



2024 Joint Guidance on Federal Title IX Regulations
Analysis on Section 106.45(i): Grievance procedures for the prompt and equitable resolution of complaints of sex discrimination, Appeals

July 8, 2024

Note: This document focuses on a summary analysis of Section 106.45(i), specifically Grievance procedures for the prompt and equitable resolution of complaints of sex discrimination, Appeals.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/>.

Section 106.45(i): Grievance procedures for the prompt and equitable resolution of complaints of sex discrimination, Appeals

§ 106.45(i) states:

(i) Appeals. In addition to an appeal of a dismissal consistent with paragraph (d)(3) of this section, a recipient must offer the parties an appeal process that, at a minimum, is the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints. For a complaint of sex-based harassment involving a student complainant or student respondent, a postsecondary institution must also offer an appeal on the bases set out in § 106.46(i)(1).

Summary and Analysis

Section 106.45(i) of the 2024 Title IX Regulations makes significant changes from the July 2022 Title IX Notice of Proposed Rulemaking (“NPRM”) with respect to requiring appeals in the grievance process: the NPRM only required the right to appeal from dismissal of complaints and from final determinations of complaints of sex-based harassment involving students at a postsecondary institution.²

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.

² See Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 Fed. Reg. 41390, (proposed Jul. 12, 2022) (to be codified at 34 C.F.R. Pt. 106) (hereinafter “2022 Title IX NPRM”); 34 C.F.R. 106.45(d)(3); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33712 (April 29, 2024) (hereinafter “2024 Title IX Final Rule”).

The U.S. Department of Education (“the Department”) added § 106.45(i) in the 2024 Title IX Regulations to state that “a recipient must offer the parties an appeal process that, at a minimum, is the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints.”³

The addition of this section “is consistent with the Department's view, stated in the July 2022 NPRM and reiterated here, that for complaints of sex discrimination, other than complaint dismissals or final determinations of complaints of sex-based harassment involving a student at a postsecondary institution, a recipient has discretion to decide whether the opportunity to appeal a determination would be appropriate for a given type of complaint, as long as a recipient does not exercise this discretion arbitrarily.”⁴ Thus, this section “includes protections against the kind of arbitrary decision making referenced in the preamble to the July 2022 NPRM.”⁵

Section 106.45(i) dictates the appeal process that must be provided when §106.45(d)(3) (which requires institutions to allow appeals when a complaint falling under §106.45 is dismissed) and §106.46(i)(1) (which requires institutions to allow appeals of dismissals and determinations of complaints that fall under §106.46) are not applicable.⁶ Section 106.45(i) is consistent with the Department’s view that for complaints of sex discrimination other than complaint dismissals or final determinations of complaints of sex-based harassment involving a student at a postsecondary institution, an institution must offer the same appeal process that it offers in other comparable proceedings, if any, including proceedings relating to discrimination on the basis of other protected characteristics.⁷

If an institution does not allow appeals of other discrimination claims, it does not have to allow an appeal of a complaint that falls under §106.45(i).⁸ It is notable that this is only under this section of Title IX, and that the Department states that institutions “have obligations under Federal law to employees under Title VII and Title IX and may also have obligations under other State or local laws, which may require processes that are specifically adapted for employee-to-employee complaints and may include the opportunity to appeal a determination.”⁹

The final regulations do not prohibit a recipient from adopting additional appeal provisions in its grievance procedures if the provisions apply equally to the parties.¹⁰ Recipients have the discretion to set their own reasonably prompt timeframe for implementing appeals under §106.45(i).¹¹

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³ 2024 Title IX Final Rule, 89 Fed. Reg. 33712.

⁴ *Id.*; 2022 Title IX NPRM, 87 Fed. Reg. 41489.

⁵ *Id.*

⁶ 34 C.F.R. § 106.45(i).

⁷ 2024 Title IX Final Rule, 89 Fed. Reg. 33713.

⁸ *See* 2024 Title IX Final Rule, 89 Fed. Reg. 33712.

⁹ *Id.*

¹⁰ 2024 Title IX Final Rule, 89 Fed. Reg. 33713.

¹¹ *Id.*

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