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# **Building Trust in Your Process:** Strategies for Title IX and Equity Officers, Coordinators, and Directors

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Supplemental Materials

# ABOUT THE AUTHORS



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# Summary of Contents

## I. Department of Education Material

a. <a href="#">Current Regulations</a> (in particular, note 34 C.F.R. §§ 106.45(b)(2) (written notice of allegations); 106.45(b)(3) (written notice of dismissals); 106.45(b)(5)(v) (written notice of investigatory interviews and meetings); 106.45(b)(5)(vi) (parties' inspection and review of evidence); 106.45(b)(5)(vii) (parties' review of the investigative report); 106.45(b)(7) (written determination regarding responsibility); and 106.45(b)(8) (appeals):	4
b. <a href="#">Title IX NPRM Summary of Major Provisions</a>	42
c. <a href="#">January 2021 Questions and Answers Regarding the Department's Title IX Regulations</a>	49

## II. OCR Letters & Resolution Agreements

a. <a href="#">New London Public Schools: OCR Letter</a>	59
i. <a href="#">Resolution Agreement (requires case tracking system)</a>	78
b. <a href="#">Troy University: OCR Letter</a>	84
i. <a href="#">Resolution Agreement (requires the development of a tracking system for pregnancy-related adjustment requests and responses)</a>	92

## III. Selection of State Laws with Aggregate Data Reporting

a. <a href="#">Connecticut</a>	97
b. <a href="#">Massachusetts</a>	99
c. <a href="#">Delaware</a>	111
d. <a href="#">Minnesota</a>	112
e. <a href="#">New York</a>	118
f. <a href="#">Texas</a>	120

**Current Regulations** (in particular, note 34 C.F.R. §§ 106.45(b) (2) (written notice of allegations); 106.45(b)(3) (written notice of dismissals); 106.45(b)(5)(v) (written notice of investigatory interviews and meetings); 106.45(b)(5)(vi) (parties' inspection and review of evidence); 106.45(b)(5)(vii) (parties' review of the investigative report); 106.45(b)(7) (written determination regarding responsibility); and 106.45(b)(8) (appeals):

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**34 CFR Part 106 (up to date as of 3/04/2024)**  
**Nondiscrimination on the Basis of Sex in Education Programs or...**

**34 CFR Part 106 (Mar. 4, 2024)**

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This content is from the eCFR and is authoritative but unofficial.

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**Title 34 – Education**  
**Subtitle B – Regulations of the Offices of the Department of Education**  
**Chapter I – Office for Civil Rights, Department of Education**

**Part 106** Nondiscrimination on the Basis of Sex in Education Programs or Activities  
Receiving Federal Financial Assistance

**Subpart A** Introduction

- § 106.1 Purpose and effective date.
- § 106.2 Definitions.
- § 106.3 Remedial and affirmative action and self-evaluation.
- § 106.4 Assurance required.
- § 106.5 Transfers of property.
- § 106.6 Effect of other requirements and preservation of rights.
- § 106.7 Effect of employment opportunities.
- § 106.8 Designation of coordinator, dissemination of policy, and adoption of grievance procedures.
- § 106.9 Severability.

**Subpart B** Coverage

- § 106.11 Application.
- § 106.12 Educational institutions controlled by religious organizations.
- § 106.13 Military and merchant marine educational institutions.
- § 106.14 Membership practices of certain organizations.
- § 106.15 Admissions.
- § 106.16 Educational institutions eligible to submit transition plans.
- § 106.17 Transition plans.
- § 106.18 Severability.

**Subpart C** Discrimination

on the Basis  
of Sex in  
Admission  
and  
Recruitment  
Prohibited

- § 106.21 Admission.
- § 106.22 Preference in admission.
- § 106.23 Recruitment.
- § 106.24 Severability.

**Subpart D** Discrimination

on the Basis  
of Sex in  
Education  
Programs or  
Activities

Prohibited

- § 106.30 Definitions.
- § 106.31 Education programs or activities.
- § 106.32 Housing.
- § 106.33 Comparable facilities.
- § 106.34 Access to classes and schools.
- § 106.35 Access to institutions of vocational education.
- § 106.36 Counseling and use of appraisal and counseling materials.
- § 106.37 Financial assistance.
- § 106.38 Employment assistance to students.
- § 106.39 Health and insurance benefits and services.
- § 106.40 Marital or parental status.
- § 106.41 Athletics.
- § 106.42 Textbooks and curricular material.
- § 106.43 Standards for measuring skill or progress in physical education classes.
- § 106.44 Recipient's response to sexual harassment.
- § 106.45 Grievance process for formal complaints of sexual harassment.
- § 106.46 Severability.

**Subpart E** Discrimination  
on the Basis  
of Sex in  
Employment  
in Education  
Programs or  
Activities  
Prohibited

- § 106.51 Employment.
- § 106.52 Employment criteria.
- § 106.53 Recruitment.
- § 106.54 Compensation.
- § 106.55 Job classification and structure.
- § 106.56 Fringe benefits.
- § 106.57 Marital or parental status.
- § 106.58 Effect of State or local law or other requirements.
- § 106.59 Advertising.
- § 106.60 Pre-employment inquiries.
- § 106.61 Sex as a bona-fide occupational qualification.
- § 106.62 Severability.

**Subpart F—Retaliation**

§ 106.71 Retaliation.

§ 106.72 Severability.

**Subpart G** Procedures

§ 106.81 Procedures.

§ 106.82 Severability.

## **Appendix A to Part 106**

Guidelines for Eliminating Discrimination and Denial of Services  
on the Basis of Race, Color, National Origin, Sex, and Handicap in  
Vocational Education Programs

# **PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Authority:** 20 U.S.C. 1681 et seq., unless otherwise noted.

**Source:** 45 FR 30955, May 9, 1980, unless otherwise noted.

## **Subpart A—Introduction**

### **§ 106.1 Purpose and effective date.**

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93–568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93–380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

*[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]*

### **§ 106.2 Definitions.**

As used in this part, the term:

- (a) **Title IX** means title IX of the Education Amendments of 1972, Pub. L. 92–318, as amended by section 3 of Pub. L. 93–568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 U.S.C. 1681, 1682, 1683, 1685, 1686.
- (b) **Department** means the Department of Education.
- (c) **Secretary** means the Secretary of Education.
- (d) **Assistant Secretary** means the Assistant Secretary for Civil Rights of the Department.

- (e) **Reviewing Authority** means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.
- (f) **Administrative law judge** means a person appointed by the reviewing authority to preside over a hearing held under this part.
- (g) **Federal financial assistance** means any of the following, when authorized or extended under a law administered by the Department:
  - (1) A grant or loan of Federal financial assistance, including funds made available for:
    - (i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and
    - (ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.
  - (2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.
  - (3) Provision of the services of Federal personnel.
  - (4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.
  - (5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.
- (h) **Program or activity** and *program* means all of the operations of—
  - (1)
    - (i) A department, agency, special purpose district, or other instrumentality of a State or local government; or
    - (ii) The entity of a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
  - (2)
    - (i) A college, university, or other postsecondary institution, or a public system of higher education; or
    - (ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;
  - (3)
    - (i) An entire corporation, partnership, other private organization, or an entire sole proprietorship—
      - (A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

- (B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
- (ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
- (4) Any other entity that is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 20 U.S.C. 1687)

- (i) **Recipient** means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.
- (j) **Applicant** means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.
- (k) **Educational institution** means a local educational agency (LEA) as defined by section 1001(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (l), (m), (n), or (o) of this section.
- (l) **Institution of graduate higher education** means an institution which:
  - (1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or
  - (2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or
  - (3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.
- (m) **Institution of undergraduate higher education** means:
  - (1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or
  - (2) An institution offering academic study leading to a baccalaureate degree; or
  - (3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.
- (n) **Institution of professional education** means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary.

- (o) **Institution of vocational education** means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.
- (p) **Administratively separate unit** means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.
- (q) **Admission** means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.
- (r) **Student** means a person who has gained admission.
- (s) **Transition plan** means a plan subject to the approval of the Secretary pursuant to section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

[45 FR 30955, May 9, 1980; 45 FR 37426, June 3, 1980, as amended at 65 FR 68056, Nov. 13, 2000; 85 FR 30579, May 19, 2020]

### § 106.3 Remedial and affirmative action and self-evaluation.

- (a) **Remedial action.** If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity under this part, or otherwise violated this part, such recipient must take such remedial action as the Assistant Secretary deems necessary to remedy the violation, consistent with 20 U.S.C. 1682.
- (b) **Affirmative action.** In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.
- (c) **Self-evaluation.** Each recipient education institution shall, within one year of the effective date of this part:
  - (1) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;
  - (2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and
  - (3) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.
- (d) **Availability of self-evaluation and related materials.** Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Assistant Secretary upon request, a description of any modifications made pursuant to paragraph (c)(ii) of this section and of any remedial steps taken pursuant to paragraph (c)(iii) of this section.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30572, 30579, May 19, 2020]

## § 106.4 Assurance required.

- (a) **General.** Every application for Federal financial assistance shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Assistant Secretary, that the education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Assistant Secretary if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 106.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Assistant Secretary of such assurance.
- (b) **Duration of obligation.**
- (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.
  - (2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.
  - (3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.
- (c) **Form.** The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

[45 FR 30955, May 9, 1980, as amended at 45 FR 86298, Dec. 30, 1980; 65 FR 68056, Nov. 13, 2000; 85 FR 30579, May 19, 2020]

## § 106.5 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of subpart B of this part.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

## § 106.6 Effect of other requirements and preservation of rights.

- (a) **Effect of other Federal provisions.** The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 292d and 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(Authority: Secs. 901, 902, 905, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1685)

- (b) **Effect of State or local law or other requirements.** The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.
- (c) **Effect of rules or regulations of private organizations.** The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives Federal financial assistance.
- (d) **Constitutional protections.** Nothing in this part requires a recipient to:
  - (1) Restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution;
  - (2) Deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution; or
  - (3) Restrict any other rights guaranteed against government action by the U.S. Constitution.
- (e) **Effect of Section 444 of General Education Provisions Act (GEPA)/Family Educational Rights and Privacy Act (FERPA).** The obligation to comply with this part is not obviated or alleviated by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99.
- (f) **Title VII of the Civil Rights Act of 1964.** Nothing in this part may be read in derogation of any individual's rights under title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* or any regulations promulgated thereunder.
- (g) **Exercise of rights by parents or guardians.** Nothing in this part may be read in derogation of any legal right of a parent or guardian to act on behalf of a "complainant," "respondent," "party," or other individual, subject to paragraph (e) of this section, including but not limited to filing a formal complaint.
- (h) **Preemptive effect.** To the extent of a conflict between State or local law and title IX as implemented by §§ 106.30, 106.44, and 106.45, the obligation to comply with §§ 106.30, 106.44, and 106.45 is not obviated or alleviated by any State or local law.

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000; 85 FR 30573, 30579, May 19, 2020]

### § 106.7 Effect of employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19 2020]

### § 106.8 Designation of coordinator, dissemination of policy, and adoption of grievance procedures.

- (a) **Designation of coordinator.** Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the "Title IX Coordinator." The recipient must notify applicants for admission and employment,

students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator pursuant to this paragraph. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

(b) **Dissemination of policy** –

(1) **Notification of policy.** Each recipient must notify persons entitled to a notification under paragraph (a) of this section that the recipient does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by title IX and this part not to discriminate in such a manner. Such notification must state that the requirement not to discriminate in the education program or activity extends to admission (unless subpart C of this part does not apply) and employment, and that inquiries about the application of title IX and this part to such recipient may be referred to the recipient's Title IX Coordinator, to the Assistant Secretary, or both.

(2) **Publications.**

(i) Each recipient must prominently display the contact information required to be listed for the Title IX Coordinator under paragraph (a) of this section and the policy described in paragraph (b)(1) of this section on its website, if any, and in each handbook or catalog that it makes available to persons entitled to a notification under paragraph (a) of this section.

(ii) 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.

(c) **Adoption of grievance procedures.** A recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30. A recipient must provide to persons entitled to a notification under paragraph (a) of this section notice of the recipient's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond.

(d) **Application outside the United States.** The requirements of paragraph (c) of this section apply only to sex discrimination occurring against a person in the United States.

[85 FR 30573, May 19, 2020]

## § 106.9 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

## Subpart B—Coverage

### § 106.11 Application.

Except as provided in this subpart, this part 106 applies to every recipient and to the education program or activity operated by such recipient which receives Federal financial assistance.

[45 FR 86298, Dec. 30, 1980, as amended at 65 FR 68056, Nov. 13, 2000; 85 FR 30579, May 19, 2020]

### § 106.12 Educational institutions controlled by religious organizations.

- (a) **Application.** This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.
- (b) **Assurance of exemption.** An educational institution that seeks assurance of the exemption set forth in paragraph (a) of this section may do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part that conflict with a specific tenet of the religious organization. An institution is not required to seek assurance from the Assistant Secretary in order to assert such an exemption. In the event the Department notifies an institution that it is under investigation for noncompliance with this part and the institution wishes to assert an exemption set forth in paragraph (a) of this section, the institution may at that time raise its exemption by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization, whether or not the institution had previously sought assurance of an exemption from the Assistant Secretary.
- (c) **Eligibility.** Any of the following in paragraphs (c)(1) through (6) of this section shall be sufficient to establish that an educational institution is controlled by a religious organization, as contemplated under paragraph (a) of this section, and is therefore eligible to assert a religious exemption to the extent application of this part would not be consistent with its religious tenets:
  - (1) That the educational institution is a school or department of divinity.
  - (2) That the educational institution requires its faculty, students, or employees to be members of, or otherwise engage in religious practices of, or espouse a personal belief in, the religion of the organization by which it claims to be controlled.
  - (3) That the educational institution, in its charter or catalog, or other official publication, contains an explicit statement that it is controlled by a religious organization or an organ thereof, or is committed to the doctrines or practices of a particular religion, and the members of its governing body are appointed by the controlling religious organization or an organ thereof, and it receives a significant amount of financial support from the controlling religious organization or an organ thereof.
  - (4) That the educational institution has a doctrinal statement or a statement of religious practices, along with a statement that members of the institution community must engage in the religious practices of, or espouse a personal belief in, the religion, its practices, or the doctrinal statement or statement of religious practices.

- (5) That the educational institution has a published institutional mission that is approved by the governing body of an educational institution and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings.
- (6) Other evidence sufficient to establish that an educational institution is controlled by a religious organization, pursuant to 20 U.S.C. 1681(a)(3).
- (d) **Severability.** If any provision of this section or its application to any person, act, or practice is held invalid, the remainder of this section or the application of its provisions to any person, act, or practice shall not be affected thereby.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30573, 30579, May 19, 2020; 85 FR 59980, Sept. 23, 2020]

### § 106.13 Military and merchant marine educational institutions.

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

### § 106.14 Membership practices of certain organizations.

- (a) **Social fraternities and sororities.** This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.
- (b) **YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls.** This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.
- (c) **Voluntary youth service organizations.** This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

### § 106.15 Admissions.

- (a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.
- (b) **Administratively separate units.** For the purposes only of this section, §§ 106.16 and 106.17, and subpart C, each administratively separate unit shall be deemed to be an educational institution.
- (c) **Application of subpart C.** Except as provided in paragraphs (d) and (e) of this section, subpart C applies to each recipient. A recipient to which subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.
- (d) **Educational institutions.** Except as provided in paragraph (e) of this section as to recipients which are educational institutions, subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

- (e) **Public institutions of undergraduate higher education.** Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

[45 FR 30955, May 9, 1980, as amended at 45 FR 86298, Dec. 30, 1980; 85 FR 30579, May 19, 2020]

## § 106.16 Educational institutions eligible to submit transition plans.

- (a) **Application.** This section applies to each educational institution to which subpart C applies which:
  - (1) Admitted only students of one sex as regular students as of June 23, 1972; or
  - (2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.
- (b) **Provision for transition plans.** An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of subpart C unless it is carrying out a transition plan approved by the Secretary as described in § 106.17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

## § 106.17 Transition plans.

- (a) **Submission of plans.** An institution to which § 106.16 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.
- (b) **Content of plans.** In order to be approved by the Secretary a transition plan shall:
  - (1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.
  - (2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.
  - (3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.
  - (4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.
  - (5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

- (c) **Nondiscrimination.** No policy or practice of a recipient to which § 106.16 applies shall result in treatment of applicants to or students of such recipient in violation of subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b) (3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b) (4) of this section.
- (d) **Effects of past exclusion.** To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 106.16 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment which emphasizes the institution's commitment to enrolling students of the sex previously excluded.

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000; 85 FR 30579, May 19, 2020]

## § 106.18 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

[85 FR 30573, May 19, 2020]

## Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

### § 106.21 Admission.

- (a) **General.** No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§ 106.16 and 106.17.
- (b) **Specific prohibitions.**
  - (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies shall not:
    - (i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;
    - (ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or
    - (iii) Otherwise treat one individual differently from another on the basis of sex.
  - (2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.
- (c) **Prohibitions relating to marital or parental status.** In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:
  - (1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

- (2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;
- (3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and
- (4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is “Miss” or “Mrs.” A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

### § 106.22 Preference in admission.

A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

### § 106.23 Recruitment.

- (a) **Nondiscriminatory recruitment.** A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 106.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 106.3(b).
- (b) **Recruitment at certain institutions.** A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

### § 106.24 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

[85 FR 30574, May 19, 2020]

## Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

### § 106.30 Definitions.

- (a) As used in this part:

**Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient. "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in § 106.8(a).

**Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Consent.** The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault, as referenced in this section.

**Formal complaint** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under § 106.8(a), and by any additional method designated by the recipient. As used in this paragraph, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part or under § 106.45, and must comply with the requirements of this part, including § 106.45(b)(1)(iii).

**Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

**Supportive measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety

of all parties or the recipient's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

(b) As used in §§ 106.44 and 106.45:

**Elementary and secondary school** means a local educational agency (LEA), as defined in the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, a preschool, or a private elementary or secondary school.

**Postsecondary institution** means an institution of graduate higher education as defined in § 106.2(l), an institution of undergraduate higher education as defined in § 106.2(m), an institution of professional education as defined in § 106.2(n), or an institution of vocational education as defined in § 106.2(o).

[85 FR 30574, May 19, 2020]

### § 106.31 Education programs or activities.

- (a) **General.** Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of
- (1) a recipient to which subpart C does not apply, or
  - (2) an entity, not a recipient, to which subpart C would not apply if the entity were a recipient.
- (b) **Specific prohibitions.** Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:
- (1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
  - (2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
  - (3) Deny any person any such aid, benefit, or service;
  - (4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;
  - (5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
  - (6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) **Assistance administered by a recipient educational institution to study at a foreign institution.** A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided*, a recipient educational institution which administers or assists in the administration of such scholarships, fellowships, or other awards which are restricted to members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) **Aid, benefits or services not provided by recipient.**

(1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

[45 FR 30955, May 9, 1980, as amended at 47 FR 32527, July 28, 1982; 65 FR 68056, Nov. 13, 2000; 85 FR 30579, May 19, 2020]

## § 106.32 Housing.

(a) **Generally.** A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) **Housing provided by recipient.**

(1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) **Other housing.**

(1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

- (2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

- (i) Proportionate in quantity and
- (ii) Comparable in quality and cost to the student.

A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

### § 106.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

### § 106.34 Access to classes and schools.

- (a) **General standard.** Except as provided for in this section or otherwise in this part, a recipient shall not provide or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on the basis of sex.
  - (1) **Contact sports in physical education classes.** This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.
  - (2) **Ability grouping in physical education classes.** This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.
  - (3) **Human sexuality classes.** Classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality may be conducted in separate sessions for boys and girls.
  - (4) **Choruses.** Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.
- (b) **Classes and extracurricular activities –**
  - (1) **General standard.** Subject to the requirements in this paragraph, a recipient that operates a nonvocational coeducational elementary or secondary school may provide nonvocational single-sex classes or extracurricular activities, if—
    - (i) Each single-sex class or extracurricular activity is based on the recipient's important objective—
      - (A) To improve educational achievement of its students, through a recipient's overall established policy to provide diverse educational opportunities, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective; or

(B) To meet the particular, identified educational needs of its students, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective;

(ii) The recipient implements its objective in an evenhanded manner;

(iii) Student enrollment in a single-sex class or extracurricular activity is completely voluntary; and

(iv) The recipient provides to all other students, including students of the excluded sex, a substantially equal coeducational class or extracurricular activity in the same subject or activity.

(2) **Single-sex class or extracurricular activity for the excluded sex.** A recipient that provides a single-sex class or extracurricular activity, in order to comply with paragraph (b)(1)(ii) of this section, may be required to provide a substantially equal single-sex class or extracurricular activity for students of the excluded sex.

(3) **Substantially equal factors.** Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether classes or extracurricular activities are substantially equal include, but are not limited to, the following: the policies and criteria of admission, the educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology, the qualifications of faculty and staff, geographic accessibility, the quality, accessibility, and availability of facilities and resources provided to the class, and intangible features, such as reputation of faculty.

(4) **Periodic evaluations.**

(i) The recipient must conduct periodic evaluations to ensure that single-sex classes or extracurricular activities are based upon genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex and that any single-sex classes or extracurricular activities are substantially related to the achievement of the important objective for the classes or extracurricular activities.

(ii) Evaluations for the purposes of paragraph (b)(4)(i) of this section must be conducted at least every two years.

(5) **Scope of coverage.** The provisions of paragraph (b)(1) through (4) of this section apply to classes and extracurricular activities provided by a recipient directly or through another entity, but the provisions of paragraph (b)(1) through (4) of this section do not apply to interscholastic, club, or intramural athletics, which are subject to the provisions of §§ 106.41 and 106.37(c) of this part.

(c) **Schools** –

(1) **General Standard.** Except as provided in paragraph (c)(2) of this section, a recipient that operates a public nonvocational elementary or secondary school that excludes from admission any students, on the basis of sex, must provide students of the excluded sex a substantially equal single-sex school or coeducational school.

(2) **Exception.** A nonvocational public charter school that is a single-school local educational agency under State law may be operated as a single-sex charter school without regard to the requirements in paragraph (c)(1) of this section.

- (3) **Substantially equal factors.** Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether schools are substantially equal include, but are not limited to, the following: The policies and criteria of admission, the educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology, the quality and range of extracurricular offerings, the qualifications of faculty and staff, geographic accessibility, the quality, accessibility, and availability of facilities and resources, and intangible features, such as reputation of faculty.
- (4) **Definition.** For the purposes of paragraph (c)(1) through (3) of this section, the term “school” includes a “school within a school,” which means an administratively separate school located within another school.

[71 FR 62542, Oct. 25, 2006, as amended at 85 FR 30579 May 19, 2020]

### § 106.35 Access to institutions of vocational education.

A recipient shall not, on the basis of sex, exclude any person from admission to any institution of vocational education operated by that recipient.

[71 FR 62543, Oct. 25, 2006, as amended at 85 FR 30579, May 19, 2020]

### § 106.36 Counseling and use of appraisal and counseling materials.

- (a) **Counseling.** A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.
- (b) **Use of appraisal and counseling materials.** A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.
- (c) **Disproportion in classes.** Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

### § 106.37 Financial assistance.

- (a) **General.** Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:
  - (1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate;

- (2) Through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or
- (3) Apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) **Financial aid established by certain legal instruments.**

- (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; *Provided*, That the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.
- (2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:
  - (i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;
  - (ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and
  - (iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) **Athletic scholarships.**

- (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.
- (2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 106.41.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

## § 106.38 Employment assistance to students.

- (a) **Assistance by recipient in making available outside employment.** A recipient which assists any agency, organization or person in making employment available to any of its students:
  - (1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and
  - (2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

- (b) **Employment of students by recipients.** A recipient which employs any of its students shall not do so in a manner which violates subpart E of this part.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

### § 106.39 Health and insurance benefits and services.

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

### § 106.40 Marital or parental status.

- (a) **Status generally.** A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.
- (b) **Pregnancy and related conditions.**
- (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.
  - (2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.
  - (3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the separate portion is comparable to that offered to non-pregnant students.
  - (4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.
  - (5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

## § 106.41 Athletics.

- (a) **General.** No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.
- (b) **Separate teams.** Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.
- (c) **Equal opportunity.** A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:
  - (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
  - (2) The provision of equipment and supplies;
  - (3) Scheduling of games and practice time;
  - (4) Travel and per diem allowance;
  - (5) Opportunity to receive coaching and academic tutoring;
  - (6) Assignment and compensation of coaches and tutors;
  - (7) Provision of locker rooms, practice and competitive facilities;
  - (8) Provision of medical and training facilities and services;
  - (9) Provision of housing and dining facilities and services;
  - (10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

- (d) **Adjustment period.** A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

## § 106.42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

## § 106.43 Standards for measuring skill or progress in physical education classes.

If use of a single standard of measuring skill or progress in physical education classes has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have that effect.

(Authority: 20 U.S.C. 1681, 1682)

## § 106.44 Recipient's response to sexual harassment.

- (a) **General response to sexual harassment.** A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. For the purposes of this section, §§ 106.30, and 106.45, "education program or activity" includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. A recipient's response must treat complainants and respondents equitably by offering supportive measures as defined in § 106.30 to a complainant, and by following a grievance process that complies with § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent. The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in § 106.30, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The Department may not deem a recipient to have satisfied the recipient's duty to not be deliberately indifferent under this part based on the recipient's restriction of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.
- (b) **Response to a formal complaint.**
- (1) In response to a formal complaint, a recipient must follow a grievance process that complies with § 106.45. With or without a formal complaint, a recipient must comply with § 106.44(a).
  - (2) The Assistant Secretary will not deem a recipient's determination regarding responsibility to be evidence of deliberate indifference by the recipient, or otherwise evidence of discrimination under title IX by the recipient, solely because the Assistant Secretary would have reached a different determination based on an independent weighing of the evidence.

- (c) **Emergency removal.** Nothing in this part precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.
- (d) **Administrative leave.** Nothing in this subpart precludes a recipient from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with § 106.45. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

[85 FR 30574, May 19, 2020]

### § 106.45 Grievance process for formal complaints of sexual harassment.

- (a) **Discrimination on the basis of sex.** A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX.
- (b) **Grievance process.** For the purpose of addressing formal complaints of sexual harassment, a recipient's grievance process must comply with the requirements of this section. Any provisions, rules, or practices other than those required by this section that a recipient adopts as part of its grievance process for handling formal complaints of sexual harassment as defined in § 106.30, must apply equally to both parties.
  - (1) **Basic requirements for grievance process.** A recipient's grievance process must—
    - (i) Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent. Remedies must be designed to restore or preserve equal access to the recipient's education program or activity. Such remedies may include the same individualized services described in § 106.30 as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;
    - (ii) Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness;
    - (iii) Require that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in § 106.30, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue,

conflicts of interest, and bias. A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in paragraph (b)(6) of this section. A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in paragraph (b)(5)(vii) of this section. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;

- (iv) Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;
- (v) Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;
- (vi) Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility;
- (vii) State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment;
- (viii) Include the procedures and permissible bases for the complainant and respondent to appeal;
- (ix) Describe the range of supportive measures available to complainants and respondents; and
- (x) Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

(2) **Notice of allegations** –

- (i) Upon receipt of a formal complaint, a recipient must provide the following written notice to the parties who are known:
  - (A) Notice of the recipient's grievance process that complies with this section, including any informal resolution process.
  - (B) Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly

constituting sexual harassment under § 106.30, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section. The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

- (ii) If, in the course of an investigation, the recipient decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to paragraph (b)(2)(i)(B) of this section, the recipient must provide notice of the additional allegations to the parties whose identities are known.

**(3) Dismissal of a formal complaint –**

- (i) The recipient must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the recipient's education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX or this part; such a dismissal does not preclude action under another provision of the recipient's code of conduct.
- (ii) The recipient may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- (iii) Upon a dismissal required or permitted pursuant to paragraph (b)(3)(i) or (b)(3)(ii) of this section, the recipient must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

**(4) Consolidation of formal complaints.** A recipient may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular "party," "complainant," or "respondent" include the plural, as applicable.

**(5) Investigation of a formal complaint.** When investigating a formal complaint and throughout the grievance process, a recipient must—

- (i) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient and not on the parties provided that the recipient cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment

to the party, unless the recipient obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the recipient must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3);

- (ii) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- (iii) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- (iv) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
- (v) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- (vi) Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
- (vii) Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

**(6) Hearings.**

- (i) For postsecondary institutions, the recipient's grievance process must provide for a live hearing. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the recipient under paragraph (b)(5)(iv) of this section to otherwise restrict the extent to which advisors may participate in the proceedings. At the request of either party, the recipient must provide for the live hearing to occur with the parties

located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the recipient's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. Recipients must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

- (ii) For recipients that are elementary and secondary schools, and other recipients that are not postsecondary institutions, the recipient's grievance process may, but need not, provide for a hearing. With or without a hearing, after the recipient has sent the investigative report to the parties pursuant to paragraph (b)(5)(vii) of this section and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. With or without a hearing, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

**(7) Determination regarding responsibility.**

- (i) The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the recipient must apply the standard of evidence described in paragraph (b)(1)(vii) of this section.
- (ii) The written determination must include—

- (A) Identification of the allegations potentially constituting sexual harassment as defined in § 106.30;
  - (B) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - (C) Findings of fact supporting the determination;
  - (D) Conclusions regarding the application of the recipient's code of conduct to the facts;
  - (E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
  - (F) The recipient's procedures and permissible bases for the complainant and respondent to appeal.
- (iii) The recipient must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.
  - (iv) The Title IX Coordinator is responsible for effective implementation of any remedies.

**(8) Appeals.**

- (i) A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases:
  - (A) Procedural irregularity that affected the outcome of the matter;
  - (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
  - (C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- (ii) A recipient may offer an appeal equally to both parties on additional bases.
- (iii) As to all appeals, the recipient must:
  - (A) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
  - (B) Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;

- (C) Ensure that the decision-maker(s) for the appeal complies with the standards set forth in paragraph (b)(1)(iii) of this section;
  - (D) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
  - (E) Issue a written decision describing the result of the appeal and the rationale for the result; and
  - (F) Provide the written decision simultaneously to both parties.
- (9) **Informal resolution.** A recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, a recipient may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient—
- (i) Provides to the parties a written notice disclosing: The allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
  - (ii) Obtains the parties' voluntary, written consent to the informal resolution process; and
  - (iii) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
- (10) **Recordkeeping.**
- (i) A recipient must maintain for a period of seven years records of—
    - (A) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under paragraph (b)(6)(i) of this section, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
    - (B) Any appeal and the result therefrom;
    - (C) Any informal resolution and the result therefrom; and
    - (D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

- (ii) For each response required under § 106.44, a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.

[85 FR 30575, May 19, 2020]

### **§ 106.46 Severability.**

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

[85 FR 30578, May 19, 2020]

## **Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited**

### **§ 106.51 Employment.**

#### **(a) General.**

- (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives Federal financial assistance.
- (2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.
- (3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.
- (4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

#### **(b) Application.** The provisions of this subpart apply to:

- (1) Recruitment, advertising, and the process of application for employment;

- (2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;
- (3) Rates of pay or any other form of compensation, and changes in compensation;
- (4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;
- (5) The terms of any collective bargaining agreement;
- (6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;
- (7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;
- (8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;
- (9) Employer-sponsored activities, including those that are social or recreational; and
- (10) Any other term, condition, or privilege of employment.

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000; 85 FR 30579, May 19, 2020]

### § 106.52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

- (a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and
- (b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

### § 106.53 Recruitment.

- (a) **Nondiscriminatory recruitment and hiring.** A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.
- (b) **Recruitment patterns.** A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

## § 106.54 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

- (a) Makes distinctions in rates of pay or other compensation;
- (b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

## § 106.55 Job classification and structure.

A recipient shall not:

- (a) Classify a job as being for males or for females;
- (b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or
- (c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in § 106.61.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

## § 106.56 Fringe benefits.

- (a) **Fringe benefits defined.** For purposes of this part, *fringe benefits* means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 106.54.
- (b) **Prohibitions.** A recipient shall not:
  - (1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;
  - (2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or
  - (3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

## § 106.57 Marital or parental status.

- (a) **General.** A recipient shall not apply any policy or take any employment action:

- (1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or
  - (2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.
- (b) **Pregnancy.** A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.
- (c) **Pregnancy as a temporary disability.** A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.
- (d) **Pregnancy leave.** In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

### § 106.58 Effect of State or local law or other requirements.

- (a) **Prohibitory requirements.** The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.
- (b) **Benefits.** A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

### § 106.59 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a *bona-fide* occupational qualification for the particular job in question.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

### § 106.60 Pre-employment inquiries.

- (a) **Marital status.** A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

- (b) **Sex.** A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

### **§ 106.61 Sex as a bona-fide occupational qualification.**

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

### **§ 106.62 Severability.**

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

[85 FR 30578, May 19, 2020]

## **Subpart F—Retaliation**

**Source:** 85 FR 30578, May 19, 2020, unless otherwise noted.

### **§ 106.71 Retaliation.**

- (a) **Retaliation prohibited.** No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation. The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under § 106.8(c).

**(b) Specific circumstances.**

- (1) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under paragraph (a) of this section.
- (2) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited under paragraph (a) of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

**§ 106.72 Severability.**

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

**Subpart G—Procedures**

**Source:** 85 FR 30579, May 19, 2020, unless otherwise noted.

**§ 106.81 Procedures.**

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 34 CFR 100.6–100.11 and 34 CFR part 101. The definitions in § 106.30 do not apply to 34 CFR 100.6–100.11 and 34 CFR part 101.

**§ 106.82 Severability.**

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

**Appendix A to Part 106—Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs**

**Editorial Note:** For the text of these guidelines, see 34 CFR part 100, appendix B.

*[44 FR 17168, Mar. 21, 1979]*

# Title IX NPRM Summary of Major Provisions

## Summary of Major Provisions of the Department of Education’s Title IX Notice of Proposed Rulemaking\*

Issue	The Title IX NPRM
<b><i>Prohibiting All Forms of Sex Discrimination</i></b> <i>(Proposed § 106.10)</i>	The proposed regulations would prohibit all forms of sex discrimination, including discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. (Proposed § 106.10)
<b><i>Defining Sex-Based Harassment</i></b> <i>(Proposed § 106.2)</i>	<p>The proposed regulations would define sex-based harassment as including sexual harassment; harassment based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; and other sex-based conduct that meets requirements described immediately below. (Proposed § 106.2)</p> <p>The proposed regulations would continue to cover quid pro quo harassment—when an employee or other person authorized by a recipient<sup>†</sup> to provide an aid, benefit, or service explicitly or impliedly conditions that aid, benefit or service on a person’s participation in unwelcome sexual conduct, and incidents of sexual assault, dating violence, domestic violence, and stalking. (Proposed § 106.2)</p> <p>The proposed regulations would also cover harassment that creates a hostile environment—unwelcome sex-based conduct that is sufficiently severe or pervasive that, based on the totality of the circumstances and evaluated subjectively and objectively, it denies or limits a person’s ability to participate in or benefit from the recipient’s education program or activity. (Proposed § 106.2)</p> <p><i>The current regulations prohibit unwelcome sex-based conduct only if it is “so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.”</i></p> <p><i>The current regulations cover sexual harassment but do not address other forms of sex-based harassment. (Current § 106.30)</i></p>
<b><i>Addressing Off-Campus Conduct that Creates or Contributes to a Hostile Environment in a</i></b>	<p>Title IX requires recipients to address all sex discrimination in their education programs or activities. Under the proposed regulations, conduct that occurs in a recipient’s education program or activity includes:</p> <ul style="list-style-type: none"> <li>• Conduct that occurs in any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. (Proposed § 106.11)</li> </ul>

\* For the complete set of proposed regulations, please see the Department’s Notice of Proposed Rulemaking on Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, which is available [here](#).

<sup>†</sup> Recipients are elementary schools and secondary schools, postsecondary institutions, and other recipients of Federal funds.

Issue	The Title IX NPRM
<p><b>Recipient’s Education Program or Activity (Proposed § 106.11)</b></p>	<ul style="list-style-type: none"> <li>• Conduct that occurs off-campus when the respondent<sup>†</sup> is a representative of the recipient or otherwise engaged in conduct under the recipient’s disciplinary authority. (Proposed § 106.11)</li> </ul> <p>Under the proposed regulations, a recipient would be required to address a sex-based hostile environment in its education program or activity, including when sex-based harassment contributing to the hostile environment occurred outside the recipient’s education program or activity or outside the United States. (Proposed § 106.11) This coverage follows from Title IX’s text, which provides that no person shall be subjected to discrimination under an education program or activity receiving Federal financial assistance.</p> <p><i>The current regulations do not require a recipient to address a sex-based hostile environment in its education program or activity in the United States if the hostile environment results from sex-based harassment that happened outside of the recipient’s education program or activity, or outside of the United States. (Current § 106.44(a))</i></p>
<p><b>Responding to Sex Discrimination (Proposed § 106.44(a))</b></p>	<p>Title IX requires all recipients to operate their education programs or activities free from prohibited sex discrimination at all times. To fulfill this requirement, the proposed regulations would require a recipient to take prompt and effective action to end any prohibited sex discrimination that has occurred in its education program or activity, prevent its recurrence, and remedy its effects. (Proposed § 106.44(a))</p> <p><i>The current regulations only require a recipient to respond to possible sexual harassment when it has “actual knowledge” of the harassment (i.e. notice of sexual harassment or alleged sexual harassment). At postsecondary institutions, only employees with authority to institute corrective measures can have actual knowledge; in elementary schools and secondary schools, the actual knowledge requirement applies to all employees.</i></p> <p><i>A recipient that has actual knowledge of sexual harassment must respond only in a manner that is not deliberately indifferent. (Current §§ 106.30 and 106.44(a))</i></p>
<p><b>Ensuring recipients learn of possible sex discrimination (Proposed § 106.44(c))</b></p>	<p>The proposed regulations require that recipients require certain employees to notify the recipient’s Title IX Coordinator of conduct that may constitute sex discrimination under Title IX. This would ensure that recipients learn of possible sex discrimination so they can operate their education programs or activities free from prohibited sex discrimination as Title IX requires. (Proposed § 106.44(c))</p> <ul style="list-style-type: none"> <li>• Any employee at an elementary school or secondary school who is not a confidential employee would be obligated to notify the Title IX Coordinator. (Proposed § 106.44(c)(1)) (Please note that elementary school</li> </ul>

<sup>†</sup> A respondent is a person who is alleged to have violated the recipient’s prohibition on sex discrimination. (Proposed § 106.2).

Issue	The Title IX NPRM
	<p>and secondary school employees may have additional obligations under Federal, State or local law to report sex-based misconduct.)</p> <ul style="list-style-type: none"> <li>• An employee at a postsecondary institution or other recipient who has authority to take corrective action or, for incidents involving students, has responsibility for administrative leadership, teaching, or advising in the recipient’s education program or activity, would be obligated to notify the Title IX Coordinator. (Proposed § 106.44(c)(2)(i)-(ii)) <ul style="list-style-type: none"> <li>• All other employees at a postsecondary institution or other recipient would be obligated to notify the Title IX Coordinator or provide an individual with the Title IX Coordinator’s contact information and information about reporting, except that confidential employees would not be obligated to notify the Title IX Coordinator about possible sex discrimination. Confidential employees would be obligated only to provide an individual with the Title IX Coordinator’s contact information and information about reporting. (Proposed § 106.44(c)(2)(i)-(ii); § 106.44(d)(2))</li> </ul> </li> </ul>

<p><b>Respecting Complainant Autonomy</b> (Proposed §§ 106.2, 106.8(d), 106.44(a) –(e))</p>	<p>To ensure that a recipient’s education program or activity is free from sex discrimination while also respecting complainant autonomy, the proposed regulations would require recipients to provide clear information and training (proposed § 106.8(d)) on (1) when their employees must notify the Title IX Coordinator about possible sex discrimination (proposed § 106.44(c)) and (2) how students can report sex discrimination for the purpose of seeking confidential assistance only (proposed § 106.44(d)) or for the purpose of asking a recipient to initiate its grievance procedures. (Proposed § 106.45(a)(2))</p> <p>A complainant would also be protected in their right to file a complaint about sex discrimination they experienced even if they have chosen to leave the recipient’s education program or activity as a result of that discrimination or for other reasons. (Proposed §§ 106.2 and 106.45(a)(2))</p> <p>Under the proposed regulations, a recipient also would require its Title IX Coordinator to monitor for barriers to reporting information about conduct that may constitute sex discrimination under Title IX. The recipient would then need to take steps reasonably calculated to address barriers the Title IX Coordinator identifies. (Proposed § 106.44(b))</p> <p>Together, these requirements in the proposed regulations would ensure that:</p> <ul style="list-style-type: none"> <li>• Employees and students have information about the identity and role of a recipient’s confidential employees.</li> <li>• Employees and students at elementary schools and secondary schools know that all employees must notify the Title IX Coordinator of possible sex discrimination.</li> </ul>
<p><b>Issue</b></p>	<p><b>The Title IX NPRM</b></p> <p>and secondary school employees may have additional obligations under Federal, State or local law to report sex-based misconduct.)</p> <ul style="list-style-type: none"> <li>• An employee at a postsecondary institution or other recipient who has authority to take corrective action or, for incidents involving students, has responsibility for administrative leadership, teaching, or advising in the recipient’s education program or activity, would be obligated to notify the Title IX Coordinator. (Proposed § 106.44(c)(2)(i)-(ii)) <ul style="list-style-type: none"> <li>• All other employees at a postsecondary institution or other recipient would be obligated to notify the Title IX Coordinator or provide an individual with the Title IX Coordinator’s contact information and information about reporting, except that confidential employees would not be obligated to notify the Title IX Coordinator about possible sex discrimination. Confidential employees would be obligated only to provide an individual with the Title IX Coordinator’s contact information and information about reporting. (Proposed § 106.44(c)(2)(i)-(ii); § 106.44(d)(2))</li> </ul> </li> </ul>
<p><b>Respecting Complainant Autonomy</b> (Proposed §§ 106.2, 106.8(d), 106.44(a) –(e))</p>	<p>To ensure that a recipient’s education program or activity is free from sex discrimination while also respecting complainant autonomy, the proposed regulations would require recipients to provide clear information and training (proposed § 106.8(d)) on (1) when their employees must notify the Title IX Coordinator about possible sex discrimination (proposed § 106.44(c)) and (2) how students can report sex discrimination for the purpose of seeking confidential assistance only (proposed § 106.44(d)) or for the purpose of asking a recipient to initiate its grievance procedures. (Proposed § 106.45(a)(2))</p> <p>A complainant would also be protected in their right to file a complaint about sex discrimination they experienced even if they have chosen to leave the recipient’s education program or activity as a result of that discrimination or for other reasons. (Proposed §§ 106.2 and 106.45(a)(2))</p> <p>Under the proposed regulations, a recipient also would require its Title IX Coordinator to monitor for barriers to reporting information about conduct that may constitute sex discrimination under Title IX. The recipient would then need to take steps reasonably calculated to address barriers the Title IX Coordinator identifies. (Proposed § 106.44(b))</p> <p>Together, these requirements in the proposed regulations would ensure that:</p> <ul style="list-style-type: none"> <li>• Employees and students have information about the identity and role of a recipient’s confidential employees.</li> <li>• Employees and students at elementary schools and secondary schools know that all employees must notify the Title IX Coordinator of possible sex discrimination.</li> </ul>

Issue	The Title IX NPRM
	<ul style="list-style-type: none"> <li>• Employees and students at postsecondary institutions know that certain employees have a duty to notify the Title IX Coordinator of possible sex discrimination and other employees must instead provide them information about how to contact the recipient’s Title IX Coordinator and report sex discrimination.</li> <li>• Students (and parents, guardians and other authorized legal representatives of elementary and secondary school students) know how to make a complaint to initiate a recipient’s grievance procedures and also how to seek information about supportive measures and other resources without making a complaint.</li> <li>• Recipients know to honor a complainant’s request not to proceed with a complaint investigation whenever possible, as long as doing so does not prevent the recipient from ensuring equal access to its education program or activity.</li> </ul> <p><i>The current regulations provide that the decision to file a complaint of sexual harassment is for the complainant or Title IX Coordinator to make, depending on the circumstances, but they do not permit complaints under Title IX by former students or employees who are not participating or attempting to participate in the recipient’s education program or activity. (Current § 106.30(a))</i></p>
<p><b>Title IX Coordinator Response to Sex Discrimination (Proposed § 106.44(f)-(g))</b></p>	<p>Under the proposed regulations, a recipient would be required to take prompt and effective action to end any sex discrimination in its education program or activity. The proposed regulations would require a recipient to ensure that its Title IX Coordinator takes the following steps upon being notified about possible sex discrimination:</p> <ul style="list-style-type: none"> <li>• Treat the complainant and respondent equitably at every stage of the recipient’s response. (Proposed § 106.44(f)(1))</li> <li>• Notify the complainant of the recipient’s grievance procedures and, if a complaint is made, notify the respondent of the grievance procedures and notify the parties of the informal resolution process, if any. (Proposed § 106.44(f)(2))</li> <li>• Offer and coordinate supportive measures, as appropriate, to the complainant and respondent. (Proposed § 106.44(f)(3))</li> <li>• In response to a complaint, initiate the recipient’s grievance procedures or informal resolution process. (Proposed § 106.44(f)(4))</li> <li>• In the absence of a complaint or informal resolution process, determine whether to initiate a complaint of sex discrimination if necessary to address conduct that may constitute sex discrimination under Title IX in the recipient’s education program or activity. (Proposed § 106.44(f)(6))</li> <li>• Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur in the recipient’s education program or activity, in addition to providing remedies to an individual complainant. (Proposed § 106.44(f)(7))</li> </ul>
Issue	The Title IX NPRM
	<p>The proposed regulations require recipients to offer supportive measures as appropriate to the complainant and/or respondent to the extent necessary to restore or preserve that person’s access to the recipient’s education program or activity. Supportive measures may include, for example, counseling, extension of deadlines, restrictions on contact between the parties, and voluntary or involuntary changes in class, work, or housing. (Proposed § 106.44(g))</p> <p><i>The current regulations require only that a recipient treat a complainant and respondent equitably by providing remedies to a complainant when it has determined that sexual harassment has occurred and by following a grievance process before imposing disciplinary sanctions or other actions on a respondent. (Current § 106.45(b)(1))</i></p> <p><i>The current regulations do not permit a recipient to offer an informal resolution process unless a formal complaint has been filed. (Current § 106.45(b)(9))</i></p>

Issue	The Title IX NPRM
	<ul style="list-style-type: none"> <li>○ Objective evaluation of relevant and not otherwise impermissible evidence. (Proposed § 106.45(b)(6)-(7))</li> <li>● Notice of the allegations to the parties. (Proposed § 106.45(c))</li> <li>● Dismissals permitted in certain circumstances, but not required. (Proposed § 106.45(d))</li> <li>● Consolidation permitted for complaints arising out of the same facts or circumstances. (Proposed § 106.45(e))</li> <li>● Investigation requirements: (Proposed § 106.45(f)) <ul style="list-style-type: none"> <li>○ Burden is on the recipient to gather sufficient evidence. (Proposed § 106.45(f)(1))</li> <li>○ Equal opportunity for all parties to present relevant fact witnesses and other evidence. (Proposed § 106.45(f)(2))</li> <li>○ Determination by the decisionmaker of what evidence is relevant and what evidence is impermissible. (Proposed § 106.45(f)(3))</li> <li>○ A description provided to the parties by the recipient of the relevant and not otherwise impermissible evidence, as well as a reasonable opportunity to respond. (Proposed § 106.45(f)(4))</li> </ul> </li> <li>● A process that enables the decisionmaker to assess the credibility of the parties and witnesses when credibility is in dispute and relevant. (Proposed § 106.45(g))</li> <li>● Clear processes for the determination of whether sex discrimination occurred, including (proposed § 106.45(h)): <ul style="list-style-type: none"> <li>○ Determining whether sex discrimination occurred using the preponderance of the evidence standard of proof, unless the clear and convincing evidence standard is used in all other comparable proceedings, including other discrimination complaints, in which case that standard may be used in determining whether sex discrimination occurred. (Proposed § 106.45(h)(1))</li> <li>○ Notifying parties of the outcome of the complaint and any opportunity to appeal. (Proposed § 106.45(h)(2))</li> <li>○ When there is a determination that sex discrimination occurred, the Title IX Coordinator provides and implements remedies for the complainant or others whose access to the recipient’s education program or activity has been limited or denied by sex discrimination, and takes other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur. (Proposed § 106.45(h)(3))</li> <li>○ The grievance procedures are completed before imposing any sanctions. (Proposed § 106.45(h)(4))</li> <li>○ A recipient is prohibited from disciplining a party, witness, or other participant for making a false statement or for engaging in consensual sexual conduct based solely on the determination of whether sex discrimination occurred. (Proposed § 106.45(h)(5))</li> </ul> </li> <li>● Parties are permitted to choose to participate in an informal resolution process if one is provided by the recipient. (Proposed § 106.45(j))</li> </ul>
Issue	The Title IX NPRM
	<ul style="list-style-type: none"> <li>● Grievance procedures must describe the range of possible supportive measures and a range or list of disciplinary sanctions and remedies for sex-based harassment complaints. (Proposed § 106.45(k))</li> </ul> <p>A recipient may add provisions to its grievance procedures as long as the provisions apply equally to the parties. (Proposed § 106.45(i))</p> <p><i>The current regulations include specific requirements for grievance procedures for complaints of sexual harassment that apply to all recipients (except that hearings and cross-examination by a party’s representative are required only in postsecondary institutions). (Current § 106.45) Many of those requirements are also in proposed § 106.45. Some are in proposed § 106.46, discussed below, which would apply only to postsecondary institutions in response to complaints of sex-based harassment involving a student complainant or student respondent.</i></p>

<p><b>Additional Requirements for Grievance Procedures for Sex-Based Harassment Complaints Involving a Postsecondary Student</b> <i>(Proposed § 106.46)</i></p>	<p>A postsecondary institution’s prompt and equitable written grievance procedures for complaints of sex-based harassment involving a student-complainant or student-respondent would include all of the requirements of proposed § 106.45, described above, and the following additional requirements under proposed § 106.46:</p> <ul style="list-style-type: none"> <li>• Written notice to the parties of allegations, dismissal, delays, meetings, interviews, and hearings. (Proposed § 106.46(c), 106.46(d), 106.46(e)(1) and 106.46(e)(5))</li> <li>• Opportunity to have an advisor of the party’s choice at any meeting or proceeding. (Proposed § 106.46(e)(2)-(3))</li> <li>• Equitable access to relevant and not otherwise impermissible evidence or to a written report summarizing the evidence. (Proposed § 106.46(e)(6))</li> <li>• A process to assess credibility of parties and witnesses, when necessary, that includes either: <ul style="list-style-type: none"> <li>○ Allowing the decisionmaker to ask relevant and not otherwise impermissible questions in a meeting or at a live hearing, and allowing the parties to propose relevant and not otherwise impermissible questions for the decisionmaker or investigator to ask during a meeting or live hearing. (Proposed § 106.46(f)(1)(i)).</li> <li>○ Allowing an advisor for each party to ask relevant and not otherwise impermissible questions to other parties and any witnesses during a live hearing. (Proposed § 106.46(f)(1)(ii))</li> </ul> </li> <li>• Permitting, but not requiring, a live hearing. When a live hearing is permitted, a recipient must allow the parties, on request, to participate from separate locations using technology. (Proposed § 106.46(g))</li> <li>• Not permitting questions that are unclear or harassing of the party being questioned. (Proposed § 106.46(f)(3))</li> <li>• Not relying on a statement of a party that supports that party's position if the party does not respond to questions related to their credibility, and not drawing an inference about whether sex-based harassment</li> </ul>
<b>Issue</b>	<b>The Title IX NPRM</b>
	<p>occurred based solely on a party's or witness's refusal to respond to questions related to their credibility. (Proposed § 106.46(f)(4))</p> <ul style="list-style-type: none"> <li>• Providing written notice of the determination that includes a description of the allegations, information about the policies and procedures used to evaluate the allegations, the decisionmaker’s evaluation of the relevant evidence and determination of whether sex-based harassment occurred, disciplinary sanctions and remedies if relevant, and information about appeal procedures. (Proposed § 106.46(h))</li> <li>• Providing an opportunity to appeal based on procedural irregularity, new evidence, and conflict of interest or bias, as well as any other bases offered equally to the parties by the recipient. (Proposed § 106.46(i))</li> </ul> <p><i>The current regulations include many of these requirements for all recipients (except that hearings are optional at non-postsecondary recipients) but only for complaints of sexual harassment. (Current § 106.45)</i></p>
<p><b>Informal Resolution</b> <i>(Proposed § 106.44(k))</i></p>	<p>The proposed regulations would permit a recipient to offer an informal resolution process if appropriate whenever it receives a complaint of sex discrimination or has information about conduct that may constitute sex discrimination under Title IX in its education program or activity.</p> <ul style="list-style-type: none"> <li>• Participation in informal resolution must be voluntary.</li> <li>• Informal resolution is not permitted in situations in which an employee is accused of sex discrimination against a student. (Proposed § 106.44(k))</li> </ul> <p><i>The current regulations permit informal resolution only if a formal complaint alleging sexual harassment has been filed. (Current § 106.45(b)(9))</i></p>
<p><b>Retaliation</b> <i>(Proposed §§ 106.2, 106.71)</i></p>	<p>The proposed regulations would clarify that Title IX protects a person from retaliation, including peer retaliation, and that protection against retaliation is necessary to fulfill Title IX’s requirement that recipients operate their education programs or activities free from sex discrimination. (Proposed § 106.71)</p> <ul style="list-style-type: none"> <li>• Retaliation would be defined as intimidation, threats, coercion, or discrimination against anyone because the person has reported possible sex discrimination, made a sex-discrimination complaint, or participated in any way in a recipient’s Title IX process. (Proposed § 106.2)</li> <li>• A recipient would be prohibited from taking action against a student or employee under its code of conduct for the purpose of intimidating, threatening, coercing, or discriminating against someone because they provided information or made a complaint regarding sex discrimination. (Proposed § 106.71(a))</li> <li>• Peer retaliation, which would be defined as retaliation by one student against another student, would also be prohibited. (Proposed §§ 106.2, 106.71(b))</li> </ul> <p><i>The current regulations prohibit retaliation; they do not include definitions of either “retaliation” or “peer retaliation.” (Current § 106.71)</i></p>

Issue	The Title IX NPRM
<p><b><i>Discrimination Based on Pregnancy or Related Conditions</i></b></p> <p><b><i>(Proposed § 106.2, 106.21(c), 106.40, 106.57)</i></b></p>	<p>The proposed regulations would clarify that recipients must protect students and employees from discrimination based on pregnancy or related conditions (defined in proposed § 106.2), including by providing reasonable modifications for students, (proposed § 106.40(b)(3)(ii) and (b)(4)), reasonable break time for employees for lactation (proposed § 106.57(e)(1)), and lactation space for both students and employees (proposed §§ 106.40(b)(3)(iv) and 106.57(e)(2)).</p> <p>The proposed regulations would also modernize and clarify Title IX’s longstanding prohibition against treating parents differently on the basis of sex, including by defining “parental status” to include, e.g., adoptive or stepparents, or legal guardians). (Proposed § 106.2)</p> <p>Under the proposed regulations, a recipient would be required ensure that when a student (or a student’s parent, guardian, or authorized legal representative) tells a recipient’s employee of the student’s pregnancy or related conditions, the employee must provide information on how to contact the Title IX Coordinator for further assistance. (Proposed § 106.40(b)(2)). Once a student or the student’s representative notifies the Title IX Coordinator, the Title IX Coordinator must:</p> <ul style="list-style-type: none"> <li>• Provide the student with the option of individualized, reasonable modifications as needed to prevent discrimination and ensure equal access to the recipient’s education program or activity. (Proposed § 106.40(b)(3)(ii) and (b)(4))</li> <li>• Allow the student a voluntary leave of absence for medical reasons and reinstatement upon return. (Proposed § 106.40(b)(3)(iii))</li> <li>• Provide the student a clean, private space for lactation. (Proposed § 106.40(b)(3)(iv))</li> </ul> <p>A recipient would be required to provide its employees with reasonable break time for lactation, as well as a clean and private lactation space. (Proposed § 106.57(e)(1)-(2))</p> <p><i>The current regulations prohibit discrimination against students, employees, and applicants based on pregnancy, childbirth, and recovery. The current regulations also prohibit recipients from adopting rules that treat parents differently on the basis of sex. (Current §§ 106.21(c)(2), 106.40(a)-(b), and 106.57(a)-(b))</i></p>
<p><b><i>Discrimination Based on Sexual Orientation, Gender Identity, and Sex Characteristics</i></b></p>	<p>The proposed regulations would make clear that Title IX prohibits all forms of sex discrimination, including discrimination based on sexual orientation, gender identity, and sex characteristics. (This proposed provision also addresses discrimination based on sex stereotypes and pregnancy or related conditions.) (Proposed § 106.10)</p>
Issue	The Title IX NPRM
<p><b><i>(Proposed §§ 106.10, 106.31(a)(2), 106.41(b)(2))</i></b></p>	<p>The proposed regulations would address discrimination based on sexual orientation, gender identity, and sex characteristics by:</p> <ul style="list-style-type: none"> <li>• Prohibiting recipients from separating or treating any person differently based on sex in a manner that subjects that person to more than minimal harm (unless otherwise permitted by Title IX). This includes policies and practices that prevent a student from participating in a recipient’s education program or activity consistent with their gender identity. This rule would not apply in contexts in which a particular practice is otherwise permitted by Title IX, such as admissions practices of traditionally single-sex postsecondary institutions or when permitted by a religious exemption. (Proposed § 106.31(a)(2))</li> </ul> <p>The Department will engage in a separate rulemaking to address Title IX’s application to the context of athletics and, in particular, what criteria recipients may be permitted to use to establish students’ eligibility to participate on a particular male or female athletic team. (See discussion of § 106.41.)</p>

A Federal court order vacated the following language in 34 C.F.R. § 106.45(b)(6)(i): “If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility.” *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021), appeals pending (1st Cir.). The Department will no longer enforce this portion of the provision and any related statements in this document may not be relied upon. See updated Questions and Answers resource and related Appendix on the Title IX Regulations on Sexual Harassment.



UNITED STATES DEPARTMENT OF EDUCATION  
Office for Civil Rights

January 15, 2021

**Part 1: Questions and Answers**  
**Regarding the Department’s Title IX Regulations**

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The Department of Education’s (Department) Office for Civil Rights (OCR), through its Outreach, Prevention, Education and Non-discrimination (OPEN) Center, issues the following technical assistance document to support institutions with meeting their obligations under the Title IX regulations. This is Part 1.

The Department announced new Title IX regulations on May 6, 2020. The new regulations were [published in the \*Federal Register\*](#) on May 19, 2020 at 85 Fed. Reg. 30026 (codified in 34 C.F.R. Part 106), and became effective on August 14, 2020. Many of the questions in this document are derived from questions posed to the OPEN Center via e-mail. This document supplements the [Question and Answer document](#) issued by the OPEN Center on September 4, 2020. OCR may periodically release additional Question and Answer documents addressing the Title IX regulations. All references and citations are to the official version of the Title IX regulations, as published in the Federal Register [here](#).

Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

**Applicability of Prior OCR Guidance**

**Question 1:** How should recipients reconcile the requirements in the Title IX regulations with different requirements in guidance documents previously issued by OCR?

**Answer 1:** In the Preamble to the Title IX regulations at 30535, the Department explains: “On September 22, 2017, the Department expressly stated that its 2017 Q&A along with the 2001 Guidance ‘provide information about how OCR will assess a school’s compliance with Title IX.’”

The Department further states at 30535 of the Preamble: “To the extent that these final regulations differ from any of the Department’s guidance documents (whether such documents remain in effect or are withdrawn), these final regulations, when they become effective, and not the Department’s guidance documents, are controlling.”

The Department also unequivocally states at 30029 of the Preamble to the regulations that “guidance is not legally enforceable,” and cites to *Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92, 96-98 (2015),

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for that proposition. Additionally, at 30068, the Department acknowledges that guidance documents do not have the force and effect of law and states: “Because guidance documents do not have the force and effect of law, the Department’s Title IX guidance could not impose legally binding obligations on recipients.”

The new Title IX regulations became effective on August 14, 2020, and the Department will not apply or enforce the new regulations retroactively. As to alleged sexual harassment occurring prior to the effective date of the new regulations, recipients may find it helpful to refer to the now-rescinded 2001 Revised Sexual Harassment Guidance and the 2017 Q&A on Campus Sexual Misconduct, which remain accessible on the Department’s website.

## Definitions

**Question 2:** If a formal complaint alleges attempted sexual assault, would that be covered under the definition of sexual harassment in 34 C.F.R. § 106.30(a), or would a recipient need to dismiss that complaint for Title IX purposes?

**Answer 2:** The Preamble to the Title IX regulations at 30174 and FN 777-779 addresses attempted sexual assault (such as rape): “With respect to an attempted rape, we define ‘sexual assault’ in § 106.30 by reference to the Clery Act, which in turn defines sexual assault by reference to the [Federal Bureau of Investigation’s Uniform Crime Reporting system], and the FBI has stated that the offense of rape includes attempts to commit rape.”

For further information on the definition of sexual harassment, see [this blog post](#) published by OCR. Additionally, even if allegations in a formal complaint do not meet the Title IX definition of sexual harassment, a recipient school is only required to dismiss such allegations *for purposes of Title IX* and may address such allegations under the recipient’s own code of conduct. 34 C.F.R. § 106.45(b)(3)(i).

## Deliberate Indifference

**Question 3:** Under the Title IX regulations, will the Department apply the deliberate indifference standard to a complaint regarding a recipient’s response to sexual harassment? For example, will the Department apply the deliberate indifference standard to assess a respondent’s allegations that the recipient’s grievance process was inequitable or that the supportive measures implemented by the recipient were unreasonably burdensome?

**Answer 3:** The Title IX regulations require a recipient to promptly respond to actual knowledge of sexual harassment in the recipient’s education program or activity against a person in the United States in a manner that is not deliberately indifferent. 34 C.F.R. § 106.44(a). The regulations further require, as part of the recipient’s response, that the recipient treat the parties equitably, which for a respondent means refraining from imposing disciplinary sanctions or other actions that are not supportive measures (as defined in 34 C.F.R. § 106.30) against a respondent, without following the 34 C.F.R. § 106.45 grievance process. See, e.g., 34 C.F.R. §§ 106.44(a), 106.45(b)(1)(i).

A Federal court order vacated the following language in 34 C.F.R. § 106.45(b)(6)(i): “If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility.” Victim Rights Law Center et al. v. Cardona, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021), appeals pending (1st Cir.). The Department will no longer enforce this portion of the provision and any related statements in this document may not be relied upon. See updated Questions and Answers resource and related Appendix on the Title IX Regulations on Sexual Harassment.

With respect to a respondent’s claim that a recipient’s grievance process was inequitable, the recipient’s legal obligation is to comply with 34 C.F.R. §§ 106.44, 106.45 as it conducts a grievance process. Where a recipient’s supportive measures unreasonably burden a respondent, those supportive measures would not meet the definition of a “supportive measure” in 34 C.F.R. § 106.30. The recipient must follow the grievance process specified in 34 C.F.R. § 106.45 before taking an action that is not a supportive measure, unless the emergency removal provision in 34 C.F.R. § 106.44(c) or administrative leave provision in 34 C.F.R. § 106.44(d) applies.

### **Program or Activity**

**Question 4:** May a recipient use the procedures outlined in 34 C.F.R. § 106.45 of the Title IX regulations even in cases where an incident of sexual harassment occurs outside of the recipient’s education program or activity and thus does not trigger the recipient’s duties under 34 C.F.R. § 106.44(a)?

**Answer 4:** Yes. Nothing in the regulations precludes a recipient from responding under its code of conduct to sexual harassment that does not trigger its duties under 34 C.F.R. § 106.44(a), using grievance procedures that nevertheless correspond with those described in 34 C.F.R. § 106.45. The regulations leave recipients flexibility in this regard.

### **Off-campus Locations**

**Question 5:** Is a recipient required to investigate a formal complaint alleging that sexual harassment occurred off campus or against a student engaged in a study abroad program, or must such complaints be dismissed?

**Answer 5:** The Title IX regulations recognize the statutory jurisdiction of Title IX’s language, which applies to persons in the United States. *See* 20 U.S.C. § 1681(a) (beginning with the words, “No person in the United States . . .”). A recipient’s study abroad program may be part of the recipient’s “education program or activity,” but Title IX does not extend to conduct that occurs outside the United States. However, even when a recipient must dismiss allegations of sexual harassment because the alleged misconduct occurred outside the United States, nothing in the regulations precludes the recipient from addressing those allegations under the recipient’s own code of conduct. 34 C.F.R. § 106.45(b)(3)(i).

With respect to conduct that occurs at an off-campus location within the United States, the regulations require a recipient to respond to actual knowledge of sexual harassment in the recipient’s education program or activity against a person in the United States. 34 C.F.R. § 106.44(a). The regulations state in 34 C.F.R. § 106.44(a): “Education program or activity” includes “locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.”

The Preamble to the regulations contains extensive discussion of the “education program or activity” jurisdictional condition, at 30195-30201, including, for example, the following statement from the Department at 30196 (footnotes omitted here):

A Federal court order vacated the following language in 34 C.F.R. § 106.45(b)(6)(i): “If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility.” Victim Rights Law Center et al. v. Cardona, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021), appeals pending (1st Cir.). The Department will no longer enforce this portion of the provision and any related statements in this document may not be relied upon. See updated Questions and Answers resource and related Appendix on the Title IX Regulations on Sexual Harassment.

For purposes of § 106.30, § 106.44, and § 106.45, the phrase “education program or activity” includes “locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurs” and also includes “any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.” The Title IX statute and existing Title IX regulations already contain detailed definitions of “program or activity” that, among other aspects of such definitions, include “all of the operations of” a postsecondary institution or local education agency. The Department will interpret “program or activity” in these final regulations in accordance with the Title IX statutory (20 U.S.C. 1687) and regulatory definitions (34 CFR 106.2(h)), guided by the Supreme Court’s language applied specifically for use in sexual harassment situations under Title IX regarding circumstances over which a recipient has control and (for postsecondary institutions) buildings owned or controlled by student organizations if the student organization is officially recognized by the postsecondary institution.

With respect to addressing such conduct via a recipient’s code of conduct, 34 C.F.R. § 106.45(b)(3)(i) expressly authorizes a recipient to address alleged misconduct that does not meet the Title IX jurisdictional requirements (i.e., did not allegedly occur in the recipient’s education program or activity, or did not occur against a person in the United States). Furthermore, at 30199 of the Preamble to the regulations, the Department notes:

[N]othing in the final regulations prevents recipients from initiating a student conduct proceeding or offering supportive measures to students affected by sexual harassment that occurs outside the recipient’s education program or activity. Title IX is not the exclusive remedy for sexual misconduct or traumatic events that affect students. As to misconduct that falls outside the ambit of Title IX, nothing in the final regulations precludes recipients from vigorously addressing misconduct (sexual or otherwise) that occurs outside the scope of Title IX or from offering supportive measures to students and individuals impacted by misconduct or trauma even when Title IX and its implementing regulations do not require such actions.

### **Parents (Role, Filing Complaints)**

**Question 6:** Is a recipient required to notify a parent or guardian of reported sexual harassment that affects that parent or guardian’s student?

**Answer 6:** To comply with 34 C.F.R. § 106.6(g) (i.e., in order to not derogate the legal rights of parents and guardians), a recipient may need to notify a parent or legal guardian so that the recipient adequately respects any underlying legal rights of a parent or guardian to make decisions “on behalf of” a complainant, respondent, or other individual involved in a Title IX matter. Additionally, the Title IX regulations impose a duty on the recipient not to respond in a manner that is deliberately indifferent. 34 C.F.R. § 106.44(a). Thus, if it would be “clearly unreasonable in light of the known circumstances” for the recipient not to notify a parent or legal guardian of reported sexual harassment

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that affects that parent or guardian’s student, the school must notify the parent or guardian of the Title IX matter.

## Employees

**Question 7:** Do the requirements in the Title IX regulations apply to allegations between employees of a recipient?

**Answer 7:** Yes. The Title IX regulations, in 34 C.F.R. § 106.30(a), define “complainant” and “respondent” respectively as “an individual who is alleged to be the victim” and “an individual who has been reported to be the perpetrator.” Any person may be a complainant or respondent, regardless of whether the person is a student, employee, or otherwise affiliated with the university.

Similarly, the regulations require a university to respond promptly when the university has actual knowledge of sexual harassment in the university’s education program or activity against a person in the United States, and that response must treat the complainant and respondent equitably by offering supportive measures to the complainant and refraining from imposing disciplinary sanctions on the respondent without following a grievance process that complies with 34 C.F.R. § 106.45. (34 C.F.R. § 106.44(a)). Thus, the regulations cover sexual harassment allegations in cases where the complainant and respondent are both employees.

At 30439 of the Preamble to the regulations, the Department explains:

The Department appreciates support for its final regulations, which apply to employees. Congress did not limit the application of Title IX to students. Title IX, 20 U.S.C. 1681, expressly states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . . .” Title IX, thus, applies to any person in the United States who experiences discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. Similarly, these final regulations, which address sexual harassment, apply to any person, including employees, in an education program or activity receiving Federal financial assistance.

(footnotes omitted).

Recipients who are subject to both Title VII and Title IX must comply with both. The Title IX regulations, at 34 C.F.R. § 106.6(f), provide that nothing about the Title IX regulations lessens an individual’s rights under Title VII. In the Preamble to the regulations, at 30438-30441, the Department discusses at length the intersection between Title VII and the Title IX regulations, and the application of the Title IX regulations to employees.

**Question 8:** Is a recipient permitted to conduct teacher or faculty discipline processes in which sanctions are reviewed by a separate committee, and which can lead to tenure revocation proceedings, outside of the requirements of 34 C.F.R. §106.45, or are recipients required to combine the

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determination regarding responsibility and sanctions aspects of a Title IX grievance process into a single process subject to the requirements of 34 C.F.R. § 106.45?

**Answer 8:** The Title IX regulations, at 34 C.F.R. § 106.45(b)(7), require a recipient’s decision-maker to issue a written determination regarding responsibility that must include, among other items, the result as to each allegation and rationale for the result, any disciplinary sanctions imposed by the recipient against the respondent, and whether remedies will be provided by the recipient to the complainant.

The regulations do not preclude a recipient from using one decision-maker to reach the determination regarding responsibility, and having different decision-maker(s) (e.g., a tenure committee) determine appropriate disciplinary sanctions (including making such a decision during a separate process, such as another hearing), so long as the end result is that the single written determination includes any disciplinary sanctions imposed by the recipient against the respondent, pursuant to 34 C.F.R. § 106.45(b)(7). The issuance of a written determination cannot be a piecemeal process that is broken down into chronologically occurring sub-parts.

Recipients should also remain aware of their obligation to conclude the grievance process within the reasonably prompt time frames designated in the recipient’s grievance process, under 34 C.F.R. § 106.45(b)(1)(v). Additionally, each decision-maker—whether an employee of the recipient or an employee of a third party such as a consortium of schools—must not have a conflict of interest or bias for or against complainants or respondents generally, or with respect to an individual complainant or respondent, pursuant to 34 C.F.R. § 106.45(b)(1)(iii).

The above principles apply to recipients that are not postsecondary institutions, with respect to determinations regarding responsibility and sanction decisions involving teachers, staff, or other employees, except that the regulations do not govern whether a non-postsecondary institution holds a hearing as part of its Title IX grievance process.

## Record-Keeping

**Question 9:** What happens to records following the required seven-year retention period?

**Answer 9:** The Title IX regulations require that the records described in 34 C.F.R. § 106.45(b)(10) must be maintained for a period of seven years. The regulations do not specify what must or may happen to such records after the seven-year period has elapsed. In the Preamble to the regulations at 30411, the Department notes that “while the final regulations require records to be kept for seven years, nothing in the final regulations prevents recipients from keeping their records for a longer period of time if the recipient wishes or due to other legal obligations.”

A Federal court order vacated the following language in 34 C.F.R. § 106.45(b)(6)(i): "If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility." Victim Rights Law Center et al. v. Cardona, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021), appeals pending (1st Cir.). The Department will no longer enforce this portion of the provision and any related statements in this document may not be relied upon. See updated Questions and Answers resource and related Appendix on the Title IX Regulations on Sexual Harassment.

## FERPA and Confidentiality

**Question 10:** The Title IX regulations make the release of a respondent's identity confidential unless the FERPA exceptions apply. FERPA permits but does not require the nonconsensual disclosure of records by postsecondary educational institutions in connection with disciplinary proceedings concerning crimes of violence or non-forcible sex offenses. Crimes of violence and non-forcible sex offenses do not include all forms of sexual harassment as defined in 34 C.F.R § 106.30(a). Does that mean that recipients cannot reveal the identity of a respondent found responsible for sexual harassment, including in response to a reference check, because it would be retaliatory to release this confidential information, assuming there is no state law requiring this information to be revealed?

**Answer 10:** In the Preamble to the regulations at 30426-27 (emphasis added), the Department addresses the intersection of FERPA and the regulations' requirement in 34 C.F.R. § 106.45(b)(5)(vi).

The Title IX regulations, at 34 C.F.R. § 106.71(a), state the general rule that a recipient must keep confidential the identity of any person who has reported sexual harassment, or who has been reported to be a perpetrator of sexual harassment. The purpose of this provision is to prevent the school from retaliating against anyone. This duty of confidentiality has three exceptions in 34 C.F.R. § 106.71(a): if disclosure is permitted under FERPA; if disclosure is required by law; or if disclosure is necessary to carry out the purposes of Title IX and its regulations, including to conduct a grievance process.

A recipient's disclosure of the identity of a respondent cannot be made with a retaliatory purpose without violating 34 C.F.R. § 106.71. If the disclosure is made by a recipient without falling into one of the three exceptions listed in 34 C.F.R. § 106.71, OCR may view the disclosure as potentially retaliatory, and examine the facts and circumstances to determine whether the disclosure either (i) satisfied one of the three exceptions (for example, the disclosure was necessary to carry out the purposes of the Title IX regulations), or (ii) was made for a non-retaliatory purpose.

**Question 11:** How can a recipient address a complainant's request for confidentiality, including in instances where a Title IX Coordinator signs the formal complaint initiating an investigation into a complainant's sexual harassment allegations?

**Answer 11:** The Title IX regulations balance a complainant's desire for confidentiality (in terms of, for instance, the complainant's identity not being disclosed to the respondent) with a school's discretion to pursue an investigation where factual circumstances warrant an investigation even though the complainant does not desire to file a formal complaint or participate in a grievance process. In the Preamble to the regulations at 30133-30134, the Department discusses these issues at length, including the following (footnotes omitted here):

A complainant (or third party) who desires to report sexual harassment without disclosing the complainant's identity to anyone may do so, but the recipient will be unable to provide supportive measures in response to that report without knowing the complainant's identity. If a complainant desires supportive measures, the recipient can, and should, keep the complainant's identity confidential (including from the respondent), unless disclosing the complainant's identity is necessary to provide

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supportive measures for the complainant (e.g., where a no-contact order is appropriate and the respondent would need to know the identity of the complainant in order to comply with the no-contact order, or campus security is informed about the no-contact order in order to help enforce its terms). . . .

A formal complaint initiates a grievance process (i.e., an investigation and adjudication of allegations of sexual harassment). A complainant (i.e., a person alleged to be the victim of sexual harassment) cannot file a formal complaint anonymously because § 106.30 defines a formal complaint to mean a document or electronic submission (such as an e-mail or using an online portal provided for this purpose by the recipient) that contains the complainant’s physical or digital signature or otherwise indicates that the complainant is the person filing the formal complaint. The final regulations require a recipient to send written notice of the allegations to both parties upon receiving a formal complaint. The written notice of allegations under § 106.45(b)(2) must include certain details about the allegations, including the identity of the parties, if known.

Where a complainant desires to initiate a grievance process, the complainant cannot remain anonymous or prevent the complainant’s identity from being disclosed to the respondent (via the written notice of allegations). Fundamental fairness and due process principles require that a respondent knows the details of the allegations made against the respondent, to the extent the details are known, to provide adequate opportunity for the respondent to respond. The Department does not believe this results in unfairness to a complainant. Bringing claims, charges, or complaints in civil or criminal proceedings generally requires disclosure of a person’s identity for purposes of the proceeding. Even where court rules permit a plaintiff or victim to remain anonymous or pseudonymous, the anonymity relates to identification of the plaintiff or victim in court records that may be disclosed to the public, not to keeping the identity of the plaintiff or victim unknown to the defendant. The final regulations ensure that a complainant may obtain supportive measures while keeping the complainant’s identity confidential from the respondent (to the extent possible while implementing the supportive measure), but in order for a grievance process to accurately resolve allegations that a respondent has perpetrated sexual harassment against a complainant, the complainant’s identity must be disclosed to the respondent, if the complainant’s identity is known. However, the identities of complainants (and respondents, and witnesses) should be kept confidential from anyone not involved in the grievance process, except as permitted by FERPA, required by law, or as necessary to conduct the grievance process, and the final regulations add § 106.71 to impose that expectation on recipients.

When a formal complaint is signed by a Title IX Coordinator rather than filed by a complainant, the written notice of allegations in § 106.45(b)(2) requires the recipient to send both parties details about the allegations, including the identity of the parties if known, and thus, if the complainant’s identity is known it must be disclosed in the written notice of allegations. However, if the complainant’s identity is unknown (for example, where a third party has reported that a complainant was victimized by sexual

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harassment but does not reveal the complainant’s identity, or a complainant has reported anonymously), then the grievance process may proceed if the Title IX Coordinator determines it is necessary to sign a formal complaint, even though the written notice of allegations does not include the complainant’s identity.

## Clery Act

**Question 12:** Do the Title IX regulations intend to mirror Clery Act geography in all off-campus descriptions?

**Answer 12:** No. The Title IX regulations, at 34 C.F.R. § 106.44(a), state that a recipient’s “education program or activity” includes “any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.” At page 30197 of the Preamble to the regulations, the Department explains:

We note that the revision in § 106.44(a) referencing a “building owned or controlled by a student organization that is officially recognized by a postsecondary institution” is not the same as, and should not be confused with, the Clery Act’s use of the term “noncampus building or property,” even though that phrase is defined under the Clery Act in part by reference to student organizations officially recognized by an institution.

For example, “education program or activity” in these final regulations includes buildings within the confines of the campus on land owned by the institution that the institution may rent to a recognized student organization. As discussed in the “Clery Act” subsection of the “Miscellaneous” section of this preamble, the Clery Act and Title IX serve distinct purposes, and Clery Act geography is not co-extensive with the scope of a recipient’s education program or activity under Title IX.

(internal footnotes omitted).

**Question 13:** How would a complainant’s request to dismiss, or a postsecondary institution’s decision to dismiss, a formal complaint of sexual harassment under Title IX affect the postsecondary institution’s responsibility under the Clery Act?

**Answer 13:** A complainant’s request to dismiss or a recipient’s decision to dismiss a formal complaint of sexual harassment under Title IX does not affect a postsecondary institution’s obligations under the Clery Act, if the Clery Act applies to the institution. The Title IX regulations do not change a postsecondary institution’s responsibilities under the Clery Act. At page 30511 of the Preamble to the Title IX regulations, the Department states: “These final regulations do not change, affect, or alter any rights, obligations, or responsibilities under the Clery Act.”

## Elementary and Secondary School Proceedings

**Question 14:** Do the provisions in the Title IX regulations regarding a complainant’s prior sexual history and sexual predisposition apply at both the elementary and secondary school and postsecondary levels?

A Federal court order vacated the following language in 34 C.F.R. § 106.45(b)(6)(i): “If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility.” Victim Rights Law Center et al. v. Cardona, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021), appeals pending (1st Cir.). The Department will no longer enforce this portion of the provision and any related statements in this document may not be relied upon. See updated Questions and Answers resource and related Appendix on the Title IX Regulations on Sexual Harassment.

**Answer 14:** Yes. The Title IX regulations state that with or without a hearing, questions and evidence about the complainant’s sexual predisposition are never relevant, and questions and evidence about a complainant’s prior sexual behavior are not relevant unless such questions and evidence are offered to (1) prove that someone other than the respondent committed the conduct alleged by the complainant, or (2) if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(b)(6)(i)-(ii). The same requirements apply at all educational levels and to all recipients whose education programs or activities are covered by Title IX.

**Question 15:** Are all of the written notifications and opportunities for parties to provide feedback during an investigation of a formal complaint, outlined in 34 C.F.R. § 106.45, required for both elementary and secondary schools, and postsecondary institutions? If not, what Title IX grievance process requirements differ for elementary and secondary schools?

**Answer 15:** All of the provisions in 34 C.F.R. § 106.45 apply equally to all recipients except § 106.45(b)(6) (regarding hearings). Thus, all recipients (including elementary and secondary schools) must comply with, for instance: 34 C.F.R. §§ 106.45(b)(2) (written notice of allegations); 106.45(b)(3) (written notice of dismissals); 106.45(b)(5)(v) (written notice of investigatory interviews and meetings); 106.45(b)(5)(vi) (parties’ inspection and review of evidence); 106.45(b)(5)(vii) (parties’ review of the investigative report); 106.45(b)(7) (written determination regarding responsibility); and 106.45(b)(8) (appeals).

The Department has also created a [website](#) to aid schools, students, and other stakeholders to better understand the new Title IX regulations.

If you have questions for OCR, want additional information or technical assistance, or believe that a school is violating federal civil rights law, visit OCR’s website at [www.ed.gov/ocr](http://www.ed.gov/ocr), or the Department’s Title IX page at [www.ed.gov/titleix](http://www.ed.gov/titleix). You may contact OCR at (800) 421-3481 (TDD: 800-877-8339), [ocr@ed.gov](mailto:ocr@ed.gov), OCR’s Outreach, Prevention, Education and Non-discrimination (OPEN) Center at [OPEN@ed.gov](mailto:OPEN@ed.gov), or e-mail the OPEN Center with additional questions about the Title IX regulations at [T9questions@ed.gov](mailto:T9questions@ed.gov). You may also fill out a complaint form online at <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

October 17, 2023

Cynthia Ritchie, Superintendent  
By email: ritchiec@newlondon.org

Re: Compliance Review No. 01-20-5001  
New London Public Schools

Dear Superintendent Ritchie:

This letter is to advise you of the outcome of the above-referenced compliance review of New London Public Schools (District), which the U.S. Department of Education, Office for Civil Rights (OCR) initiated on March 12, 2020.

OCR initiated this compliance review pursuant to our authority under the Title IX regulation at 20 U.S.C. Section 1681 *et seq.*, and its implementing regulation at 34 C.F.R. § 106.71, which incorporates by reference the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, at 34 C.F.R. § 100.7(a). This regulation authorizes OCR to periodically review the practices of recipients to determine whether they are complying with the laws OCR enforces.

### Summary of Findings and Concerns

OCR determined that the District violated Title IX as follows:

- The District did not ensure adequate Title IX coordination and oversight during the 2020-2021 and 2021-2022 school years.
- The District did not adopt and publish grievance procedures that complied with the Title IX regulation.
- The District did not respond equitably to complaints of employee-involved sexual harassment during the 2018-2019 school year.<sup>1</sup>

OCR also identified the following concerns:

- The District may not have ensured adequate Title IX coordination and oversight during the 2019-2020 school year.
- The District's recordkeeping practices with regard to Title IX complaints may not have been compliant with the Title IX regulation (incorporating 34 C.F.R. § 100.6(b)).
- The District may not have responded equitably to complaints of student-involved sexual harassment during the 2017-2018, 2018-2019, and 2019-2020 school years.

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<sup>1</sup> For purposes of this compliance review, the term "student-involved sexual harassment" means an allegation of sexual harassment by a student-respondent against another student; "employee-involved sexual harassment" means an allegation of sexual harassment by an employee-respondent against a student.

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

Because OCR identified both violations of Title IX and compliance concerns during its investigation of this compliance review, OCR determined that it was appropriate to resolve the allegations in this compliance review pursuant to Section 303(c) of its *Case Processing Manual*, which provides that a “mixed determination” is appropriate for complaints with multiple allegations where the allegations will be resolved in different ways.

The relevant facts, legal standards, and conclusions are summarized below.

### **Methodology**

The District is in southeastern Connecticut and serves more than 3,000 students. The District is comprised of four elementary schools that serve students in kindergarten through fifth grade, one middle school that serves students in sixth grade through eighth grade, and one high school.

OCR’s compliance review examined the District’s handling of complaints of sexual harassment, including sexual violence, for the 2017-2018, 2018-2019, and 2019-2020 school years (the Review Period). Because the U.S. Department of Education’s amended Title IX regulation took effect in August 2020, this portion of the investigation reviewed compliance with the regulation in effect during the academic years OCR had notified the District OCR would review.

OCR analyzed case file information regarding the District’s response to reports of sexual harassment over the Review Period; the District’s Title IX policies and grievance procedures; and documents related to employee training on sexual harassment and other initiatives undertaken by the District to reduce instances of, and respond appropriately to, sexual harassment. OCR also interviewed the District’s Title IX Coordinator.<sup>2</sup> Additionally, OCR reviewed materials related to a State agency’s investigation into the District’s handling of staff-involved sexual harassment.

OCR also examined the District’s coordination of its Title IX responsibilities.

### **LEGAL STANDARDS**

OCR applied the Title IX regulation in effect during the Review Period.<sup>3</sup>

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states: “Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.”

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<sup>2</sup> For purposes of this letter, “Title IX Coordinator” refers to the individual employed by the District in the position during the 2020-2021 and 2021-2022 school years whom OCR interviewed in March 2022 and discusses further below. OCR also refers generally to the position of “Title IX coordinator” when discussing the position in the context of the District’s Title IX processes versus a specific individual.

<sup>3</sup> Amendments to the Title IX regulation went into effect on August 14, 2020, and can be viewed [here](#). The Title IX regulation that was in effect for purposes of this compliance review can be found [here](#).

Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence.

The Title IX regulation requires that each recipient notify applicants for admission and employment, students and parents of elementary and secondary school students and employees, among others, that it does not discriminate on the basis of sex in its education programs or activities and that it is required by Title IX not to discriminate in such a manner. The Title IX regulation requires that the notice state, at least, that the requirement not to discriminate in the education program or activity extends to employment therein and admission thereto unless Subpart C of the regulation does not apply and that inquiries concerning Title IX can be referred to the Title IX coordinator or to OCR. *See* 34 C.F.R. § 106.9(a).

In addition, the Title IX regulation requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including any investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or alleging any actions which would be prohibited by Title IX. Under the Title IX regulation, a recipient is also required to notify all its students and employees of the name, office address, and telephone number of the employee(s) designated as the recipient’s coordinator of its Title IX responsibilities. *See* 34 C.F.R. § 106.8(a).

The Title IX regulation also requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX. *See* 34 C.F.R. § 106.8(b). There is no fixed time frame to determine whether a resolution has been prompt; rather, OCR evaluates a recipient’s good faith efforts under the circumstances. An equitable response requires a trained investigator to analyze and document the available evidence to support reliable decisions, and any rights or opportunities that a recipient makes available to one party during an investigation should be made available to the other party on equal terms. OCR evaluates on a case-by-case basis whether the resolution of a sexual harassment complaint was prompt and equitable.

A school has a responsibility to respond to notice of sexual harassment. An appropriate response may include taking interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

The current Title IX regulation at 34 C.F.R. § 106.8(a) states: “Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the ‘Title IX Coordinator.’”

## **SUMMARY OF THE EVIDENCE**

### ***Title IX Coordinator***

The District's Title IX coordinator in place during the Review Period took periodic extended [redacted content] leave during the 2019-2020 school year. While he served as the Title IX coordinator when present, the District delegated coverage of Title IX duties in his absence to its Executive Director of School and Family Support, and to two other individuals: an interim Human Resources administrator, and a consultant hired by the District. The Executive Director of School and Family Support joined the District in July 2019 and has a background in Title IX. The Executive Director of School and Family Support explained that the consultant supported the District in an almost full-time capacity during the 2019-2020 school year, and that all three individuals were notified of Title IX complaints when the Title IX coordinator was absent. However, she explained that her Title IX duties during the 2019-2020 school year were "minimal" and that she may have only been involved in one Title IX case resolution.

The District formally appointed the Executive Director of School and Family Support as the District's Title IX coordinator (hereinafter Title IX Coordinator) for the 2020-2021 school year. The Title IX coordinator who had been on [redacted content] leave during the 2019-2020 school year did not serve as the District's Title IX coordinator for any portion of the 2020-2021 school year and passed away in fall of 2020. According to OCR's investigation, the Title IX Coordinator split responsibilities and oversight of Title IX matters with another District administrator, the Executive Director of Talent and Human Resources. Under the system in place during the 2020-2021 and 2021-2022 school years, these two administrators divided their oversight of sexual harassment complaints: the Title IX Coordinator oversaw allegations of student-involved sexual harassment, and the Executive Director of Talent and Human Resources oversaw allegations of staff-involved sexual harassment. This same division of responsibility between student- and employee-related matters remained in place during the 2022-2023 school year.

During the Review Period through the present, the District also designated building-level Title IX coordinators at each school. The building-level Title IX coordinators were generally responsible for investigating and resolving matters involving student-respondents during the Review Period. This practice continued through at least the 2021-2022 school year, as confirmed by the Title IX Coordinator during her March 2022 interview with OCR. The Title IX Coordinator also explained that in some circumstances she or her designee would conduct the investigation if there was a concern about bias.

### ***Recordkeeping***

According to the District's data response, the building-level Title IX coordinators were responsible for recording, tracking, and resolving allegations of student-involved sexual harassment using several templates to record and track investigative information during the Review Period (a District investigative report, an investigative adult report, a student statement

form, and a non-student statement form).<sup>4</sup> However, the District did not provide OCR with records indicating that any of these templates were utilized for 12 out of 20 case files, nor did it generally produce comparable forms memorializing its investigative actions. The District explained that its efforts to collect responsive records were hindered both by the death of the previous Title IX Coordinator, who kept paper records, and by construction at the middle and high schools, where additional records were stored. In her interview with OCR, the Title IX Coordinator stated that no later than the 2019-2020 school year, all records on student-involved sexual harassment are turned over to the Human Resources office once a case is completed. Nonetheless, the Title IX Coordinator was unable to speak to whether this actually occurred prior to being appointed as Title IX Coordinator in fall 2020. The District introduced a centralized electronic recordkeeping system in the 2020-2021 school year and stated that it did not expect similar concerns regarding record maintenance and production to arise in the future.

The District records and tracks reports of student-involved sexual harassment in its software program, PowerSchool. OCR identified two incidents of alleged sexual harassment that were not listed in the PowerSchool log, which purports to capture all reports of student-involved sexual harassment during the Review Period. Specifically, OCR reviewed an email related to the District's investigation of alleged sexual harassment involving middle school students during the 2017-2018 school year; however, this incident was not included in the PowerSchool log. In another incident at an elementary school during the 2018-2019 school year, the investigating administrator's case notes reflect that she was referring the case to the Connecticut Department of Children and Families (DCF) due to its connection to the previous year's "Pre-Title IX," involving the student-respondent. While the 2018-2019 incident was included in the PowerSchool log, the related 2017-2018 "Pre-Title IX" incident was not.

Sexual harassment complaints against employees were referred to the Human Resources Office and the Title IX Coordinator for resolution. During the Review Period and through the present, these employee records are maintained in the Human Resources Office. Unlike the student-involved sexual harassment files, the employee-involved sexual harassment files were generally comprehensive and memorialized the District's investigative actions.

### ***Grievance Procedures***

The District provided OCR with its Title IX policies and procedures that were in effect during the Review Period. Of these, OCR identified four different grievance procedures for resolving complaints of discrimination based on sex: Policy 4000.1 (*Personnel – Certified/Non-Certified, Title IX*), (approved in 2005 and revised in fall 2019); Policy 4141.4 (*Reports of Suspected Abuse or Neglect of Children or Sexual Assault of Students by School Employees*) (approved in fall 2019); Policy 0521.1 (*Grievance Procedure for Section 504, Title IX, and Title VII Regulations*) (approved in 2005); and Policy 0521 (*Nondiscrimination*), (approved in 2016). Policies 4141.4 and 0521 remain available on the District's website during the 2022-2023 school year and do not indicate they have been rescinded.<sup>5</sup> The District, in its data response and during the Title IX Coordinator's interview with OCR, was unable to identify the specific grievance procedure(s) it

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<sup>4</sup> The investigative process and recordkeeping procedures have been revised since the Review Period, as detailed below.

<sup>5</sup> As discussed below, the District created new Title IX grievance procedures after the Review Period.

followed during the Review Period for complaints against students. The District also did not explain the different grievance procedures’ applicability when they appear to overlap as to student and employee sex discrimination complaints.

a. Policy 4000.1 (*Personnel – Certified/Non-Certified, Title IX*)

Policy 4000.1 sets forth a process for resolving Title IX complaints against employees. The policy states that complaints shall be filed in writing with the Board-designated Compliance Officer (defined as the Assistant Superintendent). The Compliance Officer is responsible for investigating all complaints, effectuating any changes necessary to eliminate discrimination, and informing the complainant in writing of the Compliance Officer’s actions within 10 days of complaint receipt. Appeals may be filed with the Superintendent and then the Board of Education. Employees who are represented by labor organizations are directed to process all complaints of alleged Title IX violations through the grievance procedures set forth in the applicable collective bargaining contracts. As noted above, Policy 4000.1 no longer appears on the District’s website.

b. Policy 4141.4 (*Reports of Suspected Abuse or Neglect of Children or Sexual Assault of Students by School Employees*)

Policy 4141.4 states, in relevant part, that all school employees must report suspected sexual assault of a student by a school employee.<sup>6</sup> Mandated reporters are required to file with DCF or law enforcement and with the building principal (or designee) or the Superintendent (or designee). Non-mandated reporters must notify the Superintendent (or designee), who will file a report with DCF or law enforcement if there is reasonable cause to suspect or believe a child is a victim of sexual assault by a school employee. The Superintendent will “thoroughly investigate” the report upon notice from DCF or law enforcement that the District’s investigation will not interfere, and will give priority to any DCF/law enforcement investigation. The District’s investigation will include the opportunity for the respondent to respond to the allegations and will seek to minimize the number of interviews a suspected student victim of sexual assault must undergo.

If DCF determines there is reasonable cause to believe that a student has been sexually assaulted by a District employee, the Superintendent is directed to suspend the employee. Additional employment actions will be taken in accordance with state law. The policy further provides that, regardless of DCF’s/law enforcement’s findings, the District may take disciplinary action if the Superintendent’s investigation produces evidence that a student has been a victim of sexual assault by a school employee.

As noted above, Policy 4141.4 still appears on the District’s website.<sup>7</sup>

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<sup>6</sup> The policy also addresses suspected child abuse and/or neglect, nonaccidental physical injury, and imminent risk of serious harm.

<sup>7</sup> <https://www.newlondon.org/cms/lib/CT50000644/Centricity/domain/38/boe%20policies/4141.4%20-%20Child%20Sex%20Abuse%20or%20Assault%20Response%20and%20Reporting.pdf> (last accessed May 26, 2023).

c. Policy 0521.1 (*Grievance Procedure for Section 504, Title IX, and Title VII Regulations*)

Policy 0521.1 describes the process for responding to complaints of discrimination filed against students and employees under the above-referenced laws. The policy sets forth both informal and formal procedures. Under the informal procedure, a complainant (student, employee, or applicant to a program) is directed to contact the “Building principal/supervisor” within 30 days of the alleged discrimination to discuss the complaint. At that time, the building principal/supervisor will explain the grievance procedures and commence an investigation within 10 working days of complaint receipt, including informal meetings with the parties, confidential counseling where advisable, and an attempt to help the parties reach an informal resolution.

If the complainant is dissatisfied with the informal resolution process, the complainant may initiate the formal process by submitting a written complaint to the building principal/supervisor within 20 school days of the initial informal meeting. The building principal then has five days to render a decision and explain to the complainant, in writing, the reasons for the decision. Appeals may be filed with the Superintendent and then the Board of Education. As noted above, Policy 0521.1 no longer appears on the District’s website.

d. Policy 0521 (*Nondiscrimination*)

The District identified Policy 0521 as its notice of nondiscrimination; however, it also contains a complaint procedure for students, employees, and third parties alleging discrimination based on gender, sexual orientation, or gender identity or expression.<sup>8</sup> Covered individuals alleging discrimination under this policy are directed to file an oral or written complaint with the building principal. The building principal will then conduct an investigation (unless directed otherwise by the Compliance Officer), which “may” consist of interviews with the parties and other knowledgeable individuals and review of information/materials. The building principal will issue a decision to the parties within 15 days (unless additional time is required), including a summary of the investigation, a determination of whether the complaint has been substantiated and whether it is a violation of this policy, and a recommended disposition. Upon substantiation of the complaint, the District will take prompt, corrective action to ensure that such conduct ceases and will not reoccur. Appeals may be filed with the Compliance Officer. As noted above, Policy 0521 still appears on the District’s website.<sup>9</sup>

***The District’s Response to Reports of Sexual Harassment***

The District identified three reports of employee-involved sexual harassment and 20 reports of student-involved sexual harassment during the Review Period, a total of 23 reports involving 20 respondents. Ten reports were at the elementary school level, nine were at the middle school level (one of which involved sexual harassment of students by an employee), and four were at

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<sup>8</sup> The District also identified policies that were not grievance procedures, but rather policies expressing the District’s commitment to provide an environment free of sexual harassment, such as Policies 4112.112 (*Sex Discrimination and Sexual Harassment in the Workplace Personnel Policy for Personnel*, approved in fall 2018) and 5145.5 (Regarding Sex Discrimination and Sexual Harassment (Students), approved in fall 2018).

<sup>9</sup> <https://www.newlondon.org/cms/lib/CT50000644/Centricity/domain/38/boe%20policies/0521%20-%20Nondiscrimination.pdf> (last accessed May 26, 2023).

the high school level (two of which involved sexual harassment of students by an employee). Of these 23 reports, there were 12 recorded allegations of unwelcome physical contact.

The District produced limited documents related to reports of, and its response to, alleged sexual harassment, most notably for student-involved sexual harassment. For example, the District only produced four case files with an associated investigative report summarizing the District's investigative steps and findings. For nine of the reports, the District solely provided OCR with a log from PowerSchool – containing the incident's date, location, description, and outcome. For three other reports, the District produced one additional document (a discipline log).

### *Reports of Staff-Involved Sexual Harassment*

During the 2018-2019 school year, two District employees – Employee 1 and Employee 2 – were accused of sexually harassing District students.

#### a. Employee 1

In March 2019, DCF notified the District that a complaint had been filed against Employee 1, the [redacted content] at a District elementary school, for allegedly sexually assaulting two District middle school students inside the school. The assaults were alleged to have occurred in 2016 and 2017, while Employee 1 was a middle school employee. Employee 1 was also accused of recording the sexual assaults and sharing those videos with others.<sup>10</sup>

The District immediately placed Employee 1 on paid administrative leave on March 20, 2019 upon notification of the allegations by DCF. Employee 1's employment was subsequently terminated on May 13, 2019 after Employee 1 failed to appear at a mandatory pre-termination hearing. The District acknowledged in its narrative response to OCR that it did not conduct an independent investigation of the allegations because they were being investigated by the police and DCF. The information OCR reviewed to date indicates that the District took some responsive measures, such as dispatching crisis teams and holding parent meetings. The District also made a number of systemic changes to its Title IX system in the wake of the allegations against Employee 1 and Employee 2, which are detailed further below.

#### b. Employee 2

Employee 2 was a [redacted content] at the District's middle school and a [redacted content] coach at the high school during the 2018-2019 school year. Two reports of sexual harassment were filed with the District against him in March and May 2019.

On March 21, 2019, a student told a District employee that Employee 2 was having a sexual relationship with a District high school student. The employee reported this information to the High School [redacted content] on March 22, 2019, who immediately notified the High School

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<sup>10</sup> Employee 1 was arrested in May 2019 and charged with several crimes, including second-degree sexual assault, third-degree possession of child pornography, dissemination of voyeuristic material, and risk of injury to a minor. He pleaded no contest to two charges of risk of injury to a minor under a plea agreement and was sentenced to seven years in prison in April 2022.

Principal in writing, and Employee 2 was placed on administrative leave that day. On March 25, 2019, the District notified DCF of the allegation and began conducting what it referred to as a “preliminary investigation” in its letter of finding. According to the documentation provided, the preliminary investigation consisted of discussions with the allegedly harassed student, Employee 2, and the High School [redacted content]. The allegedly harassed student and Employee 2 denied having a sexual relationship. On March 28, 2019, the District sent Employee 2 a letter finding the allegation was unfounded and cleared him to return to work.

On May 9, 2019, a student reported to a District employee that, among other things, Employee 2 had engaged in a sexual relationship with another student, that the harassed student in the March 2019 report lied about her relationship with Employee 2, and that Employee 2 referred to a student as a “quick hit” in a conversation with another student. The student reporter expressed frustration that Employee 2 had been allowed to return to work and stated that no one was looking out for her classmates’ wellbeing. The student also noted that the entire [redacted content] knew about the relationship between Employee 2 and a student. On May 10, 2019, the employee notified the High School Principal of the new allegations against Employee 2. The District placed Employee 2 on administrative leave that day and notified DCF and the police. The District interviewed two paraprofessionals and at least one student about the allegations that month. On June 13, 2019, Employee 2 was terminated after failing to attend a pre-termination hearing.<sup>11</sup> OCR did not review any evidence demonstrating the District engaged in further investigative actions following Employee 2’s arrest on June 24, 2019.

Information reviewed by OCR indicates that at least two District employees may have been aware of Employee 2’s alleged misconduct but did not report it. One [redacted content] told the High School Principal during a May 23, 2019 interview that “everybody knew” about Employee 2’s relationship with a student.<sup>12</sup> A second staff member was arrested and charged with failing as a mandated reporter to report sexual misconduct of which she was allegedly aware concerning Employee 2.<sup>13</sup>

### *Reports of Student-Involved Sexual Harassment*

OCR reviewed the District’s response to the 20 reports of alleged student-involved sexual harassment in the District’s files. Of these 20 reports, the District produced four case files with an associated investigative summary. For the remaining 16 reports, OCR reviewed the District’s PowerSchool log (which was the only document produced for nine reports), incident reports, discipline logs, and/or staff emails. The District generally resolved the allegations between one day (in eight cases) and 16 days upon receipt of a report of sexual harassment. For four cases, however, the District did not provide OCR with information about the timing of its investigations/responses.

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<sup>11</sup> Employee 2 was arrested on a charge of sexual assault in the second degree in May 2019. In September 2020, the State’s Attorney’s office declined to prosecute Employee 2’s case.

<sup>12</sup> The School Resource Officer wrote in an internal email that he believed the relationship took place before Employee 2 was employed by the District, and the student was over 16.

<sup>13</sup> The staff member resigned from her position and the State’s Attorney’s office subsequently determined it would not prosecute her.

a. Elementary School Level

Of the 10 student-involved reports at the elementary school level, two case files note interim measures during the course of the investigation (immediate separation of students) and remedial measures for the harassed students upon substantiation of the allegations (changes to the respondents' class schedules, counseling). The remaining eight elementary school case files focus mostly or exclusively on the actions taken to address the incidents with the respondents. OCR observed in one case file, for example, that the District discussed a substantiated incident of inappropriate touching with the respondent and his family and suggested counseling; however, the file makes no mention of whether the respondent received counseling or whether the incident was similarly addressed with the harassed student and her family, and if any consideration was given to how to remedy the effects of the harassment and prevent recurrence.

In addition, OCR's review indicates that serial harassment involving student-respondents occurred or may have occurred:

- One of the respondents was involved in three separate incidents of inappropriate touching during the 2018-2019 school year. For the first two incidents (touching one student's skirt on two separate occasions), the District informed the respondent's parent and said the respondent needed to stay away from the harassed student. The District's Title IX records do not indicate if the respondent received disciplinary consequences and if the District monitored the respondent's behavior and separated the students after the first and/or second incident. Approximately six weeks after the second incident, the respondent's behavior escalated and he was accused of touching a second student's bottom and genitals, prompting the District to file a report with the DCF. Aside from contacting the respondent's parent, the file does not reflect whether the District took any other action than to report to DCF in response to the third allegation, including whether it conducted an investigation, contacted the harassed student's parent, or took any steps to address the needs of the harassed student.
- During the 2018-2019 school year, a second respondent was accused of grabbing the buttocks of another student. The PowerSchool log notes the District investigated and "addressed" the incident with the respondent, but that no additional follow-up was needed. The District's Title IX records also do not indicate what investigative steps were taken by the District, how it addressed the incident with the respondent, whether it offered any supportive measures to the harassed student, and why it determined no further action was needed. Approximately 10 months later, the District held a meeting with the respondent's parents concerning a safety plan to monitor the respondent, which raises a question, unanswered in the files, whether the respondent engaged in other related behavior or what behavior prompted the safety plan.
- In a third incident during the 2018-2019 school year, the District substantiated an allegation that a [redacted content] grade student-respondent told a peer he was going to rape her. The District referred the complaint to DCF because of its connection to a "Pre-Title IX inquiry" from the 2017-2018 school year involving the same student-respondent. The District did not provide OCR with information about the "pre-Title IX inquiry," including how it responded at the time. In addition, the Title IX Coordinator told OCR

that she was unfamiliar with a “pre-Title IX inquiry” and that it was no longer part of the District’s process.

b. Middle School Level

The District reported eight substantiated incidents of sexual harassment involving a student-respondent at the middle school level, all but one of which resulted in the out-of-school suspension of the respondent. Four of those case files note, at most, that the District met with the respondents and their families prior to issuing disciplinary consequences; however, the case files do not indicate whether the District also met with the harassed students and their families and offered both parties the opportunity to present evidence and witnesses. In the remaining three cases that resulted in out-of-school suspensions, a description of the investigative steps was either absent or lacked critical details, such as noting that the respondent was dismissive of the allegations “until evidence was shown”, without describing the evidence and the basis for discipline.

For four incidents, the respondents’ families received letters substantiating that the sexual harassment occurred and outlining the disciplinary consequences. The harassed students’ families, however, did not receive comparable letters, nor was there indication from OCR’s records review that they were otherwise notified of the outcome. Additionally, while some case files did not include written notice to either party at any point in the resolution process, there were often other records (e.g., PowerSchool log; disciplinary records) establishing that investigative information was orally conveyed to the respondents’ families. Those same records are silent as to whether the complainants’ families received similar information. Specifically, OCR reviewed six incidents in which the PowerSchool log and/or other documents reflect that the respondents’ families were contacted to discuss the substantiated reports of sexual harassment; however, these materials do not reference whether the harassed students’ families were also contacted.

c. High School Level

The District produced records related to two reports of student-involved sexual harassment at its high school. In one case of alleged sextortion during the 2017-2018 school year, the District immediately put interim measures into place, excusing the allegedly harassed student for early dismissal and separating the parties while the investigation was pending. After the sexual harassment allegation was substantiated, the District continued to separate the students and recommended the respondent for expulsion. By contrast, in another case, after substantiating an allegation of unwelcome sexual gestures and comments during the 2018-2019 school year, the District increased the respondent’s counseling; however, there is no documentation showing that it offered supportive or remedial measures to the harassed student.

***Recent District-Wide Title IX Changes***

In 2019, the Connecticut Office of the Child Advocate (OCA) commenced an investigation into the District’s response to allegations of abuse and neglect of students and the alleged failure of District employees to report suspected abuse or neglect. In February 2022, the OCA issued its

findings and recommendations. The OCA report noted deficiencies regarding the lack of a documented independent Title IX response to the allegations against Employees 1 and 2, as well as an absence of records demonstrating that the District addressed the educational losses suffered by the victim of Employee 2's actions and offered other supportive services. The OCA findings also noted structural deficiencies in the District's Title IX compliance framework, including a lack of information and training for staff, students, and parents regarding adult sexual misconduct, as well as an absence of policy provisions regarding adult sexual misconduct. The OCA recommended that the District create multiple reporting points for students and develop comprehensive and ongoing Title IX trainings for all stakeholders.

OCR confirmed that the District made changes to its Title IX response system that address many of the OCA's concerns, including, but not limited to, the following:

- Adoption of revised Title IX policies and a 15-step grievance process for responding to reports of Title IX sexual harassment (detailed below).
- Creation of sample investigation materials (e.g., sample investigative report, sample written determination regarding responsibility).
- Establishment of an electronic database at each school to receive and track complaints with oversight by the Human Resources and Central Offices (detailed below).
- Easier methods for reporting incidents, including the introduction of a reporting app and a complaint form available on District's website.
- Increased Title IX training during the onboarding of new staff, training of current staff, and training of students and parents, including on the following topics: new Title IX regulations, identifying and preventing adult sexual misconduct, teen dating and sexual assault prevention, mandated reporter requirements, and internet safety and exploitation.
- New leadership, including new District-level and building-level Title IX coordinators and new leadership teams at the high school and middle school (detailed below).
- Establishment of a Mental Health Department and Climate and Culture Department.

The OCA closure documents did not contain any forward-looking provisions of monitoring reports or review of case files to assess ongoing compliance.

a. Revised Title IX Policies and Grievance Procedures

The District informed OCR that in December 2021 it adopted new Title IX policies and procedures: Policy 4112.112 (*Sex Discrimination and Sexual Harassment in the Workplace (Personnel)*), Policy 5145.5 (*Title IX of the Education Amendments of 1972 – Prohibition of Sex Discrimination and Sexual Harassment (Students)*), and a 15-step grievance process.

Under Policies 4112.112 and 5145.5, which are virtually identical, any individual may make a report of sex discrimination and/or sexual harassment to any employee or directly to the Title IX Coordinator; any employee in receipt of allegations of sex discrimination or sexual harassment, or in receipt of a formal complaint, shall immediately forward such information to the Title IX Coordinator. Employees may also make a report of sexual harassment and/or sex discrimination to OCR or to the Connecticut Commission on Human Rights and Opportunities. District administration shall provide training to Title IX Coordinator(s), investigators, decisionmakers,

and any person who facilitates an informal resolution process, make the training materials publicly available on the Board of Education’s website, and distribute the policies and the accompanying Administrative Regulations (developed by the Superintendent to implement the policies) to staff, students and parents and legal guardians and make the policies and the Administrative Regulations available on the Board’s website. OCR did not locate the Administrative Regulations on the District’s/Board’s websites. The Title IX Coordinator in her interview with OCR did state, however, that the District follows a 15-step grievance process for responding to complaints of sexual harassment. Administrators are provided with these procedures, which are also shared with the complainant upon notice of the harassment and the respondent if a formal complaint is filed.

The District developed a 15-step checklist setting forth its grievance process for responding to actual notice of sexual harassment. Each step describes, in detail, both what to do and who is responsible throughout the Title IX process from notice of sexual harassment through implementation of responsibility determination/informal agreement and recordkeeping. For example, the checklist provides that the Title IX Coordinator will explain to the complainant the process for filing a formal complaint, offer supportive measures with or without a formal complaint, and determine if emergency removal of a student respondent or administrative leave of an employee respondent is required. If a formal complaint is filed, the Title IX Coordinator (suggested) will provide the respondent with a copy of the complaint and information about the grievance process and consider the informal grievance process. Assuming the complaint is not resolved informally, the investigator will then conduct an investigation (including an equal opportunity for the parties to provide witnesses and other evidence), allow the parties to review the evidence, and draft the investigative report. The decisionmaker will provide the opportunity for the parties to submit written questions and draft the responsibility determination (issued to the parties simultaneously). The Title IX Coordinator is tasked with implementation of the determination including remedies for the complainant and will retain required records for seven years.

#### b. Recordkeeping

During the 2020-2021 school year, the District introduced an electronic database at each school to intake all complaints involving both students and staff. The database assigns an intake number and records the date filed, the complainant’s name (if provided), subject of the allegation, status of the allegation, and the ultimate disposition and person tasked with closing the matter. Designated staff in the Human Resources and Central Offices have access rights to each school’s database to provide oversight and ensure compliance. In addition, the Title IX Coordinator explained to OCR that, at least during the 2020-2021 and 2021-2022 school years, the underlying records of responsive actions (outlined in the 15-step checklist) are turned over to the Executive Director of Talent and Human Resources, who is also generally responsible for maintaining electronic and paper records for both student and employee Title IX complaints. The Title IX Coordinator was unable to explain to OCR what information is saved in the electronic files and deferred to the Executive Director of Talent and Human Resources. OCR asked the Title IX Coordinator how she would go about identifying and locating these records; the Title IX Coordinator responded that she would need to contact the Executive Director of Talent and Human Resources for this information.

c. Current Title IX Coordinator

The District hired a new Title IX coordinator for the 2022-2023 school year to oversee student-related issues. In addition, the District now identifies the Executive Director of Talent and Human Resources as a Title IX coordinator as well; the District’s website lists these positions as: “Title IX Coordinator – Student Related Issues,” and “Title IX Coordinator – Non-Student Related Issues,” respectively.

**ANALYSIS**

OCR determined that the District violated Title IX with respect to its coordination of Title IX responsibilities in the 2020-2021 and 2021-2022 school years; its Title IX grievance procedures; and in its response to employee-involved sexual harassment during the Review Period. In addition, OCR identified compliance concerns in other areas identified below. These findings and concerns are explained below.

***Violation Findings***

a. Title IX Coordinator (2020-2021 and 2021-2022 School Years)

OCR concludes that the District’s manner of splitting Title IX responsibilities between two coordinators during the 2020-2021 and 2021-2022 school years did not ensure that there was sufficient oversight to ensure compliance with the Title IX regulation, as required. While schools may have multiple employees responsible for Title IX matters, fulfilling the Title IX regulation requires overall coordination and oversight of all Title IX matters, including sexual harassment, to ensure consistent practices and standards in handling complaints and investigations, and to identify patterns and concerns that may warrant follow-up action. Here, the Title IX Coordinator acknowledged that she did not have direct access to any sexual harassment case files, which were all maintained by the Executive Director of Talent and Human Resources; nor was she aware of their contents. This inequitable ability to readily access student-involved case files, coupled with the District’s designation of two Title IX coordinators with discrete oversight responsibilities (student vs. employee), indicates both a lack of oversight over all Title IX matters and coordination between the two Title IX coordinators.

b. Title IX Grievance Procedures

OCR concludes that the District’s Title IX grievance procedures in effect for the Review Period were not compliant with the Title IX regulation. First, the District did not provide effective notice about its Title IX grievance procedures for complaints against students and employees. The existence of multiple overlapping procedures may have caused confusion as to which procedures would apply to which allegations of sexual harassment and, therefore, did not provide sufficient notice of the grievance procedure applicable to complaints of sexual harassment. OCR notes that even the Title IX Coordinator was unable to untangle and explain these various processes. All four policies reviewed by OCR apply to complaints of sex-based discrimination by a District employee, and both Policy 0521.1 and Policy 0521 apply to complaints of sex discrimination by a District student. This is problematic because each policy sets forth a

different complaint procedure, including with whom to file the complaint, the identity of the investigator, the scope of the investigative activities, and to whom notice of outcome is provided. For example, under Policy 4000.1, a Title IX complaint against an employee is filed with and investigated by the Assistant Superintendent (the details of the investigation are not specified) and a decision is reached within 10 days with notice to only the complainant. On the other hand, under Policy 0521, which also applies to Title IX complaints against employees, complaints are filed with and investigated by the building principal who may conduct interviews/data review, and a decision is reached within 15 days with notice to both parties. OCR found that the procedures in place were so intertwined that it made it difficult for covered individuals, as well as District staff, to understand relevant rights and the District’s obligations under Title IX.

Second, three of the District’s policies fail to state that both parties will have the opportunity to present witnesses and other evidence. Specifically, Policies 4000.1, 4141.4, and 0521.1 provide no details about the investigative process, noting only that complaints will be investigated.<sup>14</sup> Further, while Policy 0521 discusses interviews and document review, these investigative actions are presented as possibilities rather than requirements. Third, under Policies 4000.1 and 0521.1, the notice of outcome is only provided to the complainant, rather than both parties. OCR therefore found that the District did not have processes in place to ensure equitable investigations, including the opportunity to provide witnesses and evidence, or receive notice of the outcome.

Finally, noticeably absent from all four policies is an assurance that steps will be taken both to prevent recurrence of any discrimination and to correct its effects. Policy 0521.1 is the most unclear as to what actions the District will take upon substantiation of discrimination, stating only that the investigator will “render a decision.” Policy 4141.4 solely discusses disciplinary action against the respondent employee. Under Policy 4000.1, the District is directed to “effectuate any changes deemed necessary to eliminate any discriminatory practices” but preventing recurrence and corrective actions are not mentioned. And while Policy 0521 does state that the District shall take prompt, corrective action to ensure that discriminatory conduct ceases and will not reoccur, it does not address remedying the effects of discrimination on the victim. The absence of this assurance in the policies is mirrored by the case files reviewed by OCR, which, as discussed below, raised concerns about recurring harassment and corrective action focused primarily, or often solely, on the respondent.

OCR notes that the District’s new 15-step grievance process provides both parties with notice of outcome and the opportunity to present witnesses and evidence; references supportive, interim, disciplinary, and remedial measures; and includes clear investigative standards. OCR remains concerned, however, about how individuals are notified of the grievance process when it is not available on the District’s website and is only provided to parties upon notice of sexual harassment, as well as the continued availability of Policies 4141.4 and 0521 on the District’s website.

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<sup>14</sup> Under the informal process in Policy 0521.1, the investigator is directed to informally meet with both parties; however, the formal process outlined in Policy 0521.1 does not specify what additional steps, if any, the investigator will take to reach a decision upon receipt of a formal complaint.

c. Response to Allegations of Employee-Involved Sexual Harassment

OCR concludes that the District’s response to the allegations of employee-involved sexual harassment during the 2018-2019 school year was not equitable, and therefore violated the Title IX regulation. In the case of Employee 1, the District abdicated its Title IX responsibility entirely: the District informed OCR that it did not conduct an independent Title IX investigation because the matter was being investigated by the police and DCF. In the case of Employee 2, the District conducted what it characterized as a “preliminary investigation” upon receiving the first report of alleged sexual harassment and cleared Employee 2 to return to work. When the District subsequently received further allegations against Employee 2 two months later, the District then again largely relied on DCF and the police to investigate the second set of allegations.

These actions did not comport with the District’s obligation under Title IX to investigate whether sex discrimination occurred. Whereas a criminal investigation would assess whether to prosecute Employees 1 and 2, the District had its own separate Title IX obligation to investigate the alleged discrimination, and if found to have occurred, remedy the effects of any sexual harassment on the victim and school community and to prevent recurrence of such harassment. By not conducting an investigation under Title IX, the District failed to assess whether students were subjected to a hostile environment as a result of Employee 1 and 2’s conduct or whether steps were needed to end or prevent a recurrence of such a hostile environment. Furthermore, as to Employee 2, the District’s failure to fully investigate the two reports of sexual harassment is especially concerning in light of the evidence that one or more District employees may have been aware of Employee 2’s alleged misconduct but failed to report it, and a student witness’s statement that the entire [redacted content] knew of Employee 2’s relationship with a student.

**Concerns**

a. Title IX Coordinator (2019-2020 School Year)

OCR is concerned that the District may not have ensured adequate Title IX coordination and oversight during the 2019-2020 school year. Throughout this period, the prior Title IX coordinator took periodic extended [redacted content] leave, and the Title IX Coordinator, who was one of three individuals delegated Title IX duties, admitted that her Title IX role was “minimal.” While it is unclear whether the Title IX Coordinator was expected to play any meaningful role at this time (as compared to subsequent school years), the record does not indicate the degree of coordination between the prior Title IX coordinator and the three other individuals, or whether and how the District ensured overall coordination responsibilities at this time, particularly when the prior Title IX coordinator was absent.

b. Recordkeeping

The District’s case files were notably incomplete, particularly for student-involved files. Of the 20 reports of alleged sexual harassment involving students for which the District maintained records, the District provided only four completed investigative reports which explain the evidence reviewed and conclusions reached; the remaining 16 reports were thinly documented, making it difficult to discern whether investigative or other appropriate steps were taken to

determine what occurred and whether the resolutions were equitable. The District also did not produce any investigative records for two incidents it reports it investigated, besides a PowerSchool log notation; or any records related to its referral of four sexual harassment complaints to DCF. The files that were produced to OCR were often incomplete or kept in a manner that did not allow OCR to assess the adequacy of the District's compliance with Title IX. OCR is also concerned that the District's reliance on incomplete records (both case files and PowerSchool log) may have prevented the previous and interim Title IX coordinators from effectively overseeing and ensuring the District's compliance with Title IX, including tracking and identifying repeat incidents and systemic concerns.

Finally, OCR is concerned that the District did not adequately capture all reported incidents of sexual harassment during the Review Period. As noted earlier, OCR identified one case of alleged student-involved sexual harassment and one "Pre-Title IX inquiry" into unspecified misconduct that were not included in the PowerSchool log, which the District represented as the comprehensive record of student-involved sexual harassment cases. Relatedly, it is unclear how the District defined a "pre-Title IX inquiry"; how many such inquiries existed; and whether they should have been reported and tracked as sexual harassment. OCR also is concerned whether the small number of reported allegations of sexual harassment involving student-respondents might reflect possible underreporting.

#### c. Response to Student-Involved Sexual Harassment Allegations

OCR has a number of concerns about how the District resolved student-involved sexual harassment allegations during the Review Period.

First, OCR is concerned that parties were not provided comparable information from the District. OCR's review of case files indicates that respondents' families routinely received more information than complainants' families, including but not limited to notices at the beginning and end of the resolution process.

OCR is further concerned about the sufficiency of the District's investigation of reports of student-involved sexual harassment. The District only produced four investigative reports for a total of 20 complaints, and OCR could therefore not determine with specificity how the District responded to the remaining 16 complaints. OCR particularly notes seven cases in which a respondent was disciplined with an out-of-school suspension but the District maintained no investigative reports. Despite the severity of the suspension sanction, these case files lacked any discussion of what evidence was reviewed to reach the determination, or the legal standards applied. As a result, OCR is concerned that these students may have been removed from school absent an equitable investigation.

Finally, OCR is concerned that the District may not have taken sufficient action to end the harassment, prevent its recurrence, and remedy its effects, such as considering and providing interim measures and remedial actions, where appropriate. The majority of case files reflect a primary focus on respondents (how an incident was addressed with them, how they responded to the allegations, and the disciplinary consequences issued) without equitable consideration of complainants, including appropriate interim and remedial measures. In addition, OCR identified

case files involving repeat respondents wherein the District’s initial response did not appear to include actions to prevent recurrence, such as making follow-up inquiries to see if there were any new incidents, issuing appropriate disciplinary consequences, or considering other measures to ensure the respondents understood their actions and how they affected others. Moreover, given that some allegations involved sexual harassment of more than one student occurring on school property, OCR is concerned that the District did not attempt to ascertain whether the harassing conduct affected other students and whether broader interim and remedial measures were necessary.

OCR generally does not have concerns about the promptness of the District’s response to reports of sexual harassment. However, while these responses were prompt, OCR is concerned that the District’s expeditious resolutions may be indicative of a failure to conduct equitable investigations, in light of the other issues OCR identified above.

### **Resolution Agreement**

OCR acknowledges the significant number of changes made by the District since the initiation of this compliance review, which include revised Title IX policies and procedures, updated reporting and tracking systems, new personnel, and more comprehensive training.

To resolve the violations and concerns OCR identified in this compliance review, the District entered into the attached Resolution Agreement, signed on October 16, 2023. The Resolution Agreement requires the District to take the following steps to remedy the violations and concerns OCR identified:

1. Revisions to the District’s Title IX grievance procedures to ensure compliance with the Title IX regulation and consistency across related policies and procedures.
2. Modifications to the District’s current recordkeeping procedures to comply with the Title IX regulation.
3. Reporting requirements related to the District’s response to all reports and formal complaints of sexual harassment between the 2021-2022 school year and the 2024-2025 school year.
4. A written description of the Title IX Coordinator(s)’s responsibilities to ensure those responsibilities are consistent with the Title IX regulation and that there is overall coordination of Title IX responsibilities.
5. Annual Title IX training for all District administrators and staff, including a dedicated training for its Title IX Coordinator(s), investigators, decision-makers, and any person who facilitates an informal resolution process.
6. Administration of a climate survey to District students in grades 6-12 to assess the presence and effect of sexual harassment, students’ understanding of how to report sexual harassment, and suggestions for improving the climate. The District will use the results of the survey to develop a plan for improving the climate at each school identified as having climate concerns.

**Conclusion**

OCR acknowledges the significant number of changes made by the District since the initiation of this compliance review, which include revised Title IX policies and procedures, updated reporting and tracking systems, new personnel, and more comprehensive training.

This concludes OCR’s compliance review of the District. This letter should not be interpreted to address the District’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Sincerely,

/s/

Ramzi Ajami  
Regional Director

**Resolution Agreement**  
**New London Public Schools**  
**OCR Compliance Review No. 01-20-5001**

New London Public Schools (District) has entered into the following agreement (Agreement) with the U.S. Department of Education, Office for Civil Rights (OCR) to resolve the above-referenced compliance review, and to ensure the District's compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. Section 1681 et seq., and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex. All references to the Title IX regulation in this Agreement shall include the amendments to the Title IX regulation that went into effect on August 14, 2020.

In order to address the findings and concerns identified in OCR compliance review 01-20-5001, the District assures that it will take the following actions:

**1. SEXUAL HARASSMENT GRIEVANCE PROCEDURES**

The District will review and revise as necessary its grievance procedures for the resolution of reports and formal complaints alleging sexual harassment perpetrated by students, employees, and/or third parties, to ensure that these procedures fully comply with the Title IX regulation.

- a. The revised procedures will also specifically highlight:
  - i. The District's obligations under 34 C.F.R. § 106.44(a) to treat complainants and respondents equitably by offering supportive measures to a complainant; follow a grievance process that complies with 34 C.F.R. § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent; and have the Title IX Coordinator promptly contact the complainant to discuss the availability of supportive measures with or without the filing of a formal complaint, consider the complainant's wishes with respect to supportive measures, and explain the process for filing a formal complaint.
  - ii. The District's obligation to conduct a Title IX grievance process, including an investigation, under reasonably prompt timeframes, allowing for the temporary delay of the grievance process or the limited extension of time frames for good cause shown, such as for concurrent law enforcement activity.
  - iii. Upon receipt of a formal complaint, providing written notice to the parties who are known in accordance with 34 C.F.R. § 106.45(b)(2)(i).
  - iv. The range of supportive measures available to complainants and respondents (34 C.F.R. § 106.45(b)(1)(ix)), and the range of possible disciplinary sanctions and remedies that the District may implement following any determination of responsibility (34 C.F.R. § 106.45(b)(1)(vi)).
  - v. Provide remedies designed to restore or preserve equal access to the District's education program or activity. Such remedies may include the same individualized services described in 34 C.F.R. § 106.30 as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent (34 C.F.R. § 106.45(b)(1)(i)).
- b. As part of this process, the District will ensure that its sexual harassment grievance procedures are consistent across District websites and publications, and explain how the grievance procedures, and other related policies or procedures, interact and apply,

- and will make revisions, if necessary, to comply with the Title IX regulation.
- c. The District also agrees to prominently display the name or title, office address, email address, and telephone number of its Title IX Coordinator(s) on its website and in its revised sexual harassment grievance procedures.

### **Reporting Requirement:**

**By December 1, 2023**, the District will provide OCR with a copy of its revised sexual harassment grievance procedures for OCR’s review and approval. **Within 30 calendar days of OCR’s final approval of the revised procedures**, the District will provide proof that the procedures were adopted and published on the District’s website.

## **2. RECORDKEEPING**

The District will review, and revise as necessary, its procedure for maintaining documents relating to formal complaints or other reports of sexual harassment to comply with the Title IX regulation.

### **Reporting Requirement:**

**By December 1, 2023**, the District will provide to OCR a written description of the tracking system described in Action Item 2. The District agrees to promptly make changes if requested by OCR.

- a. **By January 15, 2024**, the District will provide to OCR a spreadsheet, sorted by school, of all reports and formal complaints of sexual harassment received during the 2021-2022, and 2022-2023 school years. **Within 30 calendar days of the end of the 2023-2024 and 2024-2025 school years**, the District will also provide to OCR a spreadsheet, sorted by school, of all reports and formal complaints of sexual harassment received during those school years. The spreadsheets shall include the following:
  - i. the date of the alleged incident;
  - ii. the date the report or formal complaint was received;
  - iii. the nature of the alleged conduct;
  - iv. the results of the investigation, including the District’s determination regarding responsibility and whether notice of the determination was provided to all known parties;
  - v. any and all disciplinary sanctions issued;
  - vi. any supportive measures offered;
  - vii. the results of any appeals;
  - viii. the results of any informal resolutions; and

- ix. contacts with law enforcement and/or the Connecticut Department of Children and Families related to the alleged incident, and any actions taken by these entities, if known to the District.

The District agrees to produce any underlying documentation within 30 calendar days of OCR's request.

### **3. TITLE IX COORDINATOR**

The District will provide OCR a detailed description of the responsibilities of its Title IX Coordinator(s) to ensure those responsibilities are consistent with the Title IX regulation.

The responsibilities will include the following:

- a. Coordination and oversight of the District's compliance with Title IX.<sup>1</sup>
- b. Ensuring delegation of Title IX compliance duties to a designee knowledgeable about the responsibilities set forth in Action Item 3 in the event the Title IX Coordinator is on extended leave.
- c. Oversight of any building-level personnel the District designates to assist the Title IX Coordinator(s);
- d. Coordination of the effective implementation of supportive measures, in accordance with 34 C.F.R. 106.30(a), and remedies, in accordance with 34 C.F.R. 106.45(b)(7)(iv).
- e. Receiving training on the definition of sexual harassment, the scope of the District's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias, in accordance with 34 C.F.R. 106.30(b)(1)(iii).
- f. Access to and assessment of the records described in Action Item 2 to coordinate the District's efforts to comply with and carry out its responsibilities under Title IX. This includes:
  - i. Annually reviewing all reports of sexual harassment in order to identify and address any patterns or systemic problems; whether any individuals or organizations engaged in repeated misconduct; whether there are any patterns of barriers to reporting for any group of students; and/or if reports were not processed in compliance with the applicable policies and procedures.
  - ii. Reviewing and implementing changes to the District's recordkeeping practices with respect to allegations of sexual harassment against students, employees, and third parties, to ensure that the Title IX Coordinator is able to adequately oversee the District's response to all such allegations and identify trends or other systemic problems regarding the District's response.

#### **Reporting Requirement:**

- a. **By December 1, 2023**, the District will provide for OCR review and approval, a copy of the Title IX Coordinator(s)'s responsibilities.

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<sup>1</sup> If the District designates more than one employee to coordinate its compliance with Title IX, the District will clarify, in writing, each employee's role to ensure overall coordination of Title IX responsibilities.

- b. Within **30 calendar days of OCR’s approval**, the District shall provide documentation substantiating that the District implemented and distributed the Title IX Coordinator(s)’s responsibilities to the Title IX Coordinator(s) and any building-level Title IX coordinators.

#### **4. TRAINING**

- a. The District will annually conduct a mandatory Title IX training for District staff and administrators. The training will include, at a minimum:
  - i. Title IX’s prohibition on discrimination based on sex;
  - ii. the District’s revised sexual harassment grievance procedures;
  - iii. the definition of “sexual harassment” and examples of sexual harassment;
  - iv. the responsibility of a District employee to report incidents of possible sexual harassment, the procedures for doing so, and instructions on how to recognize, prevent, and respond appropriately to sexual harassment;
  - v. the requirement that a student or parent/guardian who has reported alleged incidents of sexual harassment must be notified of their right to file a formal complaint pursuant to the District’s Title IX grievance procedures, and be offered a copy of the procedures;
  - vi. the availability of supportive measures before or after the filing of a formal complaint or where no formal complaint has been filed;
  - vii. the District’s obligation to conduct a Title IX investigation exists regardless of whether there is a concurrent law enforcement investigation;
  - viii. identification of the Title IX Coordinator(s), by name or title, and contact information;
  - ix. the existence of OCR and its authority to enforce Title IX; and
  - x. distribution of written materials that contain the information discussed.
- b. The District will annually conduct a mandatory Title IX training for its Title IX Coordinator(s), investigators, decision-makers, and any person who facilitates an informal resolution process, that covers the topics in Action Item 4, and all other topics required by the Title IX regulation. The District shall make these training materials publicly available on its website.

#### **Reporting Requirement:**

**Within 90 calendar days** of OCR’s approval of the sexual harassment grievance procedures described in Action Item 1, the District will certify to OCR that the trainings described in Action Items 4(a) and (b) have occurred. The District will provide OCR the following documentation: (1) a copy of the Title IX training materials; (2) the name(s), title(s)/position(s), and credentials of one or more qualified individuals to provide the training; (3) a sign-in sheet or other evidence of attendance with the names and titles of the individuals who attended the trainings, a list of the required employees who did not attend, and a plan for training those employees who did not attend; and (4) the URL for the training materials required by Action Item 4.

## 5. CLIMATE ASSESSMENT

The District will administer a climate survey to students in grades 6-12 to assess the presence and effect of sexual harassment, students' understanding of how to report sexual harassment, and suggestions for improving the School/District climate. The survey can be part of a larger survey regarding school climate already being used, or planned to be used. Participation will be voluntary and answers may be submitted anonymously. Information gathered during this climate assessment will be used to inform future proactive steps that will be taken by the District. The survey will be tailored to the ages of the students being surveyed and will include questions designed to gather the following information:

- a. level of perceived safety;
- b. the prevalence of sexual harassment in the School/District;
- c. knowledge of the process by which students might make reports of sexual harassment;
- d. the willingness to report incidents of sexual harassment to District personnel;
- e. the perception of the District's handling of reports and complaints of sexual harassment; and
- f. suggestions for reducing incidents of sexual harassment in the School/District and improving the District's response to reports and complaints of sexual harassment.

The District will identify a group of staff members and administrators to serve as a District Climate Survey Working Group (Working Group), to analyze the results of the climate survey and make recommendations to the District based on these results. The Working Group will: (i) assess whether any additional student or other training is needed to further improve the climate at each school; and (ii) develop a proposal to improve the climate at each school identified as having climate concerns. The District will review the Working Group's proposal, adopt its recommendations as appropriate, and develop a plan for OCR's review and approval.

### Reporting Requirement:

- a. **By January 15, 2024**, the District will provide OCR with a copy of the survey(s) together with a report summarizing the results and the assessment of whether additional student or other training is needed to further improve the climate at each school. The District will also provide OCR with the written plan developed in accordance with Action Item 5 above for OCR's review and approval.
- b. The District agrees to promptly incorporate OCR's feedback. Within **30 calendar days** of OCR's final approval of the plan, the District will implement the plan.

\* \* \*

By signing the resolution agreement, the District agrees to provide data and other information in a timely manner in accordance with the reporting requirements of the resolution agreement. During the monitoring of the resolution agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of the resolution agreement.

The District understands that OCR will not close the monitoring of the agreement until such time as OCR determines that the District is in compliance with the terms of the agreement and the statute(s) and regulation(s) at issue in the case.

The District understands that OCR may initiate administrative enforcement proceedings or refer the case to the Department of Justice (DOJ) for judicial proceedings in the event of breach.

Before initiating such proceedings, OCR will give the District written notice of the alleged breach and 60 calendar days to cure the alleged breach.

The resolution agreement will become effective immediately upon the signature of the District's representative below.

/s/ Dr. Cynthia Ritchie  
\_\_\_\_\_  
Superintendent of Schools

10/16/23  
\_\_\_\_\_  
Date



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION IV

61 FORSYTH ST., SOUTHWEST, SUITE 19T10  
ATLANTA, GA 30303-8927

REGION IV

ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

VIA EMAIL ONLY TO [jhawkins@troy.edu](mailto:jhawkins@troy.edu)

January 26, 2023

Jack Hawkins, Jr., Ph.D.  
Chancellor  
Troy University  
216 Adams Administration Building  
Troy, AL 36082

Re: OCR Complaint # 04-21-2060

Dear Chancellor Hawkins:

This letter is to advise you of the outcome of the complaint filed by Complainant [redacted content] on December 2, 2020, with the U.S. Department of Education, Office for Civil Rights (OCR) against Troy University. The Complainant alleged discrimination on the basis of pregnancy.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. As a recipient of Federal financial assistance from the Department of Education, the University is subject to Title IX and to OCR's jurisdiction.

OCR opened an investigation into whether the University discriminated against the Complainant on the basis of pregnancy in violation of Title IX and its implementing regulation at 34 C.F.R. § 106.40(b).

During its investigation, OCR reviewed information provided by the Complainant and the University, including email correspondence between the Complainant and University personnel, the University's Title IX policies, and the Complainant's grades in her courses. OCR interviewed the Complainant's [redacted content] professor as well as the University's Dean of Student Services, who serves as the Title IX Coordinator.

Prior to OCR completing its investigation, the University expressed an interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. Section 302 states that allegations under investigation may be resolved at any time when, prior to the completion of the investigation, the recipient expresses an interest in resolving the allegation and OCR determines that it is appropriate to resolve it because OCR's

investigation has identified concerns that can be addressed through a resolution agreement. Following are the relevant legal standards and OCR's summary of the investigation.

### **Legal Standards**

The Title IX regulation, at 34 C.F.R. § 106.31(a), states as follows: Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.

The Title IX regulation, at 34 C.F.R. § 106.40(b)(1), prohibits discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions. To ensure a pregnant student's access to its educational program, when necessary, a school must make adjustments to the regular program that are reasonable and responsive to the student's temporary pregnancy status. Title IX requires a school to provide the same special services to a pregnant student that it provides to students with temporary medical conditions. 34 C.F.R. § 106.40(b)(4).

Further, under 34 C.F.R. § 106.40(b)(5), in the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which the student held when the leave began.

### **Facts**

The University's 2020-2021 Title IX policy is located in its 2020-2021 Student Handbook. The policy identifies and provides contact information for the Title IX Coordinator and Title IX points of contact for the University's campuses, as well as the members of the University's Title IX Committee. The Title IX policy outlines the responsibilities of the Title IX Coordinator. These responsibilities include that "[t]he Title IX coordinator shall work with the University on its obligation not to discriminate against students based on their parental, family, or marital status, or exclude pregnant or parenting students from participating in any educational program, including extracurricular activities." This is the sole mention in the 2020-2021 Student Handbook of the University's obligation toward pregnant students.

In 2020, the Complainant was a student at the University. On [redacted content] 2020, prior to the start of the Fall 2020 semester, the Complainant emailed the University's Adaptive Needs office, part of the University's Office of Student Development in the John W. Schmidt Center for Student Success, regarding her pregnancy. That office forwarded her email to the Dean of Student Services, who was also the Title IX Coordinator for the

University. On [redacted content] 2020, the Title IX Coordinator responded to the Complainant and asked what accommodations she needed.<sup>1</sup>

Classes for the Fall 2020 semester began on August 10, 2020. The Complainant was enrolled in [redacted content]. In advance of the Complainant's first [redacted content] class on August 13, 2020, the Complainant emailed the professor, stating that she was not feeling well and would not be in class that day. In that email, the Complainant did not mention she was pregnant.

In an [redacted content]2020, email, the Complainant requested a table for her [redacted content] class from the Title IX Coordinator because, due to her pregnancy, she could not fit into the smaller desks in the classroom. The Title IX Coordinator responded that he would speak with the Department Chair about this request. Also, on [redacted content] 2020, the [redacted content] professor emailed the Complainant to ask if she would be able to attend class and gave her the option to sign into Teams instead. On [redacted content], 2020, the Complainant emailed her [redacted content] professor, stating that she was experiencing [redacted content] and was pregnant, so she would not be able to be in class. The [redacted content] professor replied that day and told the Complainant that she could attend via Teams.

On [redacted content] 2020, the Complainant emailed the Title IX Coordinator that she had been unable to attend class due to [redacted content] and now had an F in her [redacted content] class due to that professor's policy of giving a grade for attendance. She also noted that the table had not yet been installed in her [redacted content] classroom. That same day, the Title IX Coordinator replied that he would follow up on the table that day and that he would reach out to the Complainant's professors about her absences and allowing her to make up missed work.

On [redacted content] 2020, the [redacted content] professor emailed the Complaint to notify her there had been an update to the University's attendance policy. The professor stated that the Complainant's absences would need to be excused by the Title IX Coordinator if she was unable to attend class in person, or that she might be able to drop the class and enroll in an online class. On [redacted content], 2020, the Complainant replied that she would be coming to class that day, and that she had consulted with her physician, who had advised that this would be okay. She also replied that she had emailed the Title IX Coordinator about her absences and that he was supposed to have sent an email to her professors.

On [redacted content] 2020, the Complainant emailed her [redacted content] professor that she had been hospitalized due to pregnancy complications. She also reported that she had been working on her discussion questions and asked if she could make up the first test. The

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<sup>1</sup> The Complainant and the Title IX Coordinator differ about when the Complainant first responded to the Title IX Coordinator's [redacted content] 2020, inquiry. The Title IX Coordinator alleges that the Complainant responded with several requests on [redacted content] 2020. The Complainant recalls making a request to the Title IX Coordinator on [redacted content] 2020, and the email correspondence provided to OCR supports the Complainant's recollection.

[redacted content] professor responded that same day, stating that she was able to re-open questions and tests for the Complainant. In a later email that same day, the [redacted content] professor stated that she had discussed the Complainant's situation with her Department Chair and that he had given permission for the Complainant to make up the work and to attend via Teams temporarily. The professor also added that she was worried that other students noticed the Complainant's absences and that questions of fairness may arise. She again asked the Complainant to reach out to the Title IX Coordinator so that he could excuse her absences.

On [redacted content] 2020, the Complainant emailed the Title IX Coordinator that she had been admitted to the hospital related to her pregnancy. She stated that she had already emailed most of her professors but asked the Title IX Coordinator to also follow up with them. She also noted that one of her professors had told her that other students had noticed her absences and that she was still being docked for absences and late assignments related to her pregnancy. She also asked for an extension on assignments and tests that she would be missing.

On [redacted content] 2020, the Title IX Coordinator replied to the Complainant, telling her that he would email her professors that morning and that she should take care of herself and her child. Three days later, the Title IX Coordinator emailed the Complainant's professors and told them that the Complainant would be out of class for non-COVID-related medical issues and that she should have deadlines extended and be allowed to make up work. On [redacted content] 2020, the [redacted content] professor sent the Complainant an email expressing concern that the Complainant was not attending classes. She warned the Complainant she would not allow her to submit all of her work after Thanksgiving but would give her a one-week extension on each assignment.

On [redacted content] 2020, the [redacted content] professor emailed stating that she could see that Test 1 did not deploy for the Complainant and that the Complainant was not able to upload her discussion work. The [redacted content] professor indicated that she would reopen both items until October 11 for the Complainant to complete. On [redacted content] 2020, the Complainant emailed the [redacted content] professor to let her know that she went into early labor and had been admitted to the hospital to stop the labor. She asked if she could turn in her discussion questions the following Friday. The [redacted content] professor replied on [redacted content] asking which questions the Complainant needed to have opened. The Complainant emailed the [redacted content] professor on [redacted content], 2020, stating that the baby had been born on [redacted content]; noting that she had tried to access Test 1 on October 13, but that it would not open for her; and asking to have access to some discussion questions.

On [redacted content] 2020, the Complainant's [redacted content] professor emailed the Title IX Coordinator to ask for guidance on how to handle the Complainant's grades. She also let him know that the Complainant had not returned to class, taken any exams, or made up any projects, but had turned in some assignments. On [redacted content] 2020, the Title IX Coordinator responded to the [redacted content] professor that he would follow up with the Complainant that day and get back to the [redacted content] professor. On November

24, 2020 - the Tuesday before Thanksgiving 2020, when the University was closed for students - the Title IX Coordinator attempted to call the Complainant but got no answer. He did not attempt to follow up with her again at any point during that semester. Nothing in the records provided to OCR indicates that the Title IX Coordinator further responded to the [redacted content] professor's request for guidance, or that he had any additional involvement with the Complainant that semester.

On [redacted content], 2020, the Complainant emailed the [redacted content] professor to request that she be allowed to turn in all of her discussion posts that evening. The [redacted content] professor replied that she would not accept the assignments so late and that she had given the Complainant an extra week on each assignment. She also noted that the Complainant almost never attended class in person or on Teams, and that she had taken none of the tests. She informed the Complainant that even if she turned in all of the discussion questions, she could not pass the class at this point. Finally, she told the Complainant that it just was not her semester to take [redacted content]. The Complainant received an F in [redacted content] for the semester.

The Complainant told OCR that she never received a table for her [redacted content] class. By contrast, the Title IX Coordinator told OCR that he received confirmation from the [redacted content] Department Chair that the table was put in place on or about August 29, 2020, and the University provided a photo of an installed table in an email dated [redacted content], 2021.

The Complainant received a D in the [redacted content] class for Fall 2020. In what appears to be an email statement that the University provided to OCR, the [redacted content] professor stated that during Fall 2020, the Complainant only attended a handful of classes in person and the professor had met with the Complainant in person prior to the last class she had attended to discuss her pregnancy and complications. The [redacted content] professor recalled that she told the Complainant that she would work with her, but the Complainant needed to stay in communication with her so that they could make arrangements for the Complainant's work. The [redacted content] professor stated that the Complainant attended class once thereafter and she did not hear from the Complainant again.

During his interview with OCR, the Title IX Coordinator said he was unaware of any written University policy that prohibited discrimination against pregnant students or that outlined the process for addressing requests from pregnant students. He also stated that the Complainant was the first pregnant student with whom he had worked. The Title IX Coordinator did not remember giving any guidance to the Complainant's professors regarding how to work with her to make up her work in light of the Complainant's pregnancy, nor did he speak with them about the possibility of letting the Complainant have an incomplete or a late withdrawal from classes. He told OCR that the Complainant did not request these things, but these are the types of accommodations that he has provided to students at the University with temporary disabilities when they have asked. In addition, when asked, the Complainant's [redacted content] professor stated that she was unaware

of any University policy pertaining to accommodating pregnant students and that she had never received any training on this issue through the University.

During the course of this investigation, the University updated its Title IX web page to include a section on pregnancy and parenting.<sup>2</sup> The new webpage states that pregnant or parenting students have certain rights, including the right to have excused absences when medically necessary, the ability to make up work missed, and the right to be protected from pregnancy harassment. The webpage also outlines a process by which a pregnant student may ask for reasonable adjustments or medically necessary accommodations or file a complaint if they have been discriminated against or harassed. The webpage also provides the contact information for the University's Title IX Coordinator, as well as for OCR.

## Analysis

OCR has a concern that the University did not make reasonable and responsive adjustments in response to the Complainant's pregnancy-related requests. At the time of the incidents at issue here, the University provided pregnant students no information, either in its 2020-2021 Student Handbook or on its website about how students could seek adjustments related to pregnancy, and one professor interviewed by OCR had not received training regarding Title IX's application to pregnant students. The Complainant made various requests to the Title IX Coordinator as well as directly to professors, and in multiple instances, the request was not communicated to other staff or addressed.

Moreover, the Title IX Coordinator did not consistently intervene when the Complainant contacted him about issues with certain classes and, when he did so, he was not always prompt. It appears that the Title IX Coordinator's first and only documented communication with all of the Complainant's professors was a [redacted content] 2020, email that he sent after the Complainant advised she had been hospitalized due to pregnancy-related complications. The Title IX Coordinator sent his email a month after the Complainant first contacted him about her inability to attend certain classes due to pregnancy complications and her low, attendance-related [redacted content] grade. Further, the Complainant's [redacted content] professor sought the Title IX Coordinator's advice on how to handle the Complainant's absences and lack of class participation but received no answer.

The evidence to date also suggests that the University did not engage in an interactive process with the Complainant or otherwise attempt to determine what adjustments would be appropriate for each of her courses based on the information she provided about her pregnancy. Although the Complainant appears to have received some pregnancy adjustments from some professors, OCR is concerned that these efforts were ad hoc and uncoordinated and dependent on each professor's individual interpretation of the Title IX Coordinator's [redacted content] 2020, email.

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<sup>2</sup> The webpage is located at: <https://www.troy.edu/about-us/leadership/student-services-administration/title-ix-save-act.html> and was last accessed by OCR on January 25, 2023.

Although the University has updated its Title IX webpage to include policies and information for pregnant students, it is unclear whether the University has provided faculty and staff training concerning its obligations under the Title IX regulations regarding pregnant students who request adjustments.

As noted above, the University expressed an interest in resolving the complaint with a resolution agreement pursuant to Section 302 of OCR's *Case Processing Manual*. Based on the investigation to date, OCR has concerns that warrant entering into a resolution agreement. The attached Resolution Agreement (Agreement), when fully implemented, will resolve the issues identified above. The Agreement requires the University to take various steps with respect to the Complainant and to provide pertinent training to staff members. OCR will monitor the University's implementation of the Agreement until the University is in compliance with the terms of the Agreement and the statute and regulations at issue in this case.

This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR would like to make you aware that the complainant may have a right to file a private suit in Federal court whether or not OCR finds a violation.

If you have any questions or concerns about the content of this letter, please contact OCR attorney Robyn Painter at 404-974-9345 or at [robyn.painter@ed.gov](mailto:robyn.painter@ed.gov).

Sincerely,

/s/

Scott R. Sausser  
Supervisory General Attorney

OCR Complaint # 04-21-2060  
Page 8

cc: Tom Davis, [tomdavis@troy.edu](mailto:tomdavis@troy.edu)  
Ashley English, [englisha@troy.edu](mailto:englisha@troy.edu)

**Resolution Agreement**  
**Troy University**  
**Complaint Number 04-21-2060**

Troy University enters into this Resolution Agreement (Agreement) to resolve issues raised in Complaint Number 04-21-2060. The University assures OCR that it will take the following actions to comply with the requirements of Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.

Prior to the completion of OCR’s investigation, the University agreed to resolve the issues of this investigation pursuant to Section 302 of OCR’s *Case Processing Manual*. This Agreement does not constitute an admission of wrongdoing or liability by the University pursuant to Title IX. Accordingly, to ensure compliance with Title IX and its implementing regulation, the University voluntarily agrees to the following actions.

**I. REVIEW AND REVISION OF PRACTICES, POLICIES AND PROCEDURES**

- A. The University will review its practices, policies and procedures for providing adjustments for pregnant students, to ensure that the University adequately addresses Title IX’s prohibition on discrimination against pregnant students. During its review, the University will identify the relevant practices, policies and procedures currently in effect and revise, or as needed, develop, written policies and procedures.

**REPORTING REQUIREMENT:**

By March 1, 2023, the University will submit to OCR documentation demonstrating that the University has: (i) identified all relevant practices, policies and procedures and (ii) as needed, revised or developed policies and procedures pursuant to Item IA above. The University will include a draft of the proposed revisions<sup>1</sup> for OCR’s review and approval. The University will promptly and fully address OCR’s feedback, if any, until the University receives OCR’s final approval of the revised policies and procedures.

- B. Within thirty (30) calendar days of receiving OCR’s final approval of the policies and procedures, the University will adopt and implement the policies and procedures, and disseminate them to all students, faculty, and staff.

**REPORTING REQUIREMENT:**

By April 15, 2023, the University will submit to OCR documentation demonstrating the University has: (i) formally adopted the revised policies and procedures, and (ii) disseminated the adopted policies and procedures to all students, faculty, and staff. The

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<sup>1</sup> The University will submit the revised policies and procedures by submitting: (i) a red-lined version of the proposed changes, and (ii) a clean copy of the proposed final policies and procedures.

University will promptly and fully address OCR's concerns, if any, regarding adoption and dissemination of the revised policies and procedures.

## **II. WEBSITE UPDATE AND DISSEMINATION OF INFORMATION**

The University will publish prominently on its website and elsewhere, as appropriate, information regarding: (i) the Title IX rights of—and the University's obligations to—pregnant students; (ii) the procedure for pregnant students to request adjustments to the regular program; (iii) the name and contact information for the individual(s) tasked with coordinating the University's response to requests for adjustments from pregnant students; (iv) if different from (iii) above, the name and contact information for the University's Title IX Coordinator; and (v) the grievance procedure for students to file complaints of sex discrimination, including pregnancy-related complaints, and a web link to the grievance procedures.

### **REPORTING REQUIREMENT:**

By April 15, 2023, the University will provide OCR with web links and, if applicable, hard copies of the publications in Item II above, as well as the method(s) and date(s) of publication for any hard copies.

## **III. TRAINING REGARDING RIGHTS OF AND OBLIGATIONS TO PREGNANT STUDENTS**

The University will provide training regarding the Title IX rights of pregnant students and the University's obligations regarding pregnant students to all faculty, as well as to all staff involved in providing Title IX resources or addressing requests for adjustments from pregnant students. This training must include: (i) how and to whom students may submit requests for adjustments to the regular program; (ii) the contact information for the University's Title IX Coordinator and any individual(s) tasked with coordinating the University's response to requests for adjustments from pregnant students; (iii) the process for identifying and providing adjustments; (iv) examples of pregnancy-related adjustments; and (v) the grievance procedure for students to file complaints of sex discrimination, including pregnancy-related complaints.

### **REPORTING REQUIREMENTS:**

By April 15, 2023, the University will provide OCR with the name and qualifications of the proposed trainer(s) who will provide the training described in Item III above and a copy of the proposed training materials for OCR's review and approval.

The University will promptly and fully address OCR's feedback, if any, until the University receives OCR's final approval of the trainer and training materials.

Within ninety (90) calendar days of receiving OCR's final approval of the trainer, training materials and training survey in Item IV below, the University will ensure that the training described above takes place and provide OCR: (i) the date, time, and location of the

training; (ii) confirmation that the approved training materials were used; (iii) confirmation that the approved trainer(s) was used; (iv) the names and titles or positions of faculty and staff who attended the training; (v) the names and titles or positions of faculty and staff who were required but did not attend the training; and (vi) a plan to train each person identified in (v) above.

Within thirty (30) days of completing its training obligation under this Agreement, the University will provide items (i) to (iv) above for each person identified in item (v) above who received training on an alternate date.

#### **IV. SURVEY FOR TRAINED FACULTY AND STAFF**

The University will assess the effectiveness of the training referenced in Item III above, by conducting a survey of the faculty and staff who attend the training. The survey will specifically inquire about their knowledge regarding: (a) how and to whom students may submit requests for adjustments to the regular program; (b) the contact information for the University's Title IX Coordinator and any individual(s) tasked with coordinating the University's response to requests for adjustments from pregnant students; and (c) the grievance procedure for students to file complaints of sex discrimination, including pregnancy-related complaints.

##### **REPORTING REQUIREMENTS:**

Within thirty (30) calendar days of receiving OCR's final approval of the trainer and training materials in Item III above, the University will provide OCR a draft survey for assessing the effectiveness of the training. The University will promptly and fully address OCR's feedback, if any, until the University receives OCR's final approval of the survey.

Within thirty (30) days of receiving training attendees' survey results, the University will provide documentation to OCR of the results of the survey and a description of any actions the University took or plans to take in response to the survey results, including conducting additional training sessions to ensure effective training is provided. The University will promptly and fully address OCR's feedback regarding the survey results, if any.

#### **V. TRACKING SYSTEM FOR PREGNANCY-RELATED ADJUSTMENTS FOR STUDENTS**

By March 15, 2023, the University will develop a system for tracking (i) requests for pregnancy-related adjustments for students made to the Title IX Coordinator, faculty or other staff; (ii) the responses to the requests, including verification of adjustments provided by faculty, staff or others; and (iii) the reasons for the denial of any requests.

##### **REPORTING REQUIREMENTS:**

By April 15, 2023, the University will provide OCR with details regarding the tracking system, including how requests for adjustments, responses and denials are documented and

tracked. The University will promptly and fully address OCR's feedback, if any, regarding the tracking system.

## **VI. LIST OF REQUESTS FOR PREGNANCY-RELATED ADJUSTMENTS AND THE UNIVERSITY'S RESPONSES**

By December 1, 2023, the University will compile a list of all pregnancy-related requests for adjustments for students and all responses to the requests for the period March 15 – November 15, 2023.

### **REPORTING REQUIREMENTS:**

By December 15, 2023, the University will provide OCR the above list of pregnancy-related requests for adjustments for students, and all responses to the requests for the period March 15 – November 15, 2023.

If OCR determines it needs underlying documentation, the University will provide such documentation within **ten business days** of OCR's request.

If OCR determines the University is not in compliance with Title IX with regard to a specific request, **within 15 days of the date of OCR's notice**, the University will take action to respond to the request consistent with the requirements of Title IX.

## **VII. INDIVIDUAL REMEDY**

The University will remove the Complainant's Fall 2020 grades in [redacted content] (collectively, the Courses) from the Complainant's transcript. In addition, consistent with all applicable laws, the University will work to limit the negative impact on the Complainant's future applications for financial aid that any disbursement of financial aid for the Courses may have had and reimburse the Complainant for Fall 2020 documented expenses related to any of the Courses the Complainant has since retaken.

### **REPORTING REQUIREMENTS:**

By April 15, 2023, the University will provide OCR an updated copy of the Complainant's transcript or other documentation of (i) changes made in response to Item VII above; (ii) the Complainant having retaken any of the Courses; (iii) reimbursement for Fall 2020 documented expenses related to any of the Courses the Complainant has since retaken; and (iv) any other steps the University took to limit the impact of the Courses on the Complainant's future applications for financial aid.

By signing the Agreement, the University agrees to provide data and other information in a timely manner in accordance with the reporting requirements of the Agreement. During the monitoring of the Agreement, if necessary, OCR may visit the University, interview staff and students, and

request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of the Agreement.

The University understands that OCR will not close the monitoring of the Agreement until such time as OCR determines that the University is in compliance with the terms of the Agreement and the statute(s) and regulation(s) at issue in the case.

The University understands that OCR may initiate administrative enforcement proceedings or refer the case to the Department of Justice (DOJ) for judicial proceedings to enforce the specific terms of the Agreement and the applicable statute(s) and regulation(s). Before initiating such proceedings, OCR will give the University written notice of the alleged breach and 60 calendar days to cure the alleged breach.

This agreement will become effective upon the signature(s) of the representative for the University.

For Troy University:

/s/  
\_\_\_\_\_  
Dr. Jack Hawkins, Jr.  
Chancellor

January 20, 2023  
Date

# Conn. Gen. Stat. § 10a-55a

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**(a)** Each institution of higher education shall annually prepare a uniform campus crime and safety incident report concerning crimes committed and accidents occurring in the immediately preceding calendar year within the geographical limits of the property owned or under the control of such institution. The portions of such report concerning criminal offenses shall be in accordance with the uniform crime reporting system pursuant to section 29-1c, provided such report is limited to those offenses included in part I of the most recently published edition of the Uniform Crime Reports for the United States as authorized by the Federal Bureau of Investigation and the United States Department of Justice, sexual assault under section 53a-70b of the general statutes, revision of 1958, revised to January 1, 2019, or sections 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b and 53a-73a, stalking under sections 53a-181c, 53a-181d and 53a-181e and family violence as designated under section 46b-38h. The state police, local police departments and special police forces established pursuant to section 10a-156b shall cooperate with institutions of higher education in preparing such reports. Institutions with more than one campus shall prepare such reports for each campus.

**(b)** Each annual report prepared pursuant to subsection (a) of this section shall include (1) the number of full-time equivalent students, (2) the number of full-time equivalent employees, (3) the number of students and employees residing in campus housing, (4) for any accident that occurred during the immediately preceding calendar year within the geographical limits of the property owned or under the control of an institution of higher education, including, but not limited to, campuses or dormitories in another country owned or under the control of an institution of higher education for the purposes of an international studies or international exchange program, (A) the number of such accidents that resulted in serious physical injury, as defined in section 53a-3, and (B) the number of such accidents that resulted in death, and (5) for each category of criminal offense, the number of incidents reported and the crime rate. The crime rate shall be equal to the number of incidents reported divided by the total number of full-time equivalent students and employees.

**(c)** On or before October 1, 2007, each institution of higher education and private career school, as defined in section 10a-22a, , shall have an emergency response plan. On or before October 1, 2007, and annually thereafter, each institution of higher education and private career school shall submit a copy of its emergency response plan to (1) the Commissioner of Emergency Services and Public Protection, and (2) local first responders. Such plan shall be developed in consultation with such first responders and shall include a strategy for notifying students and employees of the institution or school and visitors to such institution or school of emergency information.

**(d)** Each institution of higher education shall notify, in writing, each person who submits an application for admission to the institution, each new employee at the time of employment and all students and employees annually at the beginning of each academic year of the availability of the report prepared pursuant to subsection (a) of this section and shall, upon request, provide the most recent report to any such applicant, employee or student.

*(P.A. 90-259, S. 2; P.A. 92-83, S. 1; P.A. 07-208, S. 3; P.A. 11-48, S. 285; 11-51, S. 154; P.A. 14-11, S. 1; P.A. 16-15, S. 27.)*

Amended by P.A. 22-0123, S. 32 of the Connecticut Acts of the 2022 Regular Session, eff. 7/1/2022.

Amended by P.A. 21-0184, S. 1 of the Connecticut Acts of the 2021 Regular Session, eff. 7/1/2021.

Amended by P.A. 19-0189, S. 1 of the Connecticut Acts of the 2019 Regular Session, eff. 10/1/2019.

Amended by P.A. 16-0015, S. 27 of the Connecticut Acts of the 2016 Regular Session, eff. 7/1/2016.

Amended by P.A. 14-0011, S. 1 of the Connecticut Acts of the 2014 Regular Session, eff. 7/1/2014.

Amended by P.A. 11-0051, S. 154 of the the 2011 Regular Session, eff. 7/1/2011.

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# Massachusetts: Session Law, Acts of 2020

## - Chapter 337: AN ACT RELATIVE TO SEXUAL VIOLENCE ON HIGHER EDUCATION CAMPUSES.

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AN ACT RELATIVE TO SEXUAL VIOLENCE ON HIGHER EDUCATION CAMPUSES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Chapter 6 of the General Laws is hereby amended by inserting after section 168C the following 2 sections:-

Section 168D. (a) For the purposes of this section, the following terms shall have the following meanings unless the context clearly requires otherwise:

“Institution”, a public or independent institution of higher education located in the commonwealth and authorized to grant degrees pursuant to any general or special law.

“Sexual misconduct”, an incident of sexual violence, dating violence, domestic violence, gender-based violence, violence based on sexual orientation or gender identity or expression, sexual assault, sexual harassment or stalking.

(b)(1) Each institution shall conduct a sexual misconduct climate survey of all students at the institution not less than once every 4 years.

(2) The sexual misconduct climate surveys shall gather information on topics including, but not limited to: (i) the number of reported and unreported incidents of sexual misconduct at the institution; (ii) when and where incidents of sexual misconduct occurred; (iii) student awareness of institutional policies and procedures related to campus sexual misconduct; (iv) whether a student reported the sexual misconduct and, if so, to which campus resource the report was made; (v) whether a student was informed of or referred to local, state, campus or other resources or victim support services, including appropriate medical care and legal services; (vi) whether a student was provided with information about resources for protection from retaliation, access to school-based supportive measures and civil justice and criminal justice remedies; (vii) contextual factors, such as whether the incident of sexual misconduct involved force, incapacitation or coercion; (viii) demographic information that could be used to identify at-risk groups; and (ix) perceptions of campus safety among members of the campus community and confidence in the institution’s ability to protect against and respond to incidents of sexual misconduct.

the commissioner of higher education or a designee, who shall serve as co-chair; the commissioner of public health or a designee, who shall serve as co-chair; the secretary of public safety and security or a designee; the attorney general or a designee; 1 member of the house of representatives to be appointed by the speaker of the house of representatives; 1 member of the senate to be appointed by the senate president; and 21 persons to be appointed by the governor, 1 of whom shall be a student attending a community college, 1 of whom shall be a student attending a public university, 2 of whom shall be students attending an independent institution of higher education in the commonwealth, 1 of whom shall be a representative of the University of Massachusetts recommended by the president of the university, 1 of whom shall be a representative of the state universities recommended by the Massachusetts State Colleges Council of Presidents, 1 of whom shall be a representative of community colleges recommended by the Massachusetts Association of Community Colleges, 2 of whom shall be representatives of private colleges and universities recommended by the Association of Independent Colleges and Universities in Massachusetts, Inc., 1 of whom shall be a representative recommended by Jane Doe, Inc.: the Massachusetts Coalition Against Sexual Assault And Domestic Violence, 1 of whom shall be a representative recommended by the Victim Rights Law Center, Inc., 2 of whom shall be representatives recommended by sexual assault crisis service centers and counseling centers located in an urban and rural region of the commonwealth, 2 of whom shall be representatives recommended by community-based sexual assault crisis service centers funded by the department of public health, 1 of whom shall be a representative recommended by the Massachusetts commission on lesbian, gay, bisexual, transgender, queer and questioning youth, 1 of whom shall be a representative recommended by the Every Voice Coalition or any successor organization, 2 of whom shall be researchers with experience in the development and design of sexual misconduct climate surveys and 2 of whom shall have experience in higher education survey analysis and be researchers of: (i) statistics; (ii) data analytics; or (iii) econometrics. Membership on the task shall be reflective of the gender, racial and geographic diversity of the commonwealth and preference shall be given to those with background, education and experience in the fields of public health, survey design or Title IX.

(d)(1) The task force shall develop model questions for use by institutions in sexual misconduct climate surveys. The task force shall provide the model questions to the commissioner of higher education with related recommendations respecting the content, timing and application of the surveys. The recommendations shall include, but not be limited to, recommendations on achieving statistically valid response rates and on addressing non-response bias.

questions taken from or consistent with questions in the Administrator-Researcher Campus Climate Collaborative survey or another sexual misconduct climate survey that is currently in use by institutions and that the task force deems high-quality. The subset of model questions shall generate responses related to topics including, but not limited to: (i) the prevalence of sexual misconduct on campus; (ii) student knowledge of and familiarity with campus practices for reporting and addressing sexual misconduct; and (iii) services available to victims of sexual misconduct.

(3) In developing the sexual misconduct climate survey model questions, the task force shall: (i) utilize best practices from peer-reviewed research and consult with individuals with expertise in the development and use of sexual misconduct climate surveys by institutions of higher education; (ii) review sexual misconduct climate surveys that have been developed and previously utilized by institutions of higher education; (iii) provide opportunities for written comment from organizations that work directly with survivors of sexual misconduct to align questions with a trauma-informed approach and to ensure the adequacy and appropriateness of the proposed content; (iv) consult with institutions of higher education on strategies for optimizing the effectiveness of the survey; (v) provide opportunities for written comment from advocates to ensure that the survey impartially addresses campus sexual misconduct; and (vi) account for the diverse needs of and differences between the commonwealth's institutions of higher education.

(4) The commissioner of higher education shall review and approve the sexual misconduct climate survey model questions provided by the task force and shall periodically review and make recommendations for changes to the model questions and to the content and timing of the sexual misconduct climate surveys. In addition, the task force may be revived at any time by the commissioner. The commissioner shall provide a copy of the model questions to all institutions; provided, however, that an institution may develop and use its own campus-specific survey if the survey: (i) is designed to provide the institution with data to inform policies to prevent and respond to sexual misconduct; (ii) meets quality standards determined by the commissioner; and (iii) includes the subset of model questions described in paragraph (2).

(e) Within 120 days after completion and analysis of a sexual misconduct climate survey, each institution shall post a summary of the results on the institution's website.

(f) A sexual misconduct climate survey, including any campus-specific surveys developed and implemented by an institution, shall collect anonymous responses and shall prohibit the disclosure of identifying information.

(g) The department of higher education shall promulgate regulations necessary to implement this section.

following meanings unless the context clearly requires otherwise:

“Institution”, a public or independent institution of higher education located in the commonwealth and authorized to grant degrees pursuant to any general or special law.

“Reporting party”, a student or employee of an institution who reports being subject to an incident of sexual misconduct to the institution.

“Responding party”, a student or employee of an institution who has been accused of an alleged incident of sexual misconduct.

“Sexual misconduct”, an incident of sexual violence, dating violence, domestic violence, gender-based violence, violence based on sexual orientation or gender identity or expression, sexual assault, sexual harassment or stalking.

“Title IX”, Title IX of the federal Education Amendments of 1972.

“Title IX coordinator”, the employee of an institution responsible for the institution’s compliance with Title IX.

(b) Consistent with applicable state and federal law and regulation, each institution shall adopt policies on sexual misconduct involving students or employees of the institution that comport with best practices and current professional standards and shall establish procedures for regularly reviewing and updating the policies. The policies shall be publicly available on the institution’s website in an accessible format and shall be made available in writing to an applicant, student or employee of the institution upon request. The policies shall be developed in coordination with the institution’s Title IX coordinator and may consider input from internal and external entities including, but not limited to, institutional administrators, personnel affiliated with on-campus or off-campus health care centers, personnel affiliated with on-campus, when available, or local, community-based rape crisis centers or domestic violence programs, confidential resource providers, residence life staff, students, the department of state police and the police department or district attorney having jurisdiction in the city or town in which the institution’s primary campus is located. The policies shall include, but not be limited to: (i) procedures by which students and employees at the institution may report incidents of sexual misconduct regardless of where the offense occurred; (ii) information on where to receive immediate emergency assistance following an incident of sexual misconduct, which shall include, but not be limited to, information related to preserving evidence and contact information for seeking medical treatment on campus, if available, and off campus; (iii) descriptions of the types of counseling and health, safety, academic and other support services available from the institution within the local community or region or through a local community-based rape crisis center or domestic violence program, including contact information; (iv) information on the rights of students and employees to: (A) notify or decline to

sexual misconduct; (B) receive assistance from campus authorities in making any such notification; (C) obtain a court-issued protective order or an institution-issued no-contact order against an alleged perpetrator of the sexual misconduct; and (D) concurrently utilize the institution's process for investigating sexual misconduct complaints and any external civil or criminal processes available to the student or employee; (v) school-based supportive measures reasonably available from the institution, which shall include, but not be limited to, options for changing academic, living, campus transportation or working arrangements in response to an alleged incident of sexual misconduct, regardless of where the conduct occurred or whether such conduct occurred outside of an institution's programs or activities, and regardless of whether a complaint is filed in accordance with the institution's policy for resolving complaints, how to request such measures and the process to have any such measures reviewed; (vi) procedures for students or employees to notify the institution that a protective order has been issued under state or federal law and the institution's responsibilities upon receipt of such notice; (vii) a summary of the institution's procedures for resolving complaints of sexual misconduct promptly and equitably, including clear statements advising students and employees: (A) that notice shall be given to the responding party and shall include, but not be limited to, the date, time and location, if known, of the alleged incident of sexual misconduct and a specific statement of which policies were allegedly violated and by what actions; (B) that an impartial investigation, including any hearings and resulting disciplinary proceedings, shall be conducted by an individual who receives not less than annual training on issues relating to sexual misconduct, investigatory procedures and hearing procedures to protect the safety and rights of students and employees and promote accountability; (C) that there is a presumption that the responding party is not responsible for the alleged conduct until a determination regarding responsibility is made by the institution at the conclusion of the relevant process; (D) that both parties shall be provided equal opportunities to inspect and review evidence obtained as part of the investigation that is directly related to the allegations; (E) that the reporting party of an alleged incident of sexual misconduct and the responding party may be accompanied by and represented by an advisor or support person of their choice, which may include an advocate or counsel, to meet with the institution's investigator or other fact finder and may consult with an advisor or support person, which may include an advocate, confidential resource provider or counsel, during any meetings, hearings and disciplinary proceedings; provided, however, that the institution may establish rules regarding how the meetings, hearings and disciplinary proceedings will be conducted, which may include guidelines on the extent to which the advisor, confidential resource provider or support person for each party may participate in a meeting, hearing or disciplinary proceeding and any limitations on participation; provided further, that the rules, including guidelines on participation and limits of participation, shall apply equally to both parties; and provided further, that the institution shall adopt reasonable measures to provide for

but the availability of the advisor, confidential resource provider or support person shall not significantly delay a meeting or disciplinary proceeding; (F) of the standard of evidence used to resolve complaints; (G) that the reporting party and the responding party shall be provided with a copy of the institution's policies regarding the submission and consideration of evidence that may be used during a hearing or disciplinary proceeding and shall have equal opportunity to present evidence and witnesses on their behalf during a hearing or disciplinary proceeding; provided, however, that each party shall be provided with timely and equal access to relevant evidence that shall be used in the determination of a disciplinary action; (H) that there may be restrictions on evidence considered by the fact finder including, but not limited to, the use of evidence of prior sexual activity or character witnesses; (I) that the reporting party and the responding party shall not be personally allowed to directly question each other during a hearing or disciplinary proceeding; (J) that the reporting party and the responding party shall be informed in writing of the results of a hearing or disciplinary proceeding not later than 7 business days after a final determination of a complaint, not including any time for appeal, unless good cause for additional time is shown, and that they shall be informed of any process for appealing the decision; (K) that if an institution offers an appeal as a result of procedural errors, previously unavailable relevant evidence that could significantly impact the outcome of a case or where the sanction is disproportionate to the findings, the reporting party and the responding party shall be provided with an equal opportunity to appeal decisions regarding responsibility or sanctions; and (L) that the institution shall not disclose the identity of the reporting party and the responding party, except as necessary to carry out a disciplinary process or as permitted under state or federal law; (viii) a summary of the institution's employee disciplinary process as it pertains to sexual misconduct; (ix) the range of sanctions or penalties the institution may impose on students and employees found responsible for a violation of the applicable institutional policy prohibiting acts of sexual misconduct; and (x) a summary of the institution's policy on retaliation, noting that the institution prohibits retaliation against anyone who reports sexual misconduct, assists another in making a report or participates in an investigation of a report.

(c) Each institution shall, to the extent feasible, adopt a memorandum of understanding with local law enforcement agencies to establish the respective roles and responsibilities of each party related to the prevention of and response to on-campus and off-campus sexual misconduct. In adopting the memorandum of understanding, institutions and local law enforcement agencies shall develop policies and procedures that comply with all applicable confidentiality and privacy laws and that: (i) set out the jurisdiction of the local law enforcement agencies based on criteria such as location and type of incident and provide for cross-jurisdictional or multi-jurisdictional response and investigation, as appropriate; (ii) establish protocols, as permitted by federal and

documentation and information generated or acquired during local law enforcement or campus police investigations; and (iii) include methods for notifying the appropriate district attorney's office. If an institution is subject to the jurisdiction of more than 1 local law enforcement agency, 1 memorandum of understanding among the institution and the local law enforcement agencies shall comply with this subsection.

(d) The commissioner of higher education shall appoint within the department of higher education a campus safety advisor to facilitate and advance statewide campus safety at public and private institutions of higher education. Such person shall have relevant public safety policy experience that may include campus public safety policy experience. The advisor shall coordinate, aggregate and disseminate best practices, training opportunities and other resources to enhance campus safety at institutions.

(e) An institution shall make publicly available on its website, in an accessible format: (i) the Annual Security Report required under the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, codified as subsection (f) of 20 U.S.C. section 1092, relating to sexual misconduct and all information contained in an institution's annual report as required in subsection (q); (ii) the telephone number and website for a local, state or national 24-hour hotline that provides information on sexual misconduct; (iii) the name and contact information for the institution's Title IX coordinator; (iv) the name and contact information for a confidential resource provider, appointed pursuant to subsection (l), and a description of the role of and services provided by a confidential resource provider, which shall be updated on a timely basis; (v) the name and location of the nearest medical facility where an individual may request that a sexual assault evidence collection kit be administered by a trained sexual violence forensic health care provider, including, but not limited to, information on transportation options and reimbursement for travel costs, if any; (vi) its policies on sexual misconduct; (vii) sexual misconduct reporting options for students and employees; (viii) the process of investigation and adjudication by the institution; and (ix) the process for requesting a possible interim school-based supportive measure, when reasonable and available, to change an academic, living, campus transportation or working situation in response to alleged sexual misconduct. The institution shall also establish the methods for sharing reports with local law enforcement authorities pursuant to the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, codified as subsection (f) of 20 U.S.C. section 1092, and for facilitating the issuance of timely warnings and emergency notifications required by the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, codified as subsection (f) of 20 U.S.C. section 1092, relative to crimes that may pose a serious threat to the campus or near campus communities.

by electronic mail their policies and procedures concerning the reporting and investigation of an allegation of sexual misconduct made by a student or employee of the institution against another student or employee of the institution.

(g) Upon receiving a report of sexual misconduct, an institution shall provide a notice of the student's or the employee's rights and options under the institution's sexual misconduct policies to the reporting party.

(h) An institution that does not provide its own sexual assault crisis service center shall enter into and maintain a memorandum of understanding with a community-based sexual assault crisis service center funded by the department of public health and a community-based domestic violence program funded by the department of public health to: (i) provide an off-campus alternative for students and employees to receive sexual assault crisis services, including access to a sexual assault nurse examiner if available, or domestic violence crisis services in response to sexual misconduct; (ii) ensure that a student or employee of the institution is able to access free and confidential counseling and advocacy services either on campus or off campus; and (iii) encourage cooperation and trainings between the institution and the service center or program to ensure an understanding of the roles that the institution, service center and program should play in responding to reports and disclosures of sexual misconduct against students and employees of the institution and the institution's protocols for providing support and services to the students and employees.

The memorandum of understanding may include an agreement, including a fee structure, for the sexual assault crisis service center or domestic violence program to provide confidential victim services. Confidential victim services may include: (i) case consultation and training fees for confidential resource employees; (ii) consultation fees for the development and implementation of student education and prevention programs; (iii) the development of staff training and prevention curricula; and (iv) confidential on-site office space for an advocate from a sexual assault crisis service center or domestic violence program to meet with students and employees.

The department of higher education may waive the memorandum of understanding requirement to an institution that demonstrates that the institution acted in good faith but was unable to obtain a signed memorandum.

(i) An institution shall provide a method for anonymously reporting an incident of sexual misconduct that involves a student or employee of the institution.

(j) An institution shall notify its students and employees of the institution's obligations under state and federal law to: (i) investigate or address the alleged sexual misconduct, including when the alleged act was reported anonymously; (ii) assess whether the report triggers

obligations of which may, in limited circumstances, result in the release of the reporting party's identity; and (iii) disclose the identity of a reporting party to another student, an employee or a third party.

(k) A reporting party or a witness who causes an investigation of sexual misconduct shall not be subject to a disciplinary sanction for a violation of the institution's student conduct policy related to the incident unless the institution determines that the report was not made in good faith or that the violation was egregious. An egregious violation shall include, but not be limited to, taking an action that places the health and safety of another person at risk.

(l) Each institution shall establish a campus security policy that includes the designation of at least 1 confidential resource provider. The confidential resource provider may have another role at the institution; provided, however, that the confidential resource provider shall not be a student, a Title IX coordinator or an employee who is required by Title IX to report to the Title IX coordinator. The institution shall designate new or existing categories of employees that may serve as confidential resource providers. The designation of an existing category of employees shall not preclude the institution from designating a new or existing employee or partnering with a local, state or national victim services organization to serve as a confidential resource provider or to serve in another confidential role. An institution may partner with an outside victim support services organization to provide a confidential resource provider under this section. An institution that enrolls less than 1,000 students may partner with another institution in the region or within the commonwealth to establish a campus security policy and provide a confidential resource provider.

Upon the request of the reporting party or responding party, the confidential resource provider shall provide information on: (i) reporting options and the effects of each option; (ii) counseling services available on campus and through a local, community-based rape crisis center or domestic violence program; (iii) medical and health services available on campus and off campus; (iv) available school-based supportive measures related to academic and residence life; (v) the disciplinary process of the institution; and (vi) the legal process carried out through local law enforcement agencies.

The confidential resource provider shall receive training in the awareness and prevention of sexual misconduct and in trauma-informed response and coordinate with any on-campus or off-campus sexual assault crisis service center or domestic violence program and, if directed by the reporting party, campus or local law enforcement agencies may, as appropriate, assist the student or employee in contacting or reporting to campus or local law enforcement agencies. If requested by the reporting party, the confidential resource provider, using only the reporting party's identifying information, shall coordinate with the appropriate institutional personnel to arrange possible interim school-based supportive measures to allow the reporting party to

alleged sexual misconduct. A confidential resource provider shall not provide services to adverse parties in an incident of sexual misconduct and shall ensure confidentiality is maintained.

The confidential resource provider shall notify the reporting party of their rights and the institution's responsibilities regarding a protection order, no contact order and any other lawful orders issued by the institution or by a criminal, civil or tribal court. The confidential resource provider shall not be required to report an incident to the institution or a law enforcement agency unless otherwise required to do so by state or federal law and shall provide confidential services to students and employees. A request for a possible interim school-based supportive measure made by a confidential resource provider on behalf of a reporting party to change an academic, living, campus transportation or working situation in response to alleged sexual misconduct shall not require the reporting party to file a formal complaint for Title IX purposes. A confidential resource provider may attend an administrative or institution-based adjudication proceeding as the advisor or support person of the student's or employee's choice.

Unless otherwise required by state or federal law, a confidential resource provider shall not disclose confidential information without the prior written consent of the reporting party who shared the information; provided, however, that nothing in this section shall limit a responding party's right of cross examination of the confidential resource provider in a civil or criminal proceeding if the confidential resource provider testifies after being given written consent to do so by the party. A confidential communication shall not be subject to discovery and shall be inadmissible in a criminal or civil proceeding without the prior written consent of the party who shared the information. Information provided to the confidential resource provider shall not be released to a campus official or law enforcement officer or agency unless written consent has been given by the reporting party. A confidential resource provider shall not act as a counselor or therapist unless the confidential resource provider holds a valid and applicable license under chapter 112 and the reporting party engages the confidential resource provider in that capacity. The privileges available under chapter 233 shall apply to all information received by a confidential resource provider.

If a conflict of interest arises for an institution in which a confidential resource provider is advocating for the reporting party's need for sexual assault crisis services or campus or law enforcement services, the institution shall not discipline, penalize or otherwise retaliate against the confidential resource provider for representing the interest of the reporting party.

Notice to a confidential resource provider of an alleged act of sexual misconduct or a confidential resource provider's performance of a service under this section shall not be considered actual or constructive notice of such an alleged act to the institution at which the confidential resource provider is employed or provides contracted services.

newly-enrolled students and newly-hired employees: (i) mandatory sexual misconduct primary prevention and awareness programming for newly-enrolled students and newly-hired employees of the institution that shall include, but not be limited to: (A) an explanation of civil rights laws, their meaning, purpose, definition and applicability to all forms of sex-based and gender-based harm; (B) the role drugs and alcohol play in changing behavior and affecting an individual's ability to consent; (C) information on options relating to the reporting of an incident of sexual misconduct, the effects of each option and the methods to report an incident of sexual misconduct, including confidential and anonymous disclosure; (D) information on the institution's policies and procedures for resolving sexual misconduct complaints and the range of sanctions or penalties the institution may impose on students and employees found responsible for a violation; (E) the name, contact information and role of the confidential resource provider; and (F) strategies for bystander intervention and risk reduction; and (ii) information on opportunities for ongoing sexual misconduct prevention and awareness campaigns and programming.

(n) An individual who participates in the implementation of an institution's disciplinary process for addressing complaints of sexual misconduct, including an individual responsible for resolving complaints of reported incidents, shall have training or experience in handling sexual misconduct complaints and the operation of the institution's applicable disciplinary process. The training shall include, but not be limited to: (i) information on working with and interviewing persons subjected to sexual misconduct; (ii) information on particular types of conduct that constitute sexual misconduct; (iii) information on consent and the role drugs and alcohol may play in an individual's ability to consent; (iv) the effects of trauma, including any neurobiological impact on an individual; (v) cultural competence training regarding how sexual misconduct may impact individuals differently depending on factors that contribute to an individual's cultural background, including, but not limited to, national origin, sex, ethnicity, religion, gender identity, gender expression and sexual orientation; (vi) ways to communicate sensitively and compassionately with a reporting party of sexual misconduct including, but not limited to, an awareness of responding to a reporting party with consideration of that party's cultural background and providing services to or assisting in locating services for the reporting party; (vii) training and information regarding how sexual misconduct may impact individuals with developmental or intellectual disabilities; and (viii) training on the principles of due process necessary to ensure that proceedings are conducted impartially in a manner that is fundamentally fair to all parties.

(o) Each institution shall ensure that its Title IX coordinator and members of its special or campus police force or the campus safety personnel employed by the institution are educated and trained in the awareness and prevention of sexual misconduct.

any other provision of state or federal law.

(q) Annually, not later than December 1, each institution shall prepare and submit to the department of higher education a report that includes: (i) the total number of reports of sexual misconduct reported to the institution's Title IX coordinator by a student or employee of the institution against another student or employee of the institution; (ii) the number of reports made by a student or employee of the institution against another student or employee of the institution investigated by a local or state law enforcement agency, if known; (iii) the number of students and employees found responsible for violating an institution's policies prohibiting sexual misconduct; (iv) the number of students and employees found not responsible for violating an institution's policies prohibiting sexual misconduct; and (v) the number of disciplinary actions imposed by the institution as a result of a finding of responsibility for violating an institution's policies prohibiting sexual misconduct. Such incident data shall be reported in the form and manner established by the department of higher education, in consultation with the attorney general, and in a manner that complies with state and federal privacy laws. The department of higher education shall analyze the incident data and shall publish an annual report containing aggregate statewide information on the frequency and nature of sexual misconduct at institutions. The department of higher education shall file the annual report with the attorney general, the clerks of the senate and the house of representatives and the joint committee on higher education.

(r) The department of higher education shall promulgate regulations necessary to implement this section.

SECTION 2. The department of higher education shall promulgate regulations to implement subsection (c) of section 168E of chapter 6 of the General Laws not later than August 1, 2021.

SECTION 3. The task force on sexual misconduct surveys established in subsection (c) of section 168D of chapter 6 of the General Laws shall provide the model questions and related recommendations required pursuant to subsection (d) of said section 168D of said chapter 6 to the commissioner of higher education not later than January 1, 2022.

SECTION 4. Section 1 shall take effect on August 1, 2021.

*Approved, January 12, 2021.*

# Delaware: Title 14 - Miscellaneous

## CHAPTER 90A. Sexual Assault Policy for Institutions of Higher Education

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80 Del. Laws, c. 294, § 1 (<https://legis.delaware.gov/SessionLaws?volume=80&chapter=294>);

### § 9001A. Definitions.

As used in this chapter:

- (1) "Academic institution" means an institution of postsecondary education receiving State funds or a private institution of postsecondary education with campuses physically located in Delaware serving over 1,000 students.
- (2) "Advocate" means any of the following:
  - a. An employee or volunteer at a domestic violence shelter or a telephone crisis line for crime victims.
  - b. An employee or volunteer at an organization whose primary purpose is to provide services for victims of domestic violence or sexual offenses, including sexual assault, stalking, or any abuse.
  - c. An employee, whose primary job duties are the provision of services to victims of domestic violence, sexual assault, or other crimes.
- (3) "Responsible employee" means persons who are any of the following:
  - a. Faculty, teachers, or professors.
  - b. Employees of the academic institution who, as part of their job duties, regularly interact with students in a teaching, mentoring, advisory, or supervisory capacity.
  - c. Persons who serve as an appointed trustee or director of the academic institution.
  - d. Student employees of an academic institution who, as part of their job duties, have teaching, mentoring, advisory, or supervisory responsibilities with respect to other students. This shall include resident advisors, hall directors, and teaching assistants.
- (4) "Sexual assault" means physical contact of a sexual nature perpetrated without consent or where consent is unable to be given.

80 Del. Laws, c. 294, § 1 (<https://legis.delaware.gov/SessionLaws?volume=80&chapter=294>);

### § 9002A. Duties of responsible employees, law enforcement, and academic institutions.

- (a) Any responsible employee of an academic institution who is informed by the victim of an alleged sexual assault upon or by a student of the academic institution, shall immediately make an offer to the victim to notify the law-enforcement officers or public-safety officials who service the academic institution of the allegation. If the victim requests such a notification, the responsible employee shall make the report to law enforcement or public safety within 24 hours. Where the academic institution does not have law-enforcement officers or public-safety officials of its own, the responsible employee shall make an offer to notify municipal or state law-enforcement officers having jurisdiction over the alleged assault. Such an offer to report is required only where the alleged sexual assault occurred while the victim or perpetrator was on campus, or was enrolled as a student at the academic institution, unless the sexual assault occurred when such victim was a minor, in which case it must be reported consistent with the requirements of Chapter 9 of Title 16. Any responsible employee of an academic institution who is informed by the victim of an alleged sexual assault that occurred on campus even if the victim or perpetrator are not students, shall immediately make an offer to the victim to notify the law-enforcement or public-safety officials who service the academic institution of the allegation within 24 hours.
- (b) The responsible employee shall inform the victim of the alleged sexual assault of the employee's duty to offer to report to law-enforcement officers. The responsible employee shall inform the victim that crime victims are afforded certain rights in criminal proceedings in Delaware and provide or direct the victim to a copy of the Victims' Bill of Rights in Chapter 94 of Title 11 or a summary version thereof approved by the Department of Justice. Responsible employees shall provide information regarding confidential medical, counseling, and advocacy services available to victims on campus, as well as appropriate off-campus services available to victims. Academic institutions shall require responsible employees to document compliance with this section as part of the responsible employee's requirement to report to the Title IX coordinator. Responsible employees shall maintain a victim's confidentiality so far as it does not conflict with any requirements of federal law.
- (c) If law-enforcement officers or public-safety officials serving an academic institution receive a report, pursuant to subsection (a) of this section, of an alleged assault that took place outside of their jurisdiction, they shall within 24 hours of receiving the report notify the municipal or state law-enforcement agency having jurisdiction over the offense.

# Minnesota: Statutes 2023

## 135A.15 SEXUAL HARASSMENT AND VIOLENCE POLICY

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Subdivision 1. **Applicability; policy required.** (a) This section applies to the following postsecondary institutions:

(1) institutions governed by the Board of Trustees of the Minnesota State Colleges and Universities; and

(2) private postsecondary institutions that offer in-person courses on a campus located in Minnesota and which are eligible institutions as defined in section 136A.103, provided that a private postsecondary institution with a systemwide enrollment of fewer than 100 students in the previous academic year is exempt from subdivisions 4 to 10.

Institutions governed by the Board of Regents of the University of Minnesota are requested to comply with this section.

(b) A postsecondary institution must adopt a clear, understandable written policy on sexual harassment and sexual violence that informs victims of their rights under the crime victims bill of rights, including the right to assistance from the Crime Victims Reimbursement Board and the commissioner of public safety. The policy must apply to students and employees and must provide information about their rights and duties. The policy must apply to criminal incidents against a student or employee of a postsecondary institution occurring on property owned or leased by the postsecondary system or institution or at any activity, program, organization, or event sponsored by the system or institution, or by a fraternity and sorority. It must include procedures for reporting incidents of sexual harassment or sexual violence and for disciplinary actions against violators. During student registration, a postsecondary institution shall provide each student with information regarding its policy. A copy of the policy also shall be posted at appropriate locations on campus at all times.

Subd. 1a. **Sexual assault definition.** (a) For the purposes of this section, the following terms have the meanings given.

(b) "Incident" means one report of sexual assault to a postsecondary institution, regardless of the number of complainants included in the report, the number of respondents included in the report, and whether or not the identity of any party is known by the reporting postsecondary institution. Incident encompasses all nonconsensual events included within one report if multiple events have been identified.

(c) "Sexual assault" means rape, sex offenses - fondling, sex offenses - incest, or sex offenses - statutory rape as defined in Code of Federal Regulations, title 34, part 668, subpart D, appendix A, as amended.

Subd. 2. **Victims' rights.** The policy required under subdivision 1 shall, at a minimum, require that students and employees be informed of the policy, and shall include provisions for:

(1) filing criminal charges with local law enforcement officials in sexual assault cases;

(2) the prompt assistance of campus authorities, at the request of the victim, in notifying the appropriate law enforcement officials and disciplinary authorities of a sexual assault incident;

(3) allowing sexual assault victims to decide whether to report a case to law enforcement;

(4) requiring campus authorities to treat sexual assault victims with dignity;

(5) requiring campus authorities to offer sexual assault victims fair and respectful health care, counseling services, or referrals to such services;

(6) preventing campus authorities from suggesting to a victim of sexual assault that the victim is at fault for the crimes or violations that occurred;

(7) preventing campus authorities from suggesting to a victim of sexual assault that the victim should have acted in a different manner to avoid such a crime;

(8) subject to subdivision 10, protecting the privacy of sexual assault victims by only disclosing data collected under this section to the victim, persons whose work assignments reasonably require access, and, at a sexual assault victim's request, police conducting a criminal investigation;

(9) an investigation and resolution of a sexual assault complaint by campus disciplinary authorities;

(10) a sexual assault victim's participation in and the presence of the victim's attorney or other support person who is not a fact witness to the sexual assault at any meeting with campus officials concerning the victim's sexual assault complaint or campus disciplinary proceeding concerning a sexual assault complaint;

(11) ensuring that a sexual assault victim may decide when to repeat a description of the incident of sexual assault;

(12) notice to a sexual assault victim of the availability of a campus or local program providing sexual assault advocacy services and information on free legal resources and services;

(13) notice to a sexual assault victim of the outcome of any campus disciplinary proceeding concerning a sexual assault complaint, consistent with laws relating to data practices;

(14) the complete and prompt assistance of campus authorities, at the direction of law enforcement authorities, in obtaining, securing, and maintaining evidence in connection with a sexual assault incident;

(15) the assistance of campus authorities in preserving for a sexual assault complainant or victim materials relevant to a campus disciplinary proceeding;

(16) during and after the process of investigating a complaint and conducting a campus disciplinary procedure, the assistance of campus personnel, in cooperation with the appropriate law enforcement authorities, at a sexual assault victim's request, in shielding the victim from unwanted contact with the alleged assailant, including transfer of the victim to alternative classes or to alternative college-owned housing, if alternative classes or housing are available and feasible;

(17) forbidding retaliation, and establishing a process for investigating complaints of retaliation, against sexual assault victims by campus authorities, the accused, organizations affiliated with the accused, other students, and other employees;

(18) at the request of the victim, providing students who reported sexual assaults to the institution and subsequently choose to transfer to another postsecondary institution with information about resources for victims of sexual assault at the institution to which the victim is transferring; and

(19) consistent with laws governing access to student records, providing a student who reported an incident of sexual assault with access to the student's description of the incident as it was reported to the institution, including if that student transfers to another postsecondary institution.

Subd. 3. **Uniform amnesty.** The sexual harassment and violence policy required by subdivision 1 must include a provision that a witness or victim of an incident of sexual assault who reports the incident in good faith shall not be sanctioned by the institution for admitting in the report to a violation of the institution's student conduct policy on the personal use of drugs or alcohol.

Subd. 4. **Coordination with local law enforcement.** (a) A postsecondary institution must enter into a memorandum of understanding with the primary local law enforcement agencies that serve its campus. The memorandum must be entered into no later than January 1, 2017, and updated every two years thereafter. This memorandum shall clearly delineate responsibilities and require information sharing, in accordance with applicable state and federal privacy laws, about certain crimes including, but not limited to, sexual assault. This memorandum of understanding shall provide:

(1) delineation and sharing protocols of investigative responsibilities;

(2) protocols for investigations, including standards for notification and communication and measures to promote evidence preservation; and

(3) a method of sharing information about specific crimes, when directed by the victim, and a method of sharing crime details anonymously in order to better protect overall campus safety.

(b) Prior to the start of each academic year, a postsecondary institution shall distribute an electronic copy of the memorandum of understanding to all employees on the campus that are subject to the memorandum.

(c) An institution is exempt from the requirement that it develop a memorandum of understanding under this section if the institution and local or county law enforcement agencies establish a sexual assault protocol team to facilitate effective cooperation and collaboration between the institution and law enforcement.

Subd. 5. **Online reporting system.** (a) A postsecondary institution must provide an online reporting system to receive complaints of sexual harassment and sexual violence from students and employees. The system must permit anonymous reports, provided that the institution is not obligated to investigate an anonymous report unless a formal report is submitted through the process established in the institution's sexual harassment and sexual violence policy.

(b) A postsecondary institution must provide students making reports under this subdivision with information about who will receive and have access to the reports filed, how the information gathered through the system will be used, and contact information for on-campus and off-campus organizations serving victims of sexual violence.

(c) Data collected under this subdivision is classified as private data on individuals as defined by section 13.02, subdivision 12. Postsecondary institutions not otherwise subject to chapter 13 must limit access to the data to only the data subject and persons whose work assignments reasonably require access.

Subd. 6. **Data collection and reporting.** (a) Postsecondary institutions must annually report statistics on sexual assault. This report must be prepared in addition to any federally required reporting on campus security, including reports required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, United States Code, title 20, section 1092(f). The report must include, but not be limited to, the number of incidents of sexual assault reported to the institution in the previous calendar year, as follows:

(1) the number that were investigated by the institution;

(2) the number that were referred for a disciplinary proceeding at the institution;

(3) the number the victim chose to report to local or state law enforcement;

(4) the number for which a campus disciplinary proceeding is pending, but has not reached a final resolution;

(5) the number in which the alleged perpetrator was found responsible by the disciplinary proceeding at the institution;

(6) the number that resulted in any action by the institution greater than a warning issued to the accused;

(7) the number that resulted in a disciplinary proceeding at the institution that closed without resolution;

(8) the number that resulted in a disciplinary proceeding at the institution that closed without resolution because the accused withdrew from the institution;

(9) the number that resulted in a disciplinary proceeding at the institution that closed without resolution because the victim chose not to participate in the procedure; and

(10) the number of reports made through the online reporting system established in subdivision 5, excluding reports submitted anonymously.

(b) If an institution previously submitted a report indicating that one or more disciplinary proceedings was pending, but had not reached a final resolution, and one or more of those disciplinary proceedings reached a final resolution within the previous calendar year, that institution must submit updated totals from the previous year that reflect the outcome of the pending case or cases.

(c) The reports required by this subdivision must be submitted to the Office of Higher Education by October 1 of each year. Each report must contain the data required under paragraphs (a) and (b) from the previous calendar year.

(d) The commissioner of the Office of Higher Education shall calculate statewide numbers for each data item reported by an institution under this subdivision. The statewide numbers must include data from postsecondary institutions that the commissioner could not publish due to federal laws governing access to student records.

(e) The Office of Higher Education shall publish on its website:

(1) the statewide data calculated under paragraph (d); and

(2) the data items required under paragraphs (a) and (b) for each postsecondary institution in the state.

Each postsecondary institution shall publish on the institution's website the data items required under paragraphs (a) and (b) for that institution.

(f) Reports and data required under this subdivision must be prepared and published as summary data, as defined in section 13.02, subdivision 19, and must be consistent with applicable law governing access to educational data. If an institution or the Office of Higher Education does not publish data because of applicable law, the publication must explain why data are not included.

**Subd. 7. Access to data; audit trail.** (a) Data on incidents of sexual assault shared with campus security officers or campus administrators responsible for investigating or adjudicating complaints of sexual assault are classified as private data on individuals as defined by section 13.02, subdivision 12, for the purposes of postsecondary institutions subject to the requirements of chapter 13. Postsecondary institutions not otherwise subject to chapter 13 must limit access to the data to only the data subject and persons whose work assignments reasonably require access.

(b) Only individuals with explicit authorization from an institution may enter, update, or access electronic data related to an incident of sexual assault collected, created, or maintained under this section. The ability

of authorized individuals to enter, update, or access these data must be limited through the use of role-based access that corresponds to the official duties or training level of the individual and the institutional authorization that grants access for that purpose. All actions in which the data related to an incident of sexual assault are entered, updated, accessed, shared, or disseminated outside of the institution must be recorded in a data audit trail. An institution shall immediately and permanently revoke the authorization of any individual determined to have willfully entered, updated, accessed, shared, or disseminated data in violation of this subdivision or any provision of chapter 13. If an individual is determined to have willfully gained access to data without explicit authorization, the matter shall be forwarded to a county attorney for prosecution.

**Subd. 8. Comprehensive training.** (a) A postsecondary institution must provide campus security officers and campus administrators responsible for investigating or adjudicating complaints of sexual assault with comprehensive training on preventing and responding to sexual assault in collaboration with the Bureau of Criminal Apprehension or another law enforcement agency with expertise in criminal sexual conduct. The training for campus security officers shall include a presentation on the dynamics of sexual assault, neurobiological responses to trauma, and best practices for preventing, responding to, and investigating sexual assault. The training for campus administrators responsible for investigating or adjudicating complaints on sexual assault shall include presentations on preventing sexual assault, responding to incidents of sexual assault, the dynamics of sexual assault, neurobiological responses to trauma, and compliance with state and federal laws on sexual assault.

(b) The following categories of students who attend, or will attend, one or more courses on campus or will participate in on-campus activities must be provided sexual assault training:

- (1) students pursuing a degree or certificate;
- (2) students who are taking courses through the Postsecondary Enrollment Options Act; and
- (3) any other categories of students determined by the institution.

Students must complete such training no later than ten business days after the start of a student's first semester of classes. Once a student completes the training, institutions must document the student's completion of the training and provide proof of training completion to a student at the student's request. Students enrolled at more than one institution within the same system at the same time are only required to complete the training once.

The training shall include information about topics including but not limited to sexual assault as defined in subdivision 1a; consent as defined in section 609.341, subdivision 4; preventing and reducing the prevalence of sexual assault; procedures for reporting campus sexual assault; and campus resources on sexual assault, including organizations that support victims of sexual assault.

(c) A postsecondary institution shall annually train individuals responsible for responding to reports of sexual assault. This training shall include information about best practices for interacting with victims of sexual assault, including how to reduce the emotional distress resulting from the reporting, investigatory, and disciplinary process.

**Subd. 9. Student health services.** (a) An institution's student health service providers must screen students for incidents of sexual violence and sexual harassment. Student health service providers shall offer students information on resources available to victims and survivors of sexual violence and sexual harassment including counseling, mental health services, and procedures for reporting incidents to the institution.

(b) Each institution offering student health or counseling services must designate an existing staff member or existing staff members as confidential resources for victims of sexual violence or sexual harassment. The

confidential resource must be available to meet with victims of sexual violence and sexual harassment. The confidential resource must provide victims with information about locally available resources for victims of sexual violence and sexual harassment including, but not limited to, mental health services and legal assistance. The confidential resource must provide victims with information about the process for reporting an incident of sexual violence and sexual harassment to campus authorities or local law enforcement. The victim shall decide whether to report an incident of sexual violence and sexual harassment to campus authorities or local law enforcement. Confidential resources must be trained in all aspects of responding to incidents of sexual violence and sexual harassment including, but not limited to, best practices for interacting with victims of trauma, preserving evidence, campus disciplinary and local legal processes, and locally available resources for victims. Data shared with a confidential resource is classified as sexual assault communication data as defined by section 13.822, subdivision 1.

Subd. 10. **Applicability of other laws.** This section does not exempt mandatory reporters from the requirements of section 626.557 or chapter 260E governing the reporting of maltreatment of minors or vulnerable adults. Nothing in this section limits the authority of an institution to comply with other applicable state or federal laws related to investigations or reports of sexual harassment, sexual violence, or sexual assault.

**History:** 1989 c 293 s 15; 1992 c 571 art 5 s 1; 1995 c 212 art 3 s 7; 2002 c 220 art 7 s 8; 2010 c 364 s 1; 2015 c 69 art 4 s 2; 2017 c 89 art 3 s 1; 2019 c 64 art 2 s 3; 2020 c 109 art 1 s 2; 1Sp2020 c 2 art 8 s 18; 2023 c 52 art 5 s 79

# New York: Codes, Rules and Regulations

## 8 CRR-NY 48.2, NY-CRR

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK  
TITLE 8. EDUCATION DEPARTMENT  
CHAPTER II. REGULATIONS OF THE COMMISSIONER  
SUBCHAPTER A. HIGHER AND PROFESSIONAL EDUCATION  
PART 48. ANNUAL AGGREGATE DATA REPORTING BY NEW YORK STATE INSTITUTIONS OF HIGHER  
EDUCATION RELATED TO REPORTS OF DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING AND SEXUAL  
ASSAULT

8 CRR-NY 48.2

8 CRR-NY 48.2

### 48.2 Annual aggregate data reporting.

On or before October 1, 2019, and by October 1st of each subsequent year thereafter, institutions shall report to the department the following information concerning incidents that were reported during the prior calendar year in a form and manner prescribed by the commissioner:

(a) the following numbers of incidents reported to the title IX coordinator (which shall be established based upon the number of reporting individuals, not by the number of the accused or respondents):

- (1) the number of incidents that occurred on campus;
- (2) the number of incidents that occurred off campus; and
- (3) the total of incidents in (1) and (2) above.

(i) of those incidents reported in this paragraph:

- (a) the number of incidents that the title IX coordinator is aware of, that were reported to law enforcement, which shall include, but not be limited to, the State Police;
- (b) the number of incidents reported to campus police/campus security/campus public safety; and
- (c) the number of incidents that the title IX coordinator is aware of, for which the reporting individual requested referral to additional services through the institution, including counseling, mental health, medical or legal services, whether those services were provided on-campus or through outside service providers.

(b) of those incidents reported in paragraph (a)(3) of this section;

(1) the number of incidents for which the reporting individual sought the institution's judicial or conduct process (which includes incidents for which a reporting individual made a request, in writing or orally, to engage the judicial or conduct process, whether an investigator or hearing model, and those incidents where, pursuant to section 6446[4] of the Education Law, the institution made a determination to pursue the judicial or conduct process without the consent of the reporting individual);

(2) the number of incidents that are not included in paragraph (1) of this subdivision, including those for which there was no institutional jurisdiction over the accused or respondent, and those incidents for which the judicial or conduct process could not otherwise go forward; and

(3) the number of incidents for which the reporting individual sought an order of no contact with the respondent(s), and the number of no contact orders issued.

(c) of those incidents reported in paragraph (b)(1) of this section, the number of cases processed through the institution's judicial or conduct process, (which process shall commence upon a respondent's receipt of a notice of charges pursuant to section 6444[5][b] of the Education Law);

(d) of those cases in subdivision (c) of this section, the number of respondents who were found responsible through the institution's judicial or conduct process after all levels of appeal were exhausted, which number shall include those cases in which the respondent accepted responsibility at any point in the process;

(e) of those cases in subdivision (c) of this section, the number of respondents who were found not responsible through the institution's judicial or conduct process, or whose finding of responsibility was overturned on appeal;

(f) a description of the final sanctions imposed by the institution for each incident for which a respondent was found responsible for sexual assault, dating violence, domestic violence or stalking, as provided in subdivision (d) of this section, through the institution's judicial or conduct process, which shall be defined as:

- (1) the number of respondents found responsible who were expelled/dismissed from the institution;
- (2) the number of respondents found responsible who were suspended from the institution;
- (3) the number of respondents found responsible who received sanctions other than expulsion/dismissal or suspension;
- (4) the number of respondents found responsible who received a notation added to their official transcript noting a violation of the institutions' code of conduct; and
- (5) the number of respondents found responsible who received a notation added to their official transcript noting withdrawal from the institution with conduct charges pending;

(g) the number of cases in the institution's judicial or conduct process that were closed prior to a final determination after the respondent withdrew from the institution and declined to complete the disciplinary process;

(h) the number of cases in the institution's judicial or conduct process that were closed because the complaint was withdrawn by the reporting individual prior to a final determination or an informal resolution was reached. Such number shall include all cases, regardless of the stage at which the reporting individual withdrew the complaint or the informal resolution was reached; and

(i) additional training information. Institutions may additionally report the number of trainings held by the institution, the number of staff trained, and the number of students trained during the reporting period.

8 CRR-NY 48.2  
Current through August 15, 2021

# Texas: S.B. No. 212

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## AN ACT

relating to a reporting requirement for certain incidents of sexual harassment, sexual assault, dating violence, or stalking at certain public and private institutions of higher education; creating a criminal offense; authorizing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 51, Education Code, is amended by adding Subchapter E-2 to read as follows:

### SUBCHAPTER E-2. REPORTING INCIDENTS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, AND STALKING

Sec. 51.251. DEFINITIONS. In this subchapter:

(1) "Coordinating board" means the Texas Higher Education Coordinating Board.

(2) "Dating violence," "sexual assault," and "stalking" mean dating violence, sexual assault, or stalking, as applicable, that an institution of higher education is required to report under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Section 1092(f)).

(3) "Employee of a postsecondary educational institution" does not include a student enrolled at the institution.

(4) "Postsecondary educational institution" means an institution of higher education or a private or independent institution of higher education, as those terms are defined by Section 61.003.

(5) "Sexual harassment" means unwelcome, sex-based verbal or physical conduct that:

(A) in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or

(B) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.

Sec. 51.252. REPORTING REQUIRED FOR CERTAIN INCIDENTS.

(a) An employee of a postsecondary educational institution who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident shall promptly report the incident to the institution's Title IX coordinator or deputy Title IX coordinator.

(b) Except as provided by Subsection (c), the report must include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality in reporting the incident.

(c) An employee of a postsecondary educational institution designated by the institution as a person with whom students may speak confidentially concerning sexual harassment, sexual assault, dating violence, or stalking or who receives information regarding such an incident under circumstances that render the employee's communications confidential or privileged under other law shall, in making a report under this section, state only the type of incident reported and may not include any information that would violate a

student's expectation of privacy. This subsection does not affect the employee's duty to report an incident under any other law.

(d) Notwithstanding Subsection (a), a person is not required to make a report under this section concerning:

(1) an incident in which the person was a victim of sexual harassment, sexual assault, dating violence, or stalking; or

(2) an incident of which the person received information due to a disclosure made at a sexual harassment, sexual assault, dating violence, or stalking public awareness event sponsored by a postsecondary educational institution or by a student organization affiliated with the institution.

Sec. 51.253. ADMINISTRATIVE REPORTING REQUIREMENTS.

(a) Not less than once every three months, the Title IX coordinator of a postsecondary educational institution shall submit to the institution's chief executive officer a written report on the reports received under Section 51.252, including information regarding:

(1) the investigation of those reports;

(2) the disposition, if any, of any disciplinary processes arising from those reports; and

(3) the reports for which the institution determined not to initiate a disciplinary process, if any.

(b) The Title IX coordinator or deputy Title IX coordinator of a postsecondary educational institution shall immediately report to the institution's chief executive officer an incident reported to the coordinator under Section 51.252 if the coordinator has cause to believe that the safety of any person is in imminent danger as a result of the incident.

(c) Subject to Subsection (d), at least once during each fall or spring semester, the chief executive officer of a postsecondary educational institution shall submit to the institution's governing body and post on the institution's Internet website a report concerning the reports received under Section 51.252. The report:

(1) may not identify any person; and

(2) must include:

(A) the number of reports received under Section 51.252;

(B) the number of investigations conducted as a result of those reports;

(C) the disposition, if any, of any disciplinary processes arising from those reports;

(D) the number of those reports for which the institution determined not to initiate a disciplinary process, if any; and

(E) any disciplinary actions taken under Section 51.255.

(d) If for any semester a postsecondary educational institution has fewer than 1,500 enrolled students, the chief executive officer of the institution shall submit and post a report required under Subsection (c) for that semester only if more than five reports were received under Section 51.252 during that semester.

Sec. 51.254. IMMUNITIES. (a) A person acting in good faith who reports or assists in the investigation of a report of an incident described by Section 51.252(a) or who testifies or otherwise participates in a disciplinary process or judicial proceeding arising from a report of such an incident:

(1) is immune from civil liability, and from criminal liability for offenses punishable by fine only, that might otherwise be incurred or imposed as a result of those actions; and

(2) may not be subjected to any disciplinary action by the postsecondary educational institution at which the person is enrolled or employed for any violation by the person of the institution's code of conduct reasonably related to the incident

for which suspension or expulsion from the institution is not a possible punishment.

(b) Subsection (a) does not apply to a person who perpetrates or assists in the perpetration of the incident reported under Section 51.252.

Sec. 51.255. FAILURE TO REPORT OR FALSE REPORT; OFFENSES.

(a) A person commits an offense if the person:

(1) is required to make a report under Section 51.252 and knowingly fails to make the report; or

(2) with the intent to harm or deceive, knowingly makes a report under Section 51.252 that is false.

(b) An offense under Subsection (a) is a Class B misdemeanor, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that the actor intended to conceal the incident that the actor was required to report under Section 51.252.

(c) A postsecondary educational institution shall terminate the employment of an employee whom the institution determines in accordance with the institution's disciplinary procedure to have committed an offense under Subsection (a).

Sec. 51.256. CONFIDENTIALITY. (a) Unless waived in writing by the alleged victim, the identity of an alleged victim of an incident reported under Section 51.252:

(1) is confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) may be disclosed only to:

(A) persons employed by or under contract with the postsecondary educational institution to which the report is made who are necessary to conduct an investigation of the report or any related hearings;

(B) a law enforcement officer as necessary to conduct a criminal investigation of the report;

(C) the person or persons alleged to have perpetrated the incident, to the extent required by other law; or

(D) potential witnesses to the incident as necessary to conduct an investigation of the report.

(b) A disclosure under Subsection (a) is not a voluntary disclosure for purposes of Section 552.007, Government Code.

(c) Nothing in this section may be construed as prohibiting a victim from making a report to a law enforcement agency using the pseudonym form described by Article 57.02, Code of Criminal Procedure.

Sec. 51.257. RETALIATION PROHIBITED. (a) A postsecondary educational institution may not discipline or otherwise discriminate against an employee who in good faith:

(1) makes a report as required by Section 51.252; or

(2) cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to a report made by the employee as required by Section 51.252.

(b) Subsection (a) does not apply to an employee who:

(1) reports an incident described by Section 51.252(a) perpetrated by the employee; or

(2) cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to an allegation that the employee perpetrated an incident described by Section 51.252(a).

Sec. 51.258. COMPLIANCE. (a) The chief executive officer of each postsecondary educational institution shall annually certify in writing to the coordinating board that the institution is in substantial compliance with this subchapter.

(b) If the coordinating board determines that a postsecondary educational institution is not in substantial compliance with this subchapter, the coordinating board may assess an administrative penalty against the institution in an amount not to exceed \$2 million. In determining the amount of the penalty, the

coordinating board shall consider the nature of the violation and the number of students enrolled at the institution.

(c) If the coordinating board assesses an administrative penalty against a postsecondary educational institution under Subsection (b), the coordinating board shall provide to the institution written notice of the coordinating board's reasons for assessing the penalty.

(d) A postsecondary educational institution assessed an administrative penalty under Subsection (b) may appeal the penalty in the manner provided by Chapter 2001, Government Code.

(e) A postsecondary educational institution may not pay an administrative penalty assessed under Subsection (b) using state or federal money.

(f) An administrative penalty collected under this section shall be deposited to the credit of the sexual assault program fund established under Section 420.008, Government Code.

(g) The coordinating board shall annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing legislative committees with primary jurisdiction over legislation concerning sexual assault at postsecondary educational institutions a report regarding compliance with this subchapter, including a summary of the postsecondary educational institutions found not to be in substantial compliance as provided by this section and any penalties assessed under this section during the calendar year preceding the date of the report.

Sec. 51.259. RULES. The coordinating board shall adopt rules as necessary to implement and enforce this subchapter, including rules that ensure implementation of this subchapter in a manner that complies with federal law regarding confidentiality of student educational information, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g). In adopting those rules, the coordinating board shall use the negotiated rulemaking procedures under Chapter 2008, Government Code, and consult with relevant stakeholders.

Sec. 51.260. TRAINING ADVISORY COMMITTEE. (a) The commissioner of higher education shall establish an advisory committee to develop recommended training for persons required to report certain incidents under Section 51.252 and for Title IX coordinators and deputy Title IX coordinators at postsecondary educational institutions.

(b) The advisory committee consists of nine members appointed by the commissioner of higher education as follows:

(1) eight members who are a chief executive officer of a postsecondary educational institution or a representative designated by that officer; and

(2) one member who is a representative of an advocacy organization for victims of sexual assault or family violence.

(c) Not later than December 1, 2019, the advisory committee shall develop the recommended training under Subsection (a).

(d) This section expires September 1, 2020.

SECTION 2. Section 61.0331, Education Code, is amended to read as follows:

Sec. 61.0331. NEGOTIATED RULEMAKING REQUIRED. The board shall engage institutions of higher education in a negotiated rulemaking process as described by Chapter 2008, Government Code, when adopting a policy, procedure, or rule relating to:

(1) an admission policy regarding the common admission application under Section 51.762, a uniform admission policy under Section 51.807, graduate and professional admissions under Section 51.843, or the transfer of credit under Section 61.827;

(2) the allocation or distribution of funds, including financial aid or other trusteed funds under Section 61.07761;

(3) the reevaluation of data requests under Section 51.406; [or]

(4) compliance monitoring under Section 61.035; or  
(5) the reporting of certain incidents of sexual harassment, sexual assault, dating violence, or stalking under Subchapter E-2, Chapter 51.

SECTION 3. Section 420.008(b), Government Code, is amended to read as follows:

(b) The fund consists of:

(1) fees collected under:

(A) [~~1~~] Article 42A.653(a), Code of Criminal Procedure;

(B) [~~2~~] Section 508.189, Government Code; and

(C) [~~3~~] Subchapter B, Chapter 102, Business & Commerce Code, and deposited under Section 102.054 of that code;  
and

(2) administrative penalties collected under Section 51.258, Education Code.

SECTION 4. Sections 51.251-51.259, Education Code, as added by this Act, and Section 61.0331, Education Code, as amended by this Act, apply beginning January 1, 2020.

SECTION 5. Not later than January 1, 2021, the Texas Higher Education Coordinating Board shall submit its initial report required under Section 51.258(g), Education Code, as added by this Act.

SECTION 6. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect September 1, 2019.

(b) Section 51.260, Education Code, as added by this Act, takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Section 51.260, Education Code, as added by this Act, takes effect September 1, 2019.

(c) Section 51.255(a), Education Code, as added by this Act, takes effect January 1, 2020.

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President of the Senate

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Speaker of the House

I hereby certify that S.B. No. 212 passed the Senate on March 26, 2019, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

I hereby certify that S.B. No. 212 passed the House on May 22, 2019, by the following vote: Yeas 128, Nays 13, three present not voting.

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Chief Clerk of the House

Approved:

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Date