



2024 Joint Guidance on Federal Title IX Regulations Analysis on Section 106.8(e) and 106.44(g)(6): Students with Disabilities

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Note: This document focuses on a summary analysis of Sections 106.8(e) and 106.44(g)(6), specifically Students with Disabilities.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 Student with a Disability

As defined in the regulations,

*“Student with a disability means a student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(9)(B)...”*²

For the first time, the Title IX regulations include a definition of “student with a disability.”

§ 106.8(e): Text

106.8(e) states:

(e) Students with disabilities. If a complainant or respondent is an elementary or secondary student with a disability, the recipient must require the Title IX Coordinator to consult with one or more members, as appropriate, of the student’s Individualized Education Program (IEP) team, 34 CFR 300.321, if any, or one or more members, as appropriate, of the group of persons responsible for the student’s placement decision under 34 CFR 104.35(c), if any, to determine how to comply with the requirements of the Individuals with Disabilities

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, 33884 (April 29, 2024) (hereinafter “2024 Title IX Final Rule”). The Department added a definition of “student with a disability” to “clarify the intersection of a[n institution]’s obligations under Title IX with its obligations to protect the rights of students with disabilities.” As defined, a “student with a disability” is “a student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(9)(B), (20)(B), or a child with a disability as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3).” See Section 106.2 Definitions. The Department declined to include a reference to the Americans with Disabilities Act, 42 U.S.C. § 12102, in the definition, finding it “redundant” and would not speculate on the application of the definition to specific populations of students stating, “such inquiries are fact-specific and must be determined on a case-by-case basis.”

Education Act, 20 U.S.C. 1400 *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, throughout the recipient’s implementation of grievance procedures under § 106.45. If a complainant or respondent is a postsecondary student with a disability, the Title IX Coordinator may consult, as appropriate, with the individual or office that the recipient has designated to provide support to students with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

Summary and Analysis

Please note that this document provides the 2024 Title IX regulation guidance for students with disabilities in the postsecondary context, and does not detail in depth any information in the elementary and secondary context.

The Regulations do not specifically mention employees (faculty or staff) who have disabilities. Nevertheless, the Regulations otherwise make clear that postsecondary institutions must comply with Title IX responsibilities and obligations with respect to disabled employees. Additionally, the preamble discusses an institution’s independent obligations to comply with the Americans with Disabilities Act as well as the Rehabilitation Act of 1973.³

Grievance Procedures and Supportive Measures for Students with Disabilities

Where the complainant or respondent is a postsecondary “student with a disability,” the Department now allows a Title IX Coordinator to consult “as appropriate” with “the individual or office the institution has designated to provide support to students with disabilities to determine how to comply with Section 504 [of the Rehabilitation Act of 1973], 29 U.S.C. 794” in two specific areas - with respect to grievance procedures under Section 106.8 and the implementation of supportive measures in Section 106.44.⁴ This permissive consultation stands in contrast to the mandated coordination with special education professionals for proceedings and supportive measures involving elementary and secondary students with disabilities.⁵

The Department noted that disabled postsecondary students are not required to disclose that they have a disability to their postsecondary institutions unless they are seeking academic adjustments or other modifications.⁶ It therefore allows permissive consultation between the Title IX Coordinator and the campus’s disability services office with the intent “to provide flexibility to postsecondary institutions, while helping to ensure that the needs of students with disabilities are

³ 2024 Title IX Final Rule, 89 Fed. Reg. 33642 (April 29, 2024).

⁴ See Sections 106.8 (e) and 106.44 (g)(6)(i).

⁵ See Sections 106.8(e) and 106.44(g)(6)(i). Such coordination at the non-college level has to do with disability assistance a school may provide such a student pursuant to a “504 Plan” under Section 504 of the Rehabilitation Act of 1973, or an “Individualized Education Program (IEP) Plan” under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.*, neither of which apply in the postsecondary education context.

⁶ 2024 Title IX Final Rule, 89 Fed. Reg. 33554 (April 29, 2024).

met and while maintaining autonomy for students with disabilities regarding their relationship with a postsecondary institution’s disability services office.”⁷

To further clarify, the Department reiterated that nothing in the regulations abrogates an institution’s obligations to comply with other Federal laws to protect the rights of students with disabilities, including when implementing supportive measures.⁸ Additionally, the ADA and Section 504 prohibits discrimination against individuals with disabilities.⁹

No Requirement to Provide Additional Advisor to Student with Disabilities

The Department rejected calls to require postsecondary institutions to provide advisors for disabled students involved in Title IX grievance procedures.¹⁰ Under the 2020 regulations, the proposed advisors could have been in addition to the advisors who institutions have been required to provide to conduct cross-examination in live hearings of sexual misconduct complaints. The Department noted that the new 2024 regulations do not prohibit a recipient institution from providing advisors to students with disabilities in a Title IX grievance process.¹¹

Application of the Family Educational Rights and Privacy Act (FERPA) to Students with Disabilities in the Title IX Context

If the party is a postsecondary student with a disability, the Title IX Coordinator may consult, as appropriate, the institution’s designated disability services office/designee in order to comply with Section 504.¹² Specifically, the Department requires an institution

“... to specify the criteria for determining who constitutes a ‘school official’ and what the [institution] considers to be a ‘legitimate educational interest’ in the [institution’s] annual notification of rights under FERPA. 34 CFR 99.7(a)(3)(iii). The Department has recognized that ‘typically, a school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility... To the extent that a Title IX Coordinator obtains access to personally identifiable information from the education records of a party with a disability to comply with § 106.8(e), the Department views this access as a legitimate educational interest. Accordingly, to comply with both FERPA and Title IX, a[n institution] must establish criteria in its annual notification of FERPA rights to permit its Title IX Coordinator to

⁷ *Id.*

⁸ 2024 Title IX Final Rule, 89 Fed. Reg. 33614 (April 29, 2024).

⁹ 2024 Title IX Final Rule, 89 Fed. Reg. 33727 (April 29, 2024).

¹⁰ 2024 Title IX Final Rule, 89 Fed. Reg. 33554 (April 29, 2024).

¹¹ *Id.*

¹² 2024 Title IX Final Rule, 89 F.R. 33538-9 (April 29, 2024).

constitute a school official with legitimate educational interests when performing functions to carry out § 106.8(e)...”¹³

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¹³ 2024 Title IX Final Rule, 89 F.R. 33539 (April 29, 2024).