



2024 Joint Guidance on Federal Title IX Regulations Analysis on Section 106.2: Definition – Supportive Measures

July 18, 2024

Note: This document focuses on a summary analysis of Section 106.2, specifically Definition – Supportive Measures.¹ For a full overview of the changes from the 2020 Regulations and the 2024 Final Regulations, see *Title IX Text for Text 2020 and 2024 Regulation Final Comparison*, available at <https://system.suny.edu/sci/titleix/>.

§ 106.2: Supportive Measures

2024 Final Rule § 106.2 states:

Supportive measures means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

- (1) Restore or preserve that party’s access to the recipient’s education program or activity, including measures that are designed to protect the safety of the parties or the recipient’s educational environment; or
- (2) Provide support during the recipient’s grievance procedures under § 106.45, and if applicable § 106.46, or during the informal resolution process under § 106.44(k).

Changes from the 2020 Final Regulations

2020 Final Rule § 106.30 (a) defined Supportive Measures as follows:

Supportive measures 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 equal access to the recipient’s education program or activity without unreasonably burdening

¹ The effective date of these Regulations will be August 1, 2024 and will apply prospectively. The Department has stated it will provide technical assistance during the transition period and after the effective date.

the other party, including measures designed to protect the safety of all parties or the recipient'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 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.

Changes from the 2022 Notice of Proposed Rulemaking

- Replaced the phrase “a party” in the introductory paragraph with “a complainant or respondent.”
- Deleted “non-disciplinary, non-punitive” from the introductory paragraph of the definition and replaced it with “not for punitive or disciplinary reasons,” and moved the reference after the phrase “without unreasonably burdening a complainant or respondent.”
- Removed the reference to non-punitive and non-disciplinary reasons from paragraph (1), deleted “temporary measures that burden a respondent that are designed to protect the safety of a complainant” and replaced it with “measures that are designed to protect the safety of the parties.”
- Deleted the language “or deter the respondent from engaging in sex-based harassment” from the definition.

Summary and Analysis of the 2024 Final Rule

As stated in the Preamble, “the definition of ‘supportive measures’ in the final regulations balances the need to support a complainant with the need to ensure that a respondent is not disciplined unless and until found responsible.”² Specifically, the Department states that, “[s]upportive measures are designed to restore or preserve a party’s access to the [institution’s] education program or activity and the need for such support is not limited to sex-based harassment.”³

The Department expanded upon the latter in providing that, “[a]ll supportive measures are subject to the limits set forth in § 106.44(g)(2), may be challenged under § 106.44(g)(4), and

² Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33,474, 33603 (Apr. 29, 2024) (to be codified at 34 C.F.R. pt. 106) (hereinafter “2024 Title IX Final Rule”)

³ 2024 Title IX Final Rule, 89 Fed. Reg. 33605; Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 Fed. Reg. 41390, 41421 (proposed Jul. 12, 2022) (to be codified at 34 C.F.R. Pt. 106) (hereinafter “2022 Title IX NPRM”).

may not be imposed for punitive or disciplinary reasons.”⁴ The Department specifically deleted the language “deter the respondent from engaging in sex-based harassment” from the definition of “supportive measures.”⁵ This was done to, “avoid any suggestion that [an institution] should make a preliminary determination as to whether a respondent has engaged in sex-based harassment when considering what supportive measures to offer to a complainant.”⁶

Courses, Housing, and Extracurriculars

The Department provides a guiding principle that supportive measures can not be unreasonably burdensome and cannot be imposed for punitive or disciplinary reasons.⁷ Supportive measures pertaining to courses, housing, and extracurriculars are areas where institutions will likely be challenged. In the final regulations the Department provides that, “[s]upportive measures may include changes in work schedules or work assignments that are not imposed for punitive reasons, so that the complainant and respondent are not working on the same projects or at the same time.”⁸

“The Department declines to categorically prohibit involuntary changes to a complainant’s or respondent’s class schedule through supportive measures as it is possible that such changes may not constitute an unreasonable burden on a complainant or respondent. Whether such an involuntary change would constitute an unreasonable burden which is not permitted under the definition of supportive measures and § 106.44(g), is a fact-specific analysis that would depend on the particular circumstances of the complainant or respondent.”⁹

The preamble specifically states that, “[s]upportive measures such as schedule or housing adjustments may or may not constitute an ‘unreasonable’ burden on a party.”¹⁰ This leaves the determination up to the institution to conduct their fact specific inquiry.

In Practice

- Supportive measures are not limited to sex-based harassment.
- An institution “has an obligation under Title IX to address all forms of sex discrimination, including ensuring that access to the [institution’s] education program or activity is not limited by such sex discrimination.”¹¹
- The Department does not require institutions to provide supportive measures “to every community member engaged in grievance procedures as this would be burdensome on [an institution].”¹²

⁴ 2024 Title IX Final Rule, 89 Fed. Reg. 33603.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ 2024 Title IX Final Rule, 89 Fed. Reg. 33607.

⁹ *Id.*

¹⁰ 2024 Title IX Final Rule, 89 Fed. Reg. 33608.

¹¹ 2024 Title IX Final Rule, 89 Fed. Reg. 33608; *see, e.g.*, 2022 Title IX NPRM, 87 Fed. Reg. 41405.

¹² 2024 Title IX Final Rule, 89 Fed. Reg. 33605.

- Nothing in the final rules prevents supportive measures from being offered to other individuals or in instances where they are not required.¹³
- The Department sets out that there must be a “fact-specific inquiry to determine whether supportive measures constitute a reasonable burden on a party.”¹⁴ This must, “take into account the nature of the educational programs, activities, opportunities, and benefits in which the party is participating, not solely those components that are “academic” in nature.”¹⁵

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¹³ *Id.*

¹⁴ 2024 Title IX Final Rule, 89 Fed. Reg. 33608; Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance 85 Fed. Reg. 30026, 30182 (May 19, 2020) (to be codified at 34 C.F.R. Pt. 106) (hereinafter “2020 Title IX Final Rule”).

¹⁵ *Id.*