



The 2024 Title IX Regulations: What You Need to Know

Tuesday, April 30, 2024 | 1:00 p.m. ET

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Presenters



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2024 TITLE IX REGULATIONS “DRIVE-IN” SESSIONS

- May 2, 2024: 1:00 pm - 2:30 pm Eastern
- May 9, 2024: 11:00 am - 3:00 pm Eastern
(Two-year Institutions)
- May 14, 2024: 12:00 pm - 4:00 pm Eastern
- May 20, 2024: 11:00 am - 3:00 pm Eastern

**All sessions are held virtually. Register at
<https://www.naccop.org/naccop-title-ix-classes>**

Implementation Date: August 1, 2024



Technical Assistance from the Department

Office for Civil Rights (To assist with compliance)

<https://ocrcas.ed.gov/contact-ocr>

Student Privacy Policy Office (FEPPRA Questions)

<https://studentprivacy.ed.gov/?src=fpco>



§ 106.10 – Scope

“Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.”



Sex Discrimination

Sex-Based Harassment

- Sexual Assault
- Dating/Domestic Violence
- Stalking
- Hostile Environment
- Quid Pro Quo

Sex Discrimination

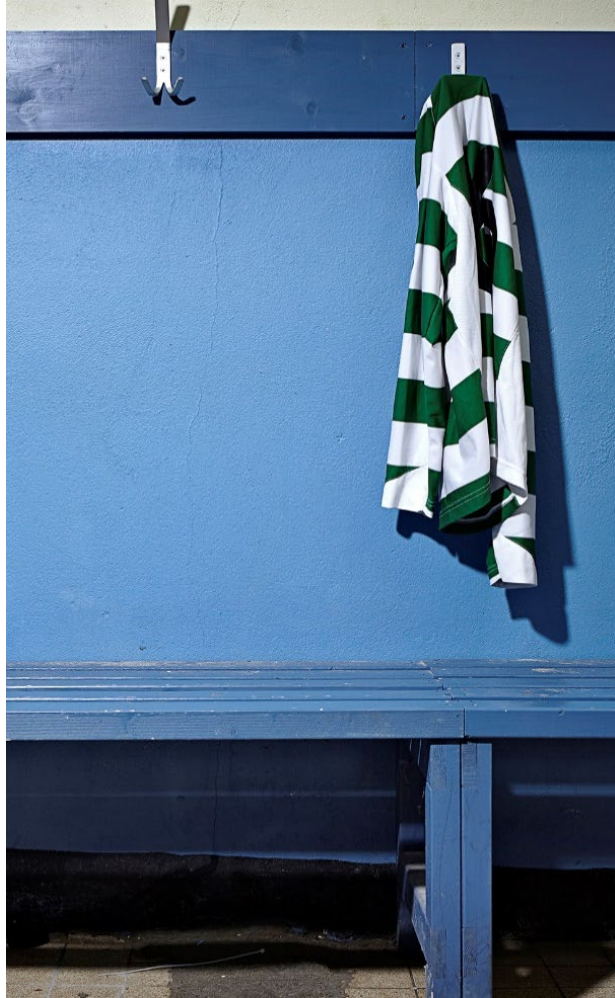
- Sex stereotypes
- Sex characteristics
- Pregnancy or related conditions
- Sexual orientation
- Gender identity

Applies in . . .

Admission, Employment, Educational Programs and Activities

§ 106.31(a)(2) – Education programs or activities

- (1) *“Except as provided elsewhere...no person, on the basis of sex...*
- (2) *“in the limited circumstances...this part permits different treatment ...on the basis of sex, ...must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, except as permitted Adopting a policy or engaging in a practice that prevents a person from participating...consistent with the person’s gender identity subjects a person to more than de minimis harm on the basis of sex.”*



Permissible different treatment: “de minimis harm”

§ 106.2 Definitions

Student with
a disability

Complaint

Complainant

Confidential
employee

Disciplinary
sanctions

Peer
retaliation

Relevant

Remedies

Respondent

Retaliation

Supportive
measures

NOT Defined

Credibility

Consent

Employee

Sex
Discrimination

Sexual assault
(but link)

§ 106.8(a)(1)-(a)(2) – Designation of Coordinator

Designate	“Designate and authorize” at least one employee
Delegate	May delegate “specific duties”
But...	One person must retain “ultimate oversight”

§ 106.2 – Definitions: Parties

Complainant

- *A student or employee or*
- *Non-student/employee who was participating/attempting to participate at the time of the alleged sex discrimination*

Respondent

- *A person who is alleged to have violated the recipient's prohibition on sex discrimination*

Party

- *A complainant or respondent*

§ 106.2 – Sex-based harassment

Sex- based harassment ... is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in § 106.10, that is:

1. Quid pro quo

2. Hostile environment

3. Specific offenses

§ 106.2 – Sex-based harassment

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1. Quid pro quo

2. Hostile environment

3. Specific offenses

§ 106.11 Application.

Sex discrimination
in education
program or activity

Sex-based hostile
environment even
when some
contributing conduct
occurred off campus

Could be broadened
by “disciplinary
authority”

§ 106.8(d)(1)

All Employee Training Requirements

*“promptly upon hiring or
change of position that
alters duties under Title IX
and annually thereafter”*



Reporting requirements

2001 Guidance

Responsible Employees: Employee with authority to take action; given the duty of reporting misconduct; or student would reasonably believe has this authority

2020 Regulations

Officials with Authority to institute corrective measures

2024 Regulations

Employees with authority to take corrective action or responsibility for administrative leadership, teaching, or advising. (BUT ALL MUST DO SOMETHING!)

§ 106.44(c)(2) – Notification Requirements

Employee Role	Notify Title IX	Provide Title IX info
Confidential Employee	No	Yes
Category 1: Employee with ability to institute corrective measures OR responsible for administrative leadership, teaching, or advising	Yes	
Category 2: All other employees	Either or (SCHOOL DECIDES)	

106.44(i) - Administrative leave

Nothing in this part precludes a recipient from placing an employee respondent on administrative leave from employment responsibilities during the pendency of the recipient's grievance procedures.

Notes on “Response”



Informal resolution

Can use for employee/student harassment



Supportive Measures

Little more flexibility



Prohibited Disclosures

Throughout the regulations

§ 106.44(c)(3)

Student Employees

“A postsecondary institution must reasonably determine and specify whether and under what circumstances a person who is both a student and an employee”



Two Grievance Procedures

Procedure A (106.45)

- Sex discrimination
- Employee on employee sex-based harassment
- K-12 complaints
- Retaliation

Procedure B (106.46)

- Sex-based harassment involving student complainants or student respondents at postsecondary institutions



106.45 - Procedure A



Minimum requirements



§ 106.45(f) – Complaint investigation



§ 106.45(f)(4) – Access to evidence



Evidence Option

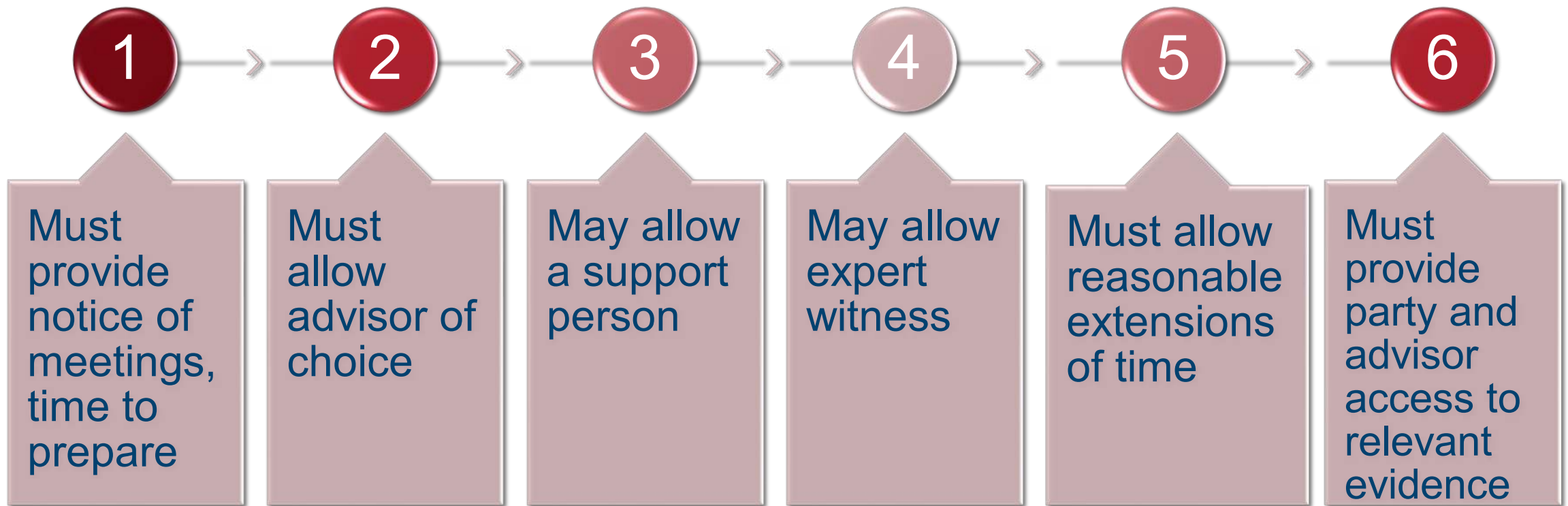


Description Option



106.46 - Procedure B

§ 106.46(e) Complaint Investigation



§ 106.46(e)(6)(i) – Access to evidence



EVIDENCE OPTION



INVESTIGATIVE
REPORT OPTION

Formats for credibility assessment

INDIVIDUAL
MEETINGS

§106.469F)(1)(i)

HEARING WITH
DECISIONMAKER
ASKING PROPOSED
QUESTIONS

§106.46(f)(1)(ii)(A)

HEARING WITH
CROSS-
EXAMINATION BY
ADVISORS

§106.46(f)(1)(ii)(B)

Notes on “Grievance Procedures”



Single-investigator model

single-investigator model is an option



Student employees

“fact-specific inquiry”

§ 106.2 – Retaliation

Nothing in this definition or this part precludes a recipient from requiring an employee or other person authorized by a recipient to provide aid, benefit, or service under the recipient's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this part.

Key Takeaways on Pregnancy



- Added “family” to “parental, family, or marital status”
- Adds “potential” pregnancy language
- Provide definitions for “parental status” and “pregnancy or related conditions”
- Comparable treatment to temporary medical conditions
- Must have grievance procedures
- Ensure the availability of lactation spaces
- Must provide reasonable modifications



106.40 – Pregnancy Or Related Conditions- Students

§ 106.40 - Parental, family, or marital status; pregnancy or related conditions

(a) Status generally. A recipient must not adopt or implement any policy, practice, or procedure concerning a student's current, potential, or past parental, family, or marital status that treats students differently on the basis of sex.

(b) (1) A recipient must not discriminate in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions. A recipient does not engage in prohibited discrimination when it allows a student, based on pregnancy or related conditions, to voluntarily participate in a separate portion of its education program or activity provided the recipient ensures that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions.

“Potential” Pregnancy

The Department interprets the word “potential” to cover pregnancy or related conditions that are expected, likely, or have the capacity to occur. In response to one commenter’s question, protection based on potential pregnancy or related conditions would apply to, for example, individuals about whom rumors circulate related to pregnancy (e.g., regarding an individual’s fertility care, planning for pregnancy, circumstances of pregnancy, or the cause or reason for termination of pregnancy) or in the context of individuals seeking fertility care or otherwise planning a possible pregnancy.

Reasonable Modifications

§ 106.40(b)(3)(ii)

Reasonable Modifications

Based on the student's individualized needs

Student must be consulted

Cannot fundamentally alter the nature of the program or activity

Student Acceptance

Student may accept or decline each reasonable modification

Institution must implement any accepted modification

Examples

Breaks during class

Intermittent absences

Access to online or homebound education

Changes in schedule or course sequence

Extensions of time

Allowing sit/stand/water

Counseling

Changes in space or supplies

Elevator access

Voluntary Access

Must allow voluntary
access to separate and
comparable portion of
program or activity

§ 106.40(b)(3)(iii)



Voluntary Leaves of Absence



Must allow a voluntarily leave of absence to cover, at minimum, the period of time deemed medically necessary



Must allow a student to use another leave policy if it allows for more time than medically necessary



Must be reinstated to the academic status and, as practicable, to the extracurricular status the student held before the leave

§ 106.40(b)(3)(iv)

Lactation Space

§ 106.40(b)(3)(v)

Must ensure access to a lactation space

May be used for expressing breast milk or breastfeeding as needed

Can't be a bathroom

Clean

Shielded from view

May be used for expressing breast milk or breastfeeding as needed

Limitation on Supporting Documentation § 106.40(b)(3)(vi)

Limitation

Must not require supporting documentation unless it is necessary and reasonable to determine the reasonable modifications or whether to take additional actions

Examples - Not Necessary

Needs a bigger uniform

Supporting documentation has previously been submitted

Carrying or keeping water nearby

Using a bigger desk

Sit or stand

Take breaks to eat, drink, or use the restroom

Lactation needs



Comparable Treatment

Use the same manner and under the same policies as any other temporary medical conditions

§ 106.40(b)(4)

Certification to Participate

- Must not require a certification that the student is physically able to participate in the program or activity unless:
 - Level of physical ability or health is necessary for participation
 - Requires such certification for all students participating in the activity
 - Information obtained is not used as a basis for discrimination



106.57 – Pregnancy or Related Conditions- Employees

§ 106.57 (a) - Status Generally EMPLOYEES

A recipient must not adopt or implement any policy, practice, or procedure, or take any employment action, on the basis of sex:

- (1) Concerning the current, potential, or past parental, family, or marital status of an employee or applicant for employment, which treats persons differently; or*
- (2) That 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.*

Voluntary Leaves of Absence

If no leave policy for its employees, or an employee has insufficient leave or accrued employment time to qualify for leave under such a policy



The pregnancy or related conditions is a justification for a leave of absence without pay for a reasonable period of time



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.

§ 106.57(d)

Lactation time and space



Reasonable Break Time



Appropriate lactation space

§ 106.57(e)

§ 106.60 - Pre-Employment Inquiries

Marital
status



Sex





Employee Pregnancy Discrimination

Title VII of the Civil Rights Act of 1964

Fair Labor Standards Act

Pregnant Workers Fairness Act

PUMP Act

Americans with Disabilities Act



Policy Considerations

- Student conduct codes
- Employee handbooks
- Non-discrimination policies and procedures
- Incidents occurring before August 1, 2024

Other D. Stafford Training Opportunities

Title IX Coordinator Track

- ☐ Tier 0: Introduction for NEW Title IX Coordinators
- ☐ Tier 1: Law and Policy
- ☐ Tier 2: Sex Discrimination Response
- ☐ Tier 3: Safety & Risk Analyses for Sex-Based Harassment Emergency Removals
- ☐ Tier 4: Title IX for Human Resources Professional
- ☐ Tier 5: Pregnancy or Related Conditions

Investigator Track

- ☐ Tier 1: Sex-Based Harassment Investigations
- ☐ Tier 2: Dating/Domestic Violence and Stalking (DVDVS) Investigations
- ☐ Tier 3: Case Study and Simulation (Interviewing)
- ☐ Tier 4: Statement Analysis
- ☐ Tier 5: Report Writing
- ☐ Tier 6: Technology & Investigations
- ☐ Tier 7: Violence Against Men

Related Offerings

- ☐ Institutional trainings
- ☐ Threat Assessment Teams
- ☐ Clery Compliance
- ☐ Procedural Justice
- ☐ Decisionmakers (www.naccop.org)
- ☐ Appellate Officer (www.naccop.org)
- ☐ Constructing Resolution Processes (www.naccop.org)
- ☐ Title IX Webinars (www.naccop.org)

For more information: dstaffordandassociates.com

NACCOP Title IX & Equity Alliance

The Title IX Equity & Alliance was created so that Title IX and Equity professionals in NACCOP can further engage in a dedicated community of practitioners through which they will receive additional discounts, exclusive programming, and other benefits curated specifically for them to meet their unique professional development needs. Key benefits of enrolling in the Alliance include:

- Access to NACCOP's annual 9 on IX webinar series at no additional cost (a \$610 value)
- Title IX & Equity Open House Discussion Series (every other month, 6 sessions annually)
- Connect and collaborate with other Title IX and Equity Professionals via an Alliance-Exclusive Listserv



To learn more about the Alliance and how to enroll, visit:
<https://www.naccop.org/title-ix-equity-alliance>



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