A recipient must provide notice of the recipient's grievance procedures, including how to report sex discrimination and how to file or respond to a complaint of sex discrimination, to students and employees.</p>	<p>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 <b>and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30</b>. A recipient must provide <b>to persons entitled to a notification under paragraph (a) of this section</b> <del>to students and employees</del> notice of the recipient's grievance procedures <b>and grievance process</b>, including how to report <b>or file a complaint</b> of sex discrimination, how to report <b>or file a formal complaint of sexual discrimination-harassment</b>, and how the recipient will respond.</p>
<p>§ 106.8 (d) Application</p>	<p>The requirements that a recipient adopt a policy and grievance procedures as described in this section apply only to exclusion from participation, denial of benefits, or discrimination on the basis of sex occurring against a person in the United States.</p>	<p>The requirements <del>that a recipient adopt a policy and grievance procedures as described in this section apply only to exclusion from participation, denial of benefits, or discrimination on the basis of sex</del> of paragraph (c) of this section apply only to sex discrimination occurring against a person in the United States.</p>
<p>§ 106.9.</p>	<p><i>Removed and reserved</i></p>	<p><b>Severability</b>. If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the</p>

		application of its provisions to any person, act, or practice shall not be affected thereby.
§ 106.12 (b) Assurance of exemption	An educational institution that seeks assurance of the exemption set forth in paragraph (a) of this section may do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part that conflict with a specific tenet of the religious organization. An institution is not required to seek assurance from the Assistant Secretary in order to assert such an exemption. In the event the Department notifies an institution that it is under investigation for noncompliance with this part and the institution wishes to assert an exemption set forth in paragraph (a) of this section, the institution may at that time raise its exemption by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization, whether or not the institution had previously sought assurance of the exemption from the Assistant Secretary.	An educational institution that seeks assurance of the exemption set forth in paragraph (a) of this section may do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part that conflict with a specific tenet of the religious organization. An institution is not required to seek assurance from the Assistant Secretary in order to assert such an exemption. In the event the Department notifies an institution that it is under investigation for noncompliance with this part and the institution wishes to assert an exemption set forth in paragraph (a) of this section, the institution may at that time raise its exemption by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization, whether or not the institution had previously sought assurance of an exemption from the Assistant Secretary.
§ 106.18. Severability		If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.
§ 106.24. Severability		If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.
§ 106.30(a). Definitions.	As used in this subpart:  <i>Actual knowledge</i> means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to a teacher in the elementary and secondary context with regard to student-on-student harassment. Imputation of knowledge based solely on respondeat superior or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the	As used in this part:  <i>Actual knowledge</i> means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to a teacher any employee of an elementary and secondary school. Imputation of knowledge based solely on <del>respondeat superior</del> vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is also the respondent. The

<p>§ 106.30(a). Definitions.</p>	<p>recipient with actual knowledge is also the respondent. The mere ability or obligation to report sexual harassment does not qualify an employee, even if that employee is an official, as one who has authority to institute corrective measures on behalf of the recipient.</p> <p><i>Complainant</i> means 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. For purposes of this definition, 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 recipient’s actual knowledge under this section.</p> <p><i>Formal complaint</i> means a document signed by a complainant or by the Title IX Coordinator alleging sexual harassment against a respondent about conduct within its education program or activity and requesting initiation of the recipient’s grievance procedures consistent with § 106.45.</p>	<p>mere ability or obligation to report sexual harassment <del>or to inform a student about how to report sexual harassment, or having been trained to do so,</del> does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient. “Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in § 106.8(a).</p> <p><i>Complainant</i> means an individual who <del>has reported being</del> is alleged to be the victim of conduct that could constitute sexual harassment, <del>or on whose behalf the Title IX Coordinator has filed a formal complaint. For purposes of this definition, 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 recipient’s actual knowledge under this section.</del></p> <p><i>Consent.</i> The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault, as referenced in this section.</p> <p><i>Formal complaint</i> means a document <del>signed</del> filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent <del>about conduct within its education program or activity and requesting initiation of the recipient’s grievance procedures consistent with § 106.45</del> that the recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under § 106.8(a), and by any additional method designated by the recipient. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the</p>
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<p>§ 106.30(a). Definitions.</p>	<p><i>Respondent</i> means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.</p> <p><i>Sexual harassment</i> means:</p> <p>(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;</p> <p>(2) Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;</p> <p>or (3) Sexual assault, as defined in 34 CFR 668.46(a)</p> <p><i>Supportive measures</i> means nondisciplinary, 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 recipient's education program or activity, without unreasonably burdening the other party; protect the safety</p>	<p>complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part or under § 106.45, and must comply with the requirements of this part, including § 106.45(b)(1)(iii).</p> <p><i>Respondent</i> means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.</p> <p><i>Sexual harassment</i> means <b>conduct on the basis of sex that satisfies one or more of the following:</b></p> <p>(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;</p> <p>(2) Unwelcome conduct <b>on the basis of sex determined by a reasonable person to be</b> so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or</p> <p>(3) "Sexual assault" as defined in <b>as defined in 34 CFR 668.46(a)</b> 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).</p> <p><i>Supportive measures</i> means 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 <b>equal</b> access to the recipient's education program or activity without unreasonably burdening the other party, <b>including measures designed to</b> protect the safety of all</p>
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<p>§ 106.30(a). Definitions.</p>	<p>of all parties and the recipient’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 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 recipient 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>parties <del>and</del> or the recipient’s educational environment, <del>or</del> 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 recipient 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 recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.</p>
<p>§ 106.30(b). Definitions.</p>		<p>(b) As used in §§ 106.44 and 106.45: <i>Elementary and secondary school</i> means a local educational agency (LEA), as defined in the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, a preschool, or a private elementary or secondary school.</p> <p><i>Postsecondary institution</i> means an institution of graduate higher education as defined in § 106.2(l), an institution of undergraduate higher education as defined in § 106.2(m), an institution of professional education as defined in § 106.2(n), or an institution of vocational education as defined in § 106.2(o).</p>
<p>§ 106.44 (a) General</p>	<p>A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States must respond in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.</p>	<p>A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.</p> <p>For the purposes of this section, §§ 106.30, and 106.45, “education program or activity” includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and</p>

<p>§ 106.44 (a) General</p>		<p>also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.</p> <p>A recipient's response must treat complainants and respondents equitably by offering supportive measures as defined in § 106.30 to a complainant, and by following a grievance process that complies with § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent.</p> <p>The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in § 106.30, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.</p> <p>The Department may not deem a recipient to have satisfied the recipient's duty to not be deliberately indifferent under this part based on the recipient's restriction of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.</p>
<p>§ 106.44 (b) Specific circumstances</p>	<p>(1) A recipient must follow procedures consistent with section 106.45 in response to a formal complaint. If the recipient follows procedures (including implementing any appropriate remedy as required) consistent with section 106.45 in response to a formal complaint, the recipient's response to the formal complaint is not deliberately indifferent and does not otherwise constitute discrimination under title IX.</p> <p>(2) When a recipient has actual knowledge regarding reports by multiple complainants of conduct by the same respondent that could</p>	<p>(1) In response to a formal complaint, a recipient must follow a grievance process that complies with § 106.45. With or without a formal complaint, a recipient must comply with § 106.44(a). <del>A recipient must follow procedures consistent with § 106.45 in response to a formal complaint. If the recipient follows procedures (including implementing any appropriate remedy as required) consistent with § 106.45 in response to a formal complaint, the recipient's response to the formal complaint is not deliberately indifferent and does not otherwise constitute discrimination under title IX.</del></p> <p><del>(2) When a recipient has actual knowledge regarding reports by multiple complainants of conduct by the same respondent that could constitute</del></p>

<p>§ 106.44 (b) Specific circumstances</p>	<p>constitute sexual harassment, the Title IX Coordinator must file a formal complaint. If the Title IX Coordinator files a formal complaint in response to the reports, and the recipient follows procedures (including implementing any appropriate remedy as required) consistent with section 106.45 in response to the formal complaint, the recipient's response to the reports is not deliberately indifferent.</p> <p>(3) For institutions of higher education, a recipient is not deliberately indifferent when in the absence of a formal complaint the recipient offers and implements supportive measures designed to effectively restore or preserve the complainant's access to the recipient's education program or activity. At the time supportive measures are offered, the recipient must in writing inform the complainant of the right to file a formal complaint at that time or a later date, consistent with other provisions of this part.</p> <p>(4) If paragraphs (b)(1) through (b)(3) of this section are not implicated, a recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States must, consistent with paragraph (a) of this section, respond in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.</p> <p>(5) The Assistant Secretary will not deem a recipient's determination regarding responsibility to be evidence of deliberate indifference by the recipient merely because the Assistant Secretary would have reached a different determination based on an independent weighing of the evidence.</p>	<p><del>sexual harassment, the Title IX Coordinator must file a formal complaint. If the Title IX Coordinator files a formal complaint in response to the reports, and the recipient follows procedures (including implementing any appropriate remedy as required) consistent with section 106.45 in response to the formal complaint, the recipient's response to the reports is not deliberately indifferent.</del></p> <p><del>(3) For institutions of higher education, a recipient is not deliberately indifferent when in the absence of a formal complaint the recipient offers and implements supportive measures designed to effectively restore or preserve the complainant's access to the recipient's education program or activity. At the time supportive measures are offered, the recipient must in writing inform the complainant of the right to file a formal complaint at that time or a later date, consistent with other provisions of this part.</del></p> <p><del>(4) If paragraphs (b)(1) through (b)(3) of this section are not implicated, a recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States must, consistent with paragraph (a) of this section, respond in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.</del></p> <p><del>(5) (2) The Assistant Secretary will not deem a recipient's determination regarding responsibility to be evidence of deliberate indifference by the recipient, or otherwise evidence of discrimination under title IX by the recipient, solely because the Assistant Secretary would have reached a different determination based on an independent weighing of the evidence.</del></p>
<p>§ 106.44 (c) Emergency Removal</p>	<p>Nothing in this section precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient undertakes an</p>	<p>Nothing in this part precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk</p>

§ 106.44 (c) Emergency Removal	individualized safety and risk analysis, determines that an immediate threat to the health or safety of students or employees justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision shall not be construed to modify any rights under the Individuals with Disabilities Education Act Section 504 of the Rehabilitation Act of 1973, or title II of the Americans with Disabilities Act.	analysis, determines that an immediate threat to the <b>physical</b> health or safety of <b>any student or other individual arising from the allegations of sexual harassment</b> justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision <del>shall</del> <b>may</b> not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.
§ 106.44 (d) Administrative leave	Nothing in this section precludes a recipient from placing a non-student employee respondent on administrative leave during the pendency of an investigation.	Nothing in this <del>section</del> -subpart precludes a recipient from placing a non-student employee respondent on administrative leave during the pendency of <del>an investigation</del> <b>a grievance process that complies with § 106.45</b> . This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.
§ 106.45 (a) Discrimination on the basis of sex.	A recipient's treatment of a complainant in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX. A recipient's treatment of the respondent may also constitute discrimination on the basis of sex under title IX.	A recipient's treatment of a complainant <b>or a respondent</b> in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX. <del>A recipient's treatment of the respondent may also constitute discrimination on the basis of sex under title IX.</del>
§ 106.45 (b) Grievance procedures	<p>For the purpose of addressing formal complaints of sexual harassment, grievance procedures must comply with the requirements of this section.</p> <p>(1) Basic requirements for grievance procedures. Grievance procedures must—</p> <p>(i) Treat complainants and respondents equitably. An equitable resolution for a complainant must include remedies where a finding of responsibility for sexual harassment has been made against the respondent; such remedies must be designed to restore or preserve access to the recipient's education program or activity. An equitable</p>	<p>For the purpose of addressing formal complaints of sexual harassment, a recipient's grievance process must comply with the requirements of this section. <b>Any provisions, rules, or practices other than those required by this section that a recipient adopts as part of its grievance process for handling formal complaints of sexual harassment as defined in § 106.30, must apply equally to both parties.</b></p> <p>(1) Basic requirements for grievance process. <b>A recipient's grievance process must—</b></p> <p>(i) Treat complainants and respondents equitably <b>by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent. An equitable</b></p>

<p>§ 106.45 (b) Grievance procedures</p>	<p>resolution for a respondent must include due process protections before any disciplinary sanctions are imposed;</p> <p>(ii) Require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person’s status as a complainant, respondent, or witness;</p> <p>(iii) Require that any individual designated by a recipient as a coordinator, investigator, or decision-maker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A recipient must ensure that coordinators, investigators, and decision-makers receive training on both the definition of sexual harassment and how to conduct an investigation and grievance process, including hearings, if applicable, that protect the safety of students, ensure due process protections for all parties, and promote accountability. Any materials used to train coordinators, investigators, or decision-makers may not rely on sex stereotypes and must promote impartial investigations and adjudications of sexual harassment;</p>	<p><del>resolution for a complainant must include remedies where a finding of responsibility for sexual harassment has been made against the respondent; such [R]emedies must be designed to restore or preserve equal access to the recipient’s education program or activity. An equitable resolution for a respondent must include due process protections before any disciplinary sanctions are imposed; Such remedies may include the same individualized services described in § 106.30 as “supportive measures”; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;</del></p> <p>(ii) Require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person’s status as a complainant, respondent, or witness;</p> <p>(iii) Require that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on both the definition of sexual harassment in § 106.30, the scope of the recipient’s education program or activity, and how to conduct an investigation and grievance process including hearings, if applicable, appeals, and informal resolution processes, as applicable, that protect the safety of students, ensure due process protections for all parties, and promote accountability and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on 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, as set forth in paragraph (b)(6) of this section. A recipient also</p>
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<p>§ 106.45 (b) Grievance procedures</p>	<p>(iv) Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;</p> <p>(v) Include reasonably prompt timeframes for conclusion of the grievance process, including reasonably prompt timeframes for filing and resolving appeals if the recipient offers an appeal, and a process that allows for the temporary delay of the grievance process or the limited extension of timeframes for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of the parties or witnesses, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities;</p> <p>(vi) Describe the range of possible sanctions and remedies that the recipient may implement following any determination of responsibility;</p> <p>(vii) Describe the standard of evidence to be used to determine responsibility;</p>	<p>must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in paragraph (b)(5)(vii) of this section. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, <del>may</del> must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;</p> <p>(iv) Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;</p> <p>(v) Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;</p> <p>(vi) Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility;</p> <p>(vii) <del>Describe the standard of evidence to be used to determine responsibility</del> State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment;</p>
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<p>§ 106.45 (b) Grievance procedures</p>	<p>(viii) Include the procedures and permissible bases for the complainant and respondent to appeal if the recipient offers an appeal; and</p> <p>(ix) Describe the range of supportive measures available to complainants and respondents.</p> <p>(2) Notice of allegations.</p> <p>(i) Notice upon receipt of formal complaint. Upon receipt of a formal complaint, a recipient must provide the following written notice to the parties who are known:</p> <p>(A) Notice of the recipient’s grievance procedures.</p> <p>(B) Notice of the allegations constituting a potential violation of the recipient’s code of conduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the specific section of the recipient’s code of conduct allegedly violated, the conduct allegedly constituting sexual harassment under this part and under the recipient’s policy, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must also inform the parties that they may request to inspect and review evidence under paragraph (b)(3)(viii) of this section and inform the</p>	<p>(viii) Include the procedures and permissible bases for the complainant and respondent to appeal <del>if the recipient offers an appeal;</del></p> <p>(ix) Describe the range of supportive measures available to complainants and respondents; <del>and</del></p> <p><del>(x) Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.</del></p> <p>(2) Notice of allegations—</p> <p>(i) <del>Notice upon receipt of formal complaint.</del> Upon receipt of a formal complaint, a recipient must provide the following written notice to the parties who are known:</p> <p>(A) Notice of the recipient’s grievance <del>process that complies with this section, including any informal resolution process.</del></p> <p>(B) Notice of the allegations <del>constituting a potential violation of the recipient’s code of conduct,</del> of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, <del>the specific section of the recipient’s code of conduct allegedly violated,</del> the conduct allegedly constituting sexual harassment <del>under § 106.30, and under the recipient’s code of conduct,</del> and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must inform the parties that they <del>may have</del></p>
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<p>§ 106.45 (b) Grievance procedures</p>	<p>parties of any provision in the recipient’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process</p> <p>(ii) Ongoing notice requirement. If, in the course of an investigation, the recipient decides to investigate allegations not included in the notice provided pursuant to paragraph (b)(2)(i)(B) of this section, the recipient must provide notice of the additional allegations to the parties, if known.</p> <p>(3) Investigations of a formal complaint.</p> <p>The recipient must investigate the allegations in a formal complaint. If the conduct alleged by the complainant would not constitute sexual harassment as defined in section 106.44(e) even if proved or did not occur within the recipient’s program or activity, the recipient must dismiss the formal complaint with regard to that conduct.</p>	<p>an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may <del>request to</del> inspect and review evidence under paragraph (b)(5)(vi) of this section. The written notice must inform the parties of any provision in the recipient’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.</p> <p>(ii) <i>Ongoing notice requirement.</i> If, in the course of an investigation, the recipient decides to investigate allegations <b>about the complainant or respondent that are</b> not included in the notice provided pursuant to paragraph (b)(2)(i)(B) of this section, the recipient must provide notice of the additional allegations to the parties <b>whose identities are known.</b></p> <p>(3) <b>Dismissal investigations</b> of a formal complaint—</p> <p>(i) The recipient must investigate the allegations in a formal complaint. If the conduct alleged <del>by the complainant in the formal complaint</del> would not constitute sexual harassment as defined in § 106.30 even if proved, <del>or</del> did not occur in the recipient’s education program or activity, <b>or did not occur against a person in the United States,</b> then the recipient must dismiss the formal complaint with regard to that conduct <b>for purposes of sexual harassment under title IX or this part; such a dismissal does not preclude action under another provision of the recipient’s code of conduct.</b></p> <p>(ii) The recipient may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.</p>
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<p>§ 106.45 (b) Grievance procedures</p>	<p>When investigating a formal complaint, a recipient must—</p> <p>(i) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient and not on the parties;</p> <p>(ii) Provide equal opportunity for the parties to present witnesses and other inculpatory and exculpatory evidence;</p>	<p>(iii) Upon a dismissal required or permitted pursuant to paragraph (b)(3)(i) or (b)(3)(ii) of this section, the recipient must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.</p> <p>(4) Consolidation of formal complaints. A recipient may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.</p> <p>(5) <i>Investigation of a formal complaint.</i> When investigating a formal complaint and throughout the grievance process, a recipient must—</p> <p>(i) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient and not on the parties provided that the recipient cannot access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party’s voluntary, written consent to do so for a grievance process under this section (if a party is not an “eligible student,” as defined in 34 CFR 99.3, then the recipient must obtain the voluntary, written consent of a “parent,” as defined in 34 CFR 99.3);</p> <p>(ii) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;</p>
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<p>§ 106.45 (b) Grievance procedures</p>	<p>(iii) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;</p> <p>(iv) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, and not limit the choice of advisor or presence for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient 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;</p> <p>(v) Provide to the party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate;</p> <p>(viii) <i>[Editor’s note: this section has been moved from its original order in the NPRM for ease of comparison with Final Rule]</i> Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the recipient 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. The</p>	<p>(iii) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;</p> <p>(iv) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, <b>who may be, but is not required to be, an attorney</b>, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient 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;</p> <p>(v) Provide, to <b>a</b> party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings <b>with a party</b>, with sufficient time for the party to prepare to participate;</p> <p>(vi)<i>[formerly (viii) in the NPRM]</i> Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility <b>and inculpatory or exculpatory evidence whether obtained from a party or other source</b>, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the recipient must send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format <del>such as a file sharing platform, that restricts the parties and advisors from downloading or copying the evidence or a hard copy</del>, and the parties <b>must</b> have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject <del>herein</del> to the parties’</p>
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<p>§ 106.45 (b) Grievance procedures</p>	<p>recipient must make all such evidence subject herein to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination;</p> <p><i>(ix) [Editor's note: this section has been moved from its original order in the NPRM for ease of comparison with Final Rule] Create an investigative report that fairly summarizes relevant evidence and, at least ten days prior to a hearing (if a hearing is required under section 106.45) or other time of determination regarding responsibility, provide a copy of the report to the parties for their review and written response.</i></p> <p>(vii) For institutions of higher education, the recipient's grievance procedure must provide for a live hearing. At the hearing, 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 at a hearing must be conducted by the party's advisor of choice, notwithstanding the discretion of the recipient under subsection 106.45(b)(3)(iv) to otherwise restrict the extent to which advisors may participate in the proceedings. If a party does not have an advisor present at the hearing, the recipient must provide that party an advisor aligned with that party to conduct cross-examination. 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. At the request of either party, the recipient must provide for cross-examination to occur with the parties located in separate rooms with technology enabling the decisionmaker and parties to simultaneously see and hear the party answering questions. The decision-maker must</p>	<p>inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and</p> <p><i>(vii)[formerly (ix) in the NPRM] Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.</i></p> <p>(6) Hearings. (i) <i>[formerly 106.45(b)(3)(vii) in NPRM] For <del>institutions of higher education</del> postsecondary institutions, the recipient's grievance process must provide for a live hearing. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the recipient under paragraph (b)(5)(iv) of this section to otherwise restrict the extent to which advisors may participate in the proceedings. <del>If a party does not have an advisor present at the hearing, the recipient must provide that party an advisor aligned with that party to conduct cross-examination. 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.</del> At the request of either party, the recipient must provide for <del>cross-examination</del> the live hearing to occur with the parties located in separate rooms with technology enabling the decision-</i></p>
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<p>§ 106.45 (b) Grievance procedures</p>	<p>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;</p>	<p>maker(s) and parties to simultaneously see and hear the party or the witness answering questions. Only relevant cross examination and other questions may be asked of a party or witness. <del>The decision-maker must explain to the party's advisor asking cross-examination questions any decision to exclude questions as not relevant.</del> 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. If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, 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. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, 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 or other questions. Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the recipient's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. Recipients must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.</p>
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<p>§ 106.45 (b) Grievance procedures</p>	<p>(vi) <i>[Editor's note: this section has been moved from its original order in the NPRM for ease of comparison with Final Rule]</i> For recipients that are elementary and secondary schools, the recipient's grievance procedure may require a live hearing. With or without a hearing, the decisionmaker must, after the recipient has incorporated the parties' responses to the investigative report under paragraph (b)(3)(ix) of this section, ask each party and any witnesses any relevant questions and follow-up questions, including those challenging credibility, that a party wants asked of any party or witnesses. If no hearing is held, the decision-maker must afford each party the opportunity to submit written questions, provide each party with the answers, and allow for additional, limited follow-up questions from each party. With or without a hearing, all such questioning 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. The decision-maker must explain to the party proposing the questions any decision to exclude questions as not relevant;</p> <p>(4) Determination regarding responsibility.</p> <p>(i) The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the recipient must apply either the preponderance of the evidence standard or the clear and convincing evidence standard, although the recipient may employ the preponderance of the evidence standard</p>	<p>(ii) <i>[formerly 106.45(b)(3)(vi) in NPRM]</i> For recipients that are elementary and secondary schools, and other recipients that are not postsecondary institutions, the recipient's grievance process may, but need not, provide for <del>require a live hearing</del>. With or without a hearing, <del>the decisionmaker must</del>, after the recipient has <del>incorporated the parties' responses to the investigative report under paragraph (b)(3)(ix) of this section</del>, ask each party and any witnesses any relevant questions and follow-up questions, including those challenging credibility, that a party wants asked of any party or witnesses, <del>;</del> sent the investigative report to the parties pursuant to paragraph (b)(5)(vii) of this section and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. With or without a hearing, <del>all such questioning must exclude evidence of the complainant's sexual behavior or predisposition</del> questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the <del>questions and</del> evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.</p> <p>(7) Determination regarding responsibility.</p> <p>(i) The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the recipient must apply <del>either the preponderance of the evidence standard or the clear and convincing evidence standard</del>, although the recipient may employ the <del>preponderance of the evidence standard only if the recipient uses that</del></p>
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<p>§ 106.45 (b) Grievance procedures</p>	<p>only if the recipient uses that standard for conduct code violations that do not involve sexual harassment but carry the same maximum disciplinary sanction. The recipient must also apply the same standard of evidence for complaints against students as it does for complaints against employees, including faculty.</p> <p>(ii) The written determination must include—</p> <p>(A) Identification of the section(s) of the recipient’s code of conduct alleged to have been violated;</p> <p>(B) A description of the procedural steps taken from the receipt of the 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;</p> <p>(C) Findings of fact supporting the determination;</p> <p>(D) Conclusions regarding the application of the recipient’s policy to the facts;</p> <p>(E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any sanctions the recipient imposes on the respondent, and any remedies provided by the recipient to the complainant designed to restore or preserve access to the recipient’s education program or activity;</p> <p>(F) The recipient’s procedures and permissible bases for the complainant and respondent to appeal, if the recipient offers an appeal.</p>	<p><del>standard for conduct code violations that do not involve sexual harassment but carry the same maximum disciplinary sanction. The recipient must also apply the same standard of evidence for complaints against students as it does for complaints against employees, including faculty</del> the standard of evidence described in paragraph (b)(1)(vii) of this section.</p> <p>(ii) The written determination must include—</p> <p>(A) Identification of the <del>of the section(s) of the recipient's code of conduct alleged to have been violated;</del> allegations potentially constituting sexual harassment as defined in § 106.30;</p> <p>(B) A description of the procedural steps taken from the receipt of the <del>formal</del> 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;</p> <p>(C) Findings of fact supporting the determination;</p> <p>(D) Conclusions regarding the application of the recipient’s code of conduct to the facts;</p> <p>(E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any <del>disciplinary</del> sanctions the recipient imposes on the respondent, and <del>any whether</del> remedies designed to restore or preserve equal access to the recipient’s education program or activity <del>will be provided by the recipient to the complainant;</del> and</p> <p>(F) The recipient’s procedures and permissible bases for the complainant and respondent to appeal <del>if the recipient offers an appeal.</del></p>
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<p>§ 106.45 (b) Grievance procedures</p>	<p>(iii) The recipient must provide the written determination to the parties simultaneously. If the recipient does not offer an appeal, the determination regarding responsibility becomes final on the date that the recipient provides the parties with the written determination. If the recipient offers an appeal, the determination regarding responsibility becomes final at either the conclusion of the appeal process, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be considered timely;</p> <p>(5) Appeals. A recipient may choose to offer an appeal. If a recipient offers an appeal, it must allow both parties to appeal. In cases where there has been a finding of responsibility, although a complainant may appeal on the ground that the remedies are not designed to restore or preserve the complainant’s access to the recipient’s education program or activity, a complainant is not entitled to a particular sanction against the respondent.</p>	<p>(iii) The recipient must provide the written determination to the parties simultaneously. <del>If the recipient does not offer an appeal, the determination regarding responsibility becomes final on the date that the recipient provides the parties with the written determination. If the recipient offers an appeal, the determination regarding responsibility becomes final at either the conclusion of the appeal process, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be considered timely.</del> The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.</p> <p>(iv) The Title IX Coordinator is responsible for effective implementation of any remedies.</p> <p>(8) Appeals. (i) <del>A recipient may choose to offer an appeal. If a recipient offers an appeal, it must allow both parties to appeal. In cases where there has been a finding of responsibility, although a complainant may appeal on the ground that the remedies are not designed to restore or preserve the complainant's access to the recipient's education program or activity, a complainant is not entitled to a particular sanction against the respondent.</del> must offer both parties an appeal from a determination regarding responsibility, and from a recipient’s dismissal of a formal complaint or any allegations therein, on the following bases:</p> <p>(A) Procedural irregularity that affected the outcome of the matter;</p> <p>(B) 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; and</p> <p>(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents</p>
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<p>§ 106.45 (b) Grievance procedures</p>	<p>As to all appeals, the recipient must:</p> <p>(i) notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;</p> <p>(ii) ensure that the appeal decision-maker is not the same person as any investigator(s) or decisionmaker(s) that reached the determination of responsibility;</p> <p>(iii) ensure that the appeal decision-maker complies with the standards set forth in section 106.45(b)(1)(iii);</p> <p>(iv) give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;</p> <p>(v) issue a written decision describing the result of the appeal and the rationale for the result; and</p> <p>(vi) provide the written decision simultaneously to both parties.</p> <p>(6) Informal resolution. At any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient--</p>	<p>generally or the individual complainant or respondent that affected the outcome of the matter.</p> <p>(ii) A recipient may offer an appeal equally to both parties on additional bases.</p> <p>(iii) As to all appeals, the recipient must:</p> <p>(A) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;</p> <p>(B) Ensure that the <del>appeal</del> decision-maker(s) for the appeal is not the same person as <del>any investigator(s) or</del> the decision-maker(s) that reached the determination regarding responsibility <del>or dismissal, the investigator(s), or the Title IX Coordinator;</del></p> <p>(C) Ensure that the <del>appeal</del> decision-maker(s) for the appeal complies with the standards set forth in paragraph (b)(1)(iii) of this section;</p> <p>(D) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;</p> <p>(E) Issue a written decision describing the result of the appeal and the rationale for the result; and</p> <p>(F) Provide the written decision simultaneously to both parties.</p> <p>(9) Informal resolution. A recipient may 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 of sexual harassment consistent with this section. Similarly, a recipient may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal</p>
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<p>§ 106.45 (b) Grievance procedures</p>	<p>(i) Provides to the parties a written notice disclosing-- (A) The allegations; (B) 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, if any; and (C) Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and</p> <p>(ii) Obtains the parties' voluntary, written consent to the informal resolution process.</p> <p>(7) Recordkeeping.</p> <p>(i) A recipient must create, make available to the complainant and respondent, and maintain for a period of three years records of--</p> <p>(A) Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve access to the recipient's education program or activity;</p> <p>(B) Any appeal and the result therefrom;</p>	<p><b>complaint is filed. However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient –</b></p> <p>(i) Provides to the parties a written notice disclosing: the allegations, 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, <b>if any, provided, however, 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 any</b> consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;</p> <p>(ii) Obtains the parties' voluntary, written consent to the informal resolution process; <b>and</b></p> <p><b>(iii) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.</b></p> <p><b>(10) Recordkeeping.</b></p> <p>(i) A recipient must <b>create, make available to the complainant and respondent,</b> maintain for a period of <b>three-seven</b> years records of –</p> <p>(A) Each sexual harassment investigation including any determination regarding responsibility <b>and any audio or audiovisual recording or transcript required under paragraph (b)(6)(i) of this section,</b> any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve <b>equal</b> access to the recipient's education program or activity;</p> <p>(B) Any appeal and the result therefrom;</p>
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	<p>(C) Informal resolution, if any; and</p> <p>(D) All materials used to train coordinators, investigators, and decision-makers with regard to sexual harassment.</p> <p>(ii) A recipient must create and maintain for a period of three years records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not clearly unreasonable, and document that it has taken measures designed to restore or preserve access to the recipient’s educational program or activity. The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken</p>	<p>(C) <del>Any informal resolution if any</del> and the result therefrom; and</p> <p>(D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process with regard to sexual harassment. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.</p> <p>(ii) For each response required under § 106.44, a recipient must create, and maintain for a period of <del>three</del> seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not <del>clearly unreasonable</del> deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient’s educational program or activity. If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.</p>
§ 106.46. Severability		If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.
§ 106.62. Severability		If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.
§ 106.71. (a) Retaliation prohibition		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

		<p>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).</p>
§ 106.71.(b) Specific circumstances.		<p>(1) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under paragraph (a) of this section.</p> <p>(2) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited under paragraph (a) of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.</p>
§ 106.72. Severability		<p>If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.</p>
§ 106.81. Procedures.		<p>The procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 34 CFR 100.6-100.11 and 34 CFR part 101.</p>

		The definitions in § 106.30 do not apply to 34 CFR 100.6- 100.11 and 34 CFR part 101.
§ 106.82. Severability.		If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

### 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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