



**2024 Joint Guidance on Federal Title IX Regulations  
Analysis on Section 106.45(a)(1): Grievance procedures for the prompt and equitable  
resolution of complaints of sex discrimination, General**

**July 5, 2024**

*Note:* This document focuses on a summary analysis of Section 106.45(a)(1), specifically Grievance procedures for the prompt and equitable resolution of complaints of sex discrimination, General.<sup>1</sup> 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/>.

**§ 106.45(a)(1): General**

Section 106.45(a)(1) states:

*General.* A recipient’s grievance procedures for the prompt and equitable resolution of complaints of sex discrimination must be in writing and include provisions that incorporate the requirements of this section. The requirements related to a respondent apply only to sex discrimination complaints alleging that a person violated the recipient’s prohibition on sex discrimination. When a sex discrimination complaint alleges that a recipient’s policy or practice discriminates on the basis of sex, the recipient is not considered a respondent.

**Changes from 2020 Regulations**

*Removal of Language From the 2020 Amendments That Treatment of a Complainant or Respondent May Be Sex Discrimination*

Some commenters objected to the removal of language in § 106.45(a) of the 2020 Title IX Regulations stating that a recipient’s “treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under

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<sup>1</sup> 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.

Title IX” because, in their view, it would remove protections for respondents.<sup>2</sup> The U.S. Department of Education (“the Department”) recognized some commenters preferred it retain the language from the 2020 Regulations that state “treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.”<sup>3</sup> Additionally, the Department acknowledged that in “certain cases courts have determined that a postsecondary institution's application of its grievance procedures violated a party's rights under Title IX or raised constitutional concerns.”<sup>4</sup> However, the Department stated that a formal complaint is no longer required under the final regulations and maintained it is not necessary to include this language because the Title IX regulations already address this point in § 106.31(a)(1) and (b)(4), enforceable through the Department of Education, Office for Civil Rights (“OCR”), which already require a recipient to carry out its grievance procedures in a nondiscriminatory manner and prohibit a recipient from discriminating against any party based on sex.<sup>5</sup>

### **Changes from 2022 Notice of Proposed Rulemaking**

The Department made minor revisions to the order of the words “prompt and equitable” and added “resolution of” in § 106.45(a)(1).<sup>6</sup>

### **Considerations from the 2024 Preamble**

Some commenters expressed concern that requiring the grievance procedure to be in writing would be detrimental to recipients and inconsistent with case law.<sup>7</sup> However, the Department acknowledged the view of commenters who agreed it is important to inform recipients of their obligations under Title IX, including by clearly explaining required grievance procedures.<sup>8</sup> Further, the Department emphasized its prior explanation in the July 2022 NPRM that recipients have been required to adopt grievance procedures since 1975, including under the 2020 Regulation, and this requirement was not changed by the writing requirement.<sup>9</sup>

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<sup>2</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33,474, 33,651 (Apr. 29, 2024) (to be codified at 34 C.F.R. pt. 106) (hereinafter “2024 Title IX Final Rule”).

<sup>3</sup> 2024 Title IX Final Rule, 89 Fed. Reg. 33651 (Apr. 29, 2024).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> The Department made an identical change to clarify section 106.46(a). Note, the preamble refers to edits made to sections 106.46(a)(1) and 106.46(a). Given the context, we believe the reference to section 106.46(a)(1) was a typographical error.

<sup>7</sup> 2024 Title IX Final Rule, 89 Fed. Reg. 33650 (Apr. 29, 2024).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

The Department also disagreed with the commenters on whether adding a writing requirement under § 106.45(a)(1) was inconsistent with case law.<sup>10</sup> Specifically, the Department stated it had reviewed all applicable authorities and this section was not in conflict with those authorities.<sup>11</sup>

*Recipient is Not a Respondent*

Some commenters suggested that a recipient's grievance procedures should only apply to sex discrimination complaints involving a complainant and a respondent.<sup>12</sup> However, the Department determined such a limitation was unnecessary based on historical practice.<sup>13</sup> Since 1975, Title IX has not included such a limitation and as explained in the July 2022 NPRM, not all complaints of sex discrimination involve active participation by complainants and respondents.<sup>14</sup> Accordingly, while not all of the provisions in section 106.45 will apply to every complaint of sex discrimination under Title IX, recipients must still fully implement and follow those parts of it that do apply, including when responding to a complaint alleging the recipient's policy or practice are discriminatory.<sup>15</sup>

The Department clarified that the language in section 106.45(a)(1) clarifies that when a complaint is against a recipient and not an individual respondent, the recipient would not be entitled to the same procedural rights and steps afforded to individual respondents.<sup>16</sup> The language is not intended to suggest that respondents do not have the same rights as other students to be protected from sex discrimination.<sup>17</sup>

In response to one commenter's question as to complaints alleging an individual engaged in sex discrimination based on actions that person took in accordance with the recipient's policies or practices, the Department clarified two things. First, the recipients must treat the individual as a respondent and comply with the requirements of section 106.45 because complaints against individuals could raise factual questions regarding whether the individual was following the recipient's policy or practice.<sup>18</sup> Second, to the extent the individual as respondent was following the recipient's policy or practice, the recipient retains the flexibility to determine whether the original complaint should be amended as being against the recipient or against the individual.<sup>19</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> 2024 Title IX Final Rule, 89 Fed. Reg. 33561 (Apr. 29, 2024).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 2024 Title IX Final Rule, 89 Fed. Reg. 33562 (Apr. 29, 2024).

<sup>19</sup> *Id.*

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