



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

July 2, 2024

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

As defined in 34 C.F.R. § 106.2:

Complaint means an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or this part.²

Explanation

A request need not be in writing and need not be signed. A complainant need not use any “magic words” such as the phrase “initiate the recipient’s grievance procedures” to trigger an obligation to investigate.³ The objective standard means the request can be understood as a request to investigate and make a determination by a reasonable person.⁴ This is a fact-specific determination, but, in general, amounts to more than an individual’s general questions about grievance procedures.⁵ The Department of Education, Office for Civil Rights (“the Department”) stated that “[i]f the request can be objectively understood as a request for the recipient to investigate and make a determination about alleged sex discrimination under Title IX, then the recipient must interpret it as a request to initiate the grievance procedures.”⁶

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 34 C.F.R. § 106.2.

³ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33485 (Apr. 29, 2024) (to be codified at 34 C.F.R. pt. 106) (hereinafter “2024 Title IX Final Rule”).

⁴ 2024 Title IX Final Rule, 89 Fed. Reg. 33487 (Apr. 29, 2024).

⁵ 2024 Title IX Final Rule, 89 Fed. Reg. 33485.

⁶ 2024 Title IX Final Rule, 89 Fed. Reg. 33487.

The Department declined commenters' suggestion to require some form of written documentation in order to commence an investigation and reminds recipients of its recordkeeping obligations under § 106.8(f).

The Department will not find that a recipient violated Title IX solely because the Department would have made a different determination than the recipient did as to whether there was a complaint of sex discrimination.⁷ However, the Department clarifies that the Department has the authority to hold a recipient accountable under any provision of the regulation, and thus may hold an institution accountable for a determination of whether a complainant's communication constitutes a complaint.⁸

The Department noted its belief that it is important not to initiate grievance procedures if a complainant is not ready or does not want to initiate them, except in limited circumstances in which the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of a complainant or other person or prevents the institution from ensuring equal access based on sex to its education program or activity.⁹ The Department desires more flexibility for the way in which complaints of sex discrimination are made to ensure the institution is aware of and can respond appropriately to sex discrimination in its education program or activity.¹⁰

The Department anticipates that when Title IX Coordinators explain the grievance procedures and, if applicable, the informal resolution process, to a complainant (or the individual who reported the conduct if the complainant is unknown), the Title IX Coordinator will confirm whether the reporter does in fact want an investigation and determination regarding the allegations.¹¹ Nothing in the final regulations would preclude the Title IX Coordinator from memorializing in writing the outcome of the conversation to avoid possible confusion about agreed upon next steps.¹² It is appropriate for a potential complainant to carefully explain to the Title IX Coordinator what they are alleging and for the Title IX Coordinator to carefully confirm both what is being alleged and whether the complainant intends to initiate the grievance process.¹³

Changes from the 2020 Regulations

This is a large departure from the 2020 regulations which required a written and signed complaint in order for the grievance procedures to commence.¹⁴ This section of the 2024

⁷ 2024 Title IX Final Rule, 89 Fed. Reg. 33489 (Apr. 29, 2024).

⁸ 2024 Title IX Final Rule, 89 Fed. Reg. 33489.

⁹ 2024 Title IX Final Rule, 89 Fed. Reg. 33487.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ 2024 Title IX Final Rule, 89 Fed. Reg. 33488.

¹⁴ *See* 2024 Title IX Final Rule, 89 Fed. Reg. 33487.

regulations does not require the same formalized written complaint in order to commence grievance procedures.¹⁵

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¹⁵ See 34 C.F.R. § 106.2.