



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

July 1, 2024

Note: This document focuses on a summary analysis of Section 106.2, specifically Definition - Complainant.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: Definition of Complainant

A complainant is defined as:

- (1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination; or
- (2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination and who was participating or attempting to participate in the recipient’s education program or activity at the time of the alleged sex discrimination.

The new rule expands who may be a complainant in two important ways. First, it incorporates the broader category of sex discrimination, not just sex-based harassment. Second, it includes individuals who are not currently employees or students, if they were participating or attempting to participate in an education program or activity at the time of the alleged discrimination (as opposed to when the complaint was filed). The 2020 Regulations require that a complainant be participating in or attempting to participate in the education program or activity at the time of filing the complaint.²

Whether someone is participating or attempting to participate in an education program or activity is a fact-specific analysis to be made on a case-by-case basis.³ Some examples may include individuals such as prospective students, visiting student-athletes, or guest speakers, or activities

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 34 C.F.R. § 106.30(a); *See also*, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30,026, 30,093-30,094, 30,574 (May 19, 2020) (to be codified at 34 C.F.R. pt. 106) (hereinafter “2020 Title IX Final Rule”).

³ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33,474, 33,483 (Apr. 29, 2024) (to be codified at 34 C.F.R. pt. 106) (hereinafter “2024 Title IX Final Rule”).

such as attending campus tours, sporting events, and lectures, as long as the alleged discrimination relates to the individual's participation or attempted participation in such program or activity.⁴ The new rule does not change that fact-specific analysis, but rather shifts the focus from the time the complaint is filed to the time of the alleged sex discrimination.

This expanded definition thus includes former students and employees, as well as volunteers.⁵ If, however, at the time the complaint is filed, the respondent is no longer participating in an education program or activity or is no longer employed, the complaint may be dismissed under 34 C.F.R. §106.45(d)(1)(ii), which states that “(1) A recipient may dismiss a complaint of sex discrimination made through its grievance procedures under this section, and if applicable § 106.46, for any of the following reasons... (ii) The respondent is not participating in the recipient's education program or activity and is not employed by the recipient...”⁶ Please see the Joint Guidance document on section 106.45(d) for more information on this.

Importantly, the new rule does not have a retroactive effect.⁷ If an individual who left an educational institution makes a complaint requesting compliance solely with regulatory requirements that were not in effect at the time of the alleged conduct, the complaint would be dismissed, and may be handled under previous policies that were in effect at the time the sex discrimination was alleged to have occurred.

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⁴ 2024 Title IX Final Rule, 89 Fed. Reg. 33484.

⁵ 2024 Title IX Final Rule, 89 Fed. Reg. 33483.

⁶ 2024 Title IX Final Rule, 89 Fed. Reg. 33482.

⁷ The Department does not intend the final 2024 Regulations to be retroactive and explains that Title IX does not grant authority for promulgation of retroactive rules. 2024 Title IX Final Rule, 89 Fed. Reg. 33482.