



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

July 8, 2024

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

§ 106.45(j) states:

(j) *Additional provisions.* If a recipient adopts additional provisions as part of its grievance procedures for handling complaints of sex discrimination, including sex-based harassment, such additional provisions must apply equally to the parties.

Summary and Analysis

The U.S. Department of Education (“the Department”) changed proposed § 106.45(i) in the July 2022 Notice of Proposed Rulemaking (“NPRM”) for the Title IX Regulations to § 106.45(j) in the 2024 Title IX Final Regulations.²

The Department maintains in the 2024 Title IX Regulations that institutions have “discretion to adopt rules and practices not required under § 106.45 [or § 106.46].”³ The 2020 Title IX Regulations “require that any additional provisions that a recipient adopts as part of its grievance procedures must apply equally to the parties.”⁴ The Department did not change this and instead proposed in the 2022 Title IX NPRM to move the requirements from section 106.45(b) to 106.45(i) and to broaden it to require that it apply to grievance procedures for all forms of sex

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 Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33713 (April 29, 2024) (hereinafter “2024 Title IX Final Rule”).

³ 2024 Title IX Final Rule, 89 Fed. Reg. 33713; *see also* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance 85 Fed. Reg. 30026, 30209 (May 19, 2020) (to be codified at 34 C.F.R. Pt. 106) (hereinafter “2020 Title IX Final Rule”).

⁴ 2024 Title IX Final Rule, 89 Fed. Reg. 33713.

discrimination, and not only to sexual harassment.⁵ The 2024 Title IX Final Regulations included this under section 106.45(j).⁶

The Department declined commenters' suggestion to change the word "equally" to "equitably" under this section.⁷ The 2022 Title IX NPRM gave examples which clarified that "while any additional provisions a recipient adopts in its grievance procedures must be applied equally to the parties, identical treatment of both parties is not always required in the implementation of those provisions.⁸ A recipient is permitted to take into account the individual needs and circumstances of a person when applying the additional provisions."⁹

Shared Governance and Collective Bargaining

The Department stated it understood that an institution may utilize shared governance and collective bargaining to adopt rules and practices beyond what is required by the 2024 Title IX Regulations and that institutions may have employees that have additional rights due to shared governance and collective bargaining agreements.¹⁰ The Department clarified that this is permissible under the 2024 Title IX Regulations and is "consistent with the Department's statement in the July 2022 NPRM that nothing in the final regulations precludes a recipient's Title IX grievance procedures from recognizing that employee parties have additional rights in a collective bargaining agreement or other shared governance policy."¹¹

Additionally, as discussed above, institutions do not have to treat individuals identically in the application of additional rules or practices and because of this, the Department acknowledges that some employees may have rights in a shared governance or collective bargaining agreement that do not apply to those who are not employees.¹² The 2024 Title IX Regulations allow institutions to utilize existing grievance procedures under collective bargaining agreements so long as they comply with these regulations.¹³ The Department does pose a reminder that under section 106.45(b)(8), if an institution "adopts grievance procedures that apply to the resolution of some, but not all complaints, the [institution] must articulate consistent principles for how the recipient will determine which procedures apply."¹⁴

The Department also acknowledged that postsecondary institutions "may involve faculty in developing its Title IX grievance procedures through a shared governance or collective

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*; *see also* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 Fed. Reg. 41390, 41491 (proposed Jul. 12, 2022) (to be codified at 34 C.F.R. Pt. 106) (hereinafter "2022 Title IX NPRM"), citing 2020 Title IX Final Rule, 85 Fed. Reg. 30186.

⁹ *Id.*; (*See* 2022 Title IX NPRM, 87 Fed. Reg. 41491).

¹⁰ *Id.*

¹¹ *Id.*

¹² 2024 Title IX Final Rule, 89 Fed. Reg. 33713-14; *see* 2022 Title IX NPRM, 87 Fed. Reg. 41491.

¹³ 2024 Title IX Final Rule, 89 Fed. Reg. 33714.

¹⁴ *Id.*

bargaining process, and these final regulations do not preclude faculty participation in a postsecondary institution's efforts to address sex discrimination under Title IX.”¹⁵ The Department stated that an institution “has discretion to determine how best to develop its Title IX grievance procedures, including how and whether to involve faculty through shared governance, in accordance with § 106.45, and if applicable § 106.46.”¹⁶

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¹⁵ *Id.*

¹⁶ *Id.*