

JOINT GUIDANCE

ON FEDERAL TIX REGULATIONS



2024 Joint Guidance on Federal Title IX Regulations Analysis on Section 106.8(f): Recordkeeping

July 5, 2024

Note: This document focuses on a summary analysis of Section 106.8(f), specifically Recordkeeping.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/>.

§ 106.8(f): Recordkeeping

§ 106.8(f) states:

(f) Recordkeeping. A recipient must maintain for a period of at least seven years:

- (1) For each complaint of sex discrimination, records documenting the informal resolution process under § 106.44(k) or the grievance procedures under § 106.45, and if applicable § 106.46, and the resulting outcome.
- (2) For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or this part, including notifications under § 106.44(c)(1) or (2), records documenting the actions the recipient took to meet its obligations under § 106.44.
- (3) All materials used to provide training under paragraph (d) of this section. A recipient must make these training materials available upon request for inspection by members of the public.

Summary and Analysis

The new rule clarifies the recordkeeping requirements. Three categories of records must be maintained for at least seven (7) years.²

First, for each complaint of sex discrimination, educational institutions must maintain records documenting any informal resolution process or grievance process and the resulting outcome.

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, 33886 (Apr. 29, 2024) (to be codified at 34 C.F.R. Pt. 106) (hereinafter “2024 Title IX Final Rule”).

Exactly how to document the information received and the steps taken in response is left up to individual institutions.³

Second, each time the Title IX Coordinator receives information about conduct that may reasonably constitute sex discrimination—including reports from employees—educational institutions must maintain records documenting the actions taken to respond as required under § 106.44.⁴ This includes documentation of a prompt and effective response.⁵ This also includes documentation of a determination that the allegations did not constitute sex discrimination and any dismissal of a complaint.⁶ If a judicial determination results in a change to the institution’s determination whether sex discrimination occurred, that change would also be included as part of the records that are required to be maintained because it documents the resulting outcome of the grievance procedure.⁷

Third, educational institutions must maintain records of all materials used to provide all required training.⁸ More information related to training can be found under § 106.8(d).⁹ Importantly, these training materials no longer must be posted online.¹⁰ However, they must be made available upon request for inspection by members of the public.¹¹ This includes slides with training content and any other written training materials.¹²

FERPA Considerations

The recordkeeping provision does not govern whether and under what circumstances an educational institution could disclose such records in court proceedings, or whether such records are part of a student’s permanent record.¹³ However, FERPA generally provides eligible students, and the parents of students who are under 18 in elementary or secondary school, with the right to access their or their children’s education records.¹⁴ The rule prohibits disclosure of personally identifiable information in the course of complying with recordkeeping obligations, except in limited circumstances.¹⁵ Further information regarding the release of personally identifiable information can be found in § 106.44(j).¹⁶

Public Inspection of Training Materials

³ 2024 Title IX Final Rule, 89 Fed. Reg. at 33485 (Apr. 29, 2024).

⁴ 89 Fed. Reg. at 33556.

⁵ *Id.*

⁶ 2024 Title IX Final Rule, 89 Fed. Reg. at 33555 (Apr. 29, 2024).

⁷ *Id.*

⁸ 89 Fed. Reg. at 33886.

⁹ 89 Fed. Reg. at 33548

¹⁰ 89 Fed. Reg. at 33556.

¹¹ *Id.*

¹² *Id.*

¹³ 89 Fed. Reg. at 33555.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 89 Fed. Reg. at 33619.

If an educational institution seeks to use training from a third-party provider that contains proprietary information, and the third-party provider is unwilling to permit the institution to make the training materials available for public inspection upon request, the recipient will not be able to use such materials to meet its training obligations.¹⁷ Institutions have discretion to formalize how a public inspection request must be made as well as how it will facilitate the inspection of such materials and the method by which the public inspection must occur. Individual institutions should give thought to how they want to implement requests for inspection on their campuses.¹⁸

Notably, this is a change from the 2020 Title IX Final Rule, which required institutions to make all training materials publicly available and posted on their websites in order to comply with the recordkeeping requirements.¹⁹ A recipient who did not maintain a website only needed to make the materials available for public inspection upon request.²⁰

Pregnancy Disclosure

Notably, the final rule does not include a recordkeeping requirement with respect to actions taken towards individuals who disclose a pregnancy and/or related conditions.²¹ The proposed subsection (f)(4) was removed from the Final Rule.²²

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¹⁷ 2024 Title IX Final Rule, 89 Fed. Reg. at 33556 (Apr. 29, 2024).

¹⁸ *Id.*

¹⁹ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30026, 30577 (May 19, 2020) (to be codified at 34 C.F.R. Pt. 106) (hereinafter “2020 Title IX Final Rule”); 34 C.F.R. § 106.45(b)(10)(D).

²⁰ *Id.*

²¹ 89 Fed. Reg. at. 33557.

²² *Id.*