



2024 Joint Guidance on Federal Title IX Regulations Analysis on Section 106.8: Notice of Nondiscrimination

July 8, 2024

Note: This document focuses on a summary analysis of Section 106.8, specifically Notice of Nondiscrimination.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 106.8: Notice of Nondiscrimination

Section 106.8(c) of the 2024 Title IX Regulations state:

(c) *Notice of nondiscrimination.* A recipient must provide a notice of nondiscrimination to students; parents, guardians, or other authorized legal representatives of elementary school and secondary school students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the recipient.

(1) *Contents of notice of nondiscrimination.* (i) The notice of nondiscrimination must include the following elements:

- (A) A statement that the recipient does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and this part, including in admission (unless subpart C of this part does not apply) and employment;
- (B) A statement that inquiries about the application of Title IX and this part to the recipient may be referred to the recipient's Title IX Coordinator, the Office for Civil Rights, or both;
- (C) The name or title, office address, email address, and telephone number of the recipient's Title IX Coordinator;
- (D) How to locate the recipient's nondiscrimination policy under paragraph (b)(1) of this section; and the recipient's grievance procedures under paragraph (b)(2) of this section; and
- (E) How to report information about conduct that may constitute sex discrimination under Title IX; and how to make a complaint of sex discrimination under this part.

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.

(ii) Nothing in this part prevents a recipient from including in its notice of nondiscrimination information about any exceptions or exemptions applicable to the recipient under Title IX.

(2) *Publication of notice of nondiscrimination.* (i) Each recipient must prominently include all elements of its notice of nondiscrimination set out in paragraphs (c)(1)(i)(A) through (E) of this section on its website and in each handbook, catalog, announcement, bulletin, and application form that it makes available to persons entitled to notice under paragraph (c) of this section, or which are otherwise used in connection with the recruitment of students or employees.

(ii) If necessary, due to the format or size of any publication under paragraph (c)(2)(i) of this section, the recipient may instead include in those publications a statement that the recipient prohibits sex discrimination in any education program or activity that it operates and that individuals may report concerns or questions to the Title IX Coordinator, and provide the location of the notice on the recipient's website.

(iii) 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 Title IX or this part.

Summary and Analysis of the 2024 Final Rule

The U.S. Department of Education (“the Department”), in the Preamble to the 2024 Title IX Regulations stated that requiring adoption, publication, and implementation of nondiscrimination policies, grievance procedures, and notices of nondiscrimination “is critical to ensuring that students and others are protected from sex discrimination.”² The Department stated that providing information on how to report allegations of sex discrimination, how to contact the Title IX Coordinator, and information on the policies and procedures themselves will make an institutions’ community safer and members of those communities more aware of their rights and institution obligations.³

Some commenters were concerned that the notice requirements are unduly burdensome, but the Department disagrees and clarifies that institutions should have some form of notices in place because they have been required to maintain nondiscrimination notices since 1975.⁴

² Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33544-45 (April 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. 33545.

⁴ *Id.*; see also Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefitting From Federal Financial Assistance, 40 Fed. Reg. 24042, 24139 (Jun. 4, 1975) (to be codified at 34 C.F.R. Pt. 106) (hereinafter “1975 Title IX Final Rule”).

In the Preamble to the 2024 Title IX Regulations, the Department stated that it appreciates that “having clear, preestablished, and publicized policies and procedures is an essential element of ensuring a fair process for all.”⁵ The Department likewise appreciates that it is important to have regulations that are clear and easy for an institution to implement.⁶ The Department believes that the revisions it has made to this part will aid an institution in complying with Title IX by ensuring that the institution’s community will be aware of Title IX rights and obligations.⁷

The Department considered commenters’ requests to require additional information be included in the notice of nondiscrimination “such as additional protected bases (*e.g.*, pregnancy or related conditions, sex-based distinctions related to parental status, gender identity), specific applications of Title IX, and a statement that individuals may have rights under other Federal, State, or local laws.”⁸ The Department stated in the Preamble to the 2024 Title IX Regulations that the nondiscrimination notice requirements “will sufficiently inform individuals of their rights and how to make a complaint under Title IX.”⁹ Likewise, the nondiscrimination notice as well as the training requirements under Section 106.8(d) will ensure that employees will know of their Title IX responsibilities and ensure adequate support for the reporting of sex discrimination which will then ensure that the institution will respond effectively.¹⁰ The Department notes that it does not have the authority to require an institution to publish rights under state and local laws, and “the Department determined that the interest in having a concise and accessible notice outweighs the interest in including more granular information about Title IX.”¹¹ The Department furthermore noted that “nothing in the final regulations precludes a recipient from enumerating the bases of sex discrimination prohibited by Title IX or State or local laws in its notice of nondiscrimination.”¹²

The Department declined to include commenters’ suggestion that the notice of nondiscrimination require additional language that Title IX does not require a complainant to exhaust administrative remedies with an institution prior to filing a complaint with the U.S. Department of Education, Office for Civil Rights (“OCR”). The Department states that the notice of nondiscrimination requirements in the 2024 Title IX Regulations in “§ 106.8(c)(1)(i)(B) makes clear that inquiries about the application of the final regulations may be referred to ‘the recipient’s Title IX Coordinator, the Office for Civil Rights, or both’ and the Department has never required an individual exhaust a recipient’s administrative processes before filing a complaint with OCR.”¹³

⁵ 2024 Title IX Final Rule, 89 Fed. Reg. 33545.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ 2024 Title IX Final Rule, 89 Fed. Reg. 33546.

The Department did consider comments on how to improve the clarity of the notice of nondiscrimination.¹⁴ The Department thus decided in the 2024 Title IX Regulations to reorganize section 106.8(c) by consolidating the requirements that the notice of nondiscrimination include how to locate the institution’s nondiscrimination policy and the institution’s grievance procedures.¹⁵

Free Speech and Religious Exemptions

The Department stated in the Preamble to the 2024 Title IX Regulations that it disagrees that the required contents of an institution’s notice of nondiscrimination would “render the notice inaccurate for a recipient that qualifies for a religious exemption.”¹⁶ The Department reiterated in this section that Title IX does not apply to an educational institution that is controlled by a religious organization “to the extent compliance would be inconsistent with the religious tenets of such organization.”¹⁷ The notice of nondiscrimination is limited in application to an institution which is required to comply with Title IX, which would not include institutions which are exempt due to the religious exemption or other exemptions.¹⁸

The Department determined that it would not amend the regulations as commenters suggested to require that an institution address that it is eligible for a religious exemption in its notice of nondiscrimination.¹⁹ The Department clarifies that an institution’s notice of nondiscrimination may include language that it intends to assert a religious exemption to certain provisions of the Title IX regulations.²⁰ Thus, the Department added language that clarifies that an institution “may, but is not required to, include information about any applicable exemptions or exceptions in its notice.”²¹

Publication of the Notice of Nondiscrimination

Some commenters in the Preamble to the 2024 Title IX Regulations opposed the requirement that the notice of nondiscrimination be in every handbook, catalog, announcement, bulletin, and application form.²² Other commenters stated that permitting an institution to post its notice of nondiscrimination only on its website would be inaccessible to some members of the institution’s community.²³

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* ([20 U.S.C. 1681\(a\)\(3\)](#)); *see also* [34 CFR 106.12\(a\)](#)).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 2024 Title IX Final Rule, 89 Fed. Reg. 33547.

²¹ *Id.*

²² *Id.*

²³ *Id.*

The Department stated in the Preamble to the 2024 Title IX Regulations that the notice of nondiscrimination must be widely accessible in order to meet Title IX’s objectives and that having these multiple modes of posting may assist members of the institution community in accessing necessary information.²⁴ The Department clarified that it is restoring the longstanding requirement that existed since 1975, but which was removed in 2020, that the notice of nondiscrimination be in an institution’s handbooks, catalogs, announcements, bulletins, and application forms in order to increase awareness.²⁵

The Department furthermore asserts that the nondiscrimination notice requirements “provides the minimum information necessary to ensure that the recipient's community members are aware of a recipient's Title IX obligations without unduly burdening the recipient.”²⁶

Additionally, the Department clarifies that an institution must comply with other Federal laws as well as Title IX, including those prohibiting discrimination on the basis of disability and national origin, in response to concerns about those with disabilities and those who speak other languages not being able to access the nondiscrimination notice contents.²⁷ The Department does leave an institution ample discretion in how it drafts its notice of nondiscrimination to ensure accessibility to its institutional community.²⁸

The Department clarifies that nothing in section 106.8(c) prevents an institution from posting its nondiscrimination notice “in a public location at each school or building the recipient operates, sharing it at specific events, or re-distributing it annually. Likewise, nothing in these final regulations prohibits a recipient from identifying other ways, in addition to the recipient's website, that students, parents, and others can access the full notice, if only the short-form notice is used in print.”²⁹

The Department lastly states that this part is necessary to effectuate Title IX’s nondiscrimination mandate, and that it is unnecessary for the Department to address other posting obligations under other laws in the 2024 Title IX Regulations.³⁰

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²⁴ *Id.*

²⁵ *Id.*; See Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 Fed. Reg. 41390, 41427-28 (proposed Jul. 12, 2022) (to be codified at 34 C.F.R. Pt. 106) (hereinafter “2022 Title IX NPRM”).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ 2024 Title IX Final Rule, 89 Fed. Reg. 33548.

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