



SESSION 1

OVERVIEW OF APPLICABLE FEDERAL AND STATE LAWS

(b) For each campus, a higher education institution's complaint resolution procedures for allegations of student violation of the comprehensive policy shall provide, at a minimum, all of the following:

(1) Complainants alleging student violation of the comprehensive policy shall have the opportunity to request that the complaint resolution procedure begin promptly and proceed in a timely manner.

(2) The higher education institution shall determine the individuals who will resolve complaints of alleged student violations of the comprehensive policy.

(3) All individuals whose duties include resolution of complaints of student violations of the comprehensive policy shall receive a minimum of 8 to 10 hours of annual training on issues related to sexual violence, domestic violence, dating violence, and stalking and how to conduct the higher education institution's complaint resolution procedures, in addition to the annual training required for employees as provided in subsection (c) of Section 30 of this Act.

(4) The higher education institution shall have a sufficient number of individuals trained to resolve complaints so that (i) a substitution can occur in the case

ILLINOIS STATE LAW TRAINING REQUIREMENTS

(5) The individual or individuals resolving a complaint shall use a preponderance standard to determine whether the alleged violation of the comprehensive policy occurred.

The higher education institution shall design the training to improve the trainee's ability to understand (i) the higher education institution's comprehensive policy; (ii) the relevant federal and State law concerning survivors of sexual violence, domestic violence, dating violence, and stalking at higher education institutions; (iii) the roles of the higher education institution, medical providers, law enforcement, and community agencies in ensuring a coordinated response to a reported incident of sexual violence; (iv) the effects of trauma on a survivor; (v) the types of conduct that constitute sexual violence, domestic violence, dating violence, and stalking, including same-sex violence; and (vi) consent and the role drugs and alcohol use can have on the ability to consent. The training shall also seek to improve the trainee's ability to respond with cultural sensitivity; provide services to or assist in locating services ■ for ■ a ■ survivor, ■ as ■ appropriate; ■ and ■ communicate sensitively and compassionately with a survivor of sexual violence, domestic violence, dating violence, or stalking.

(Source: P.A. 99-426, eff. 8-21-15.)

(110 ILCS 155/75)

Sec. 75. (Amendatory provisions; text omitted).

(Source: P.A. 99-426, eff. 8-21-15; text omitted.)

(110 ILCS 155/80)

Sec. 80. (Amendatory provisions; text omitted).

(Source: P.A. 99-426, eff. 8-21-15; text omitted.)

ILLINOIS STATE LAW TRAINING REQUIREMENTS

(110 ILCS 155/99)

Sec. 99. Effective date. This Act takes effect upon becoming law.

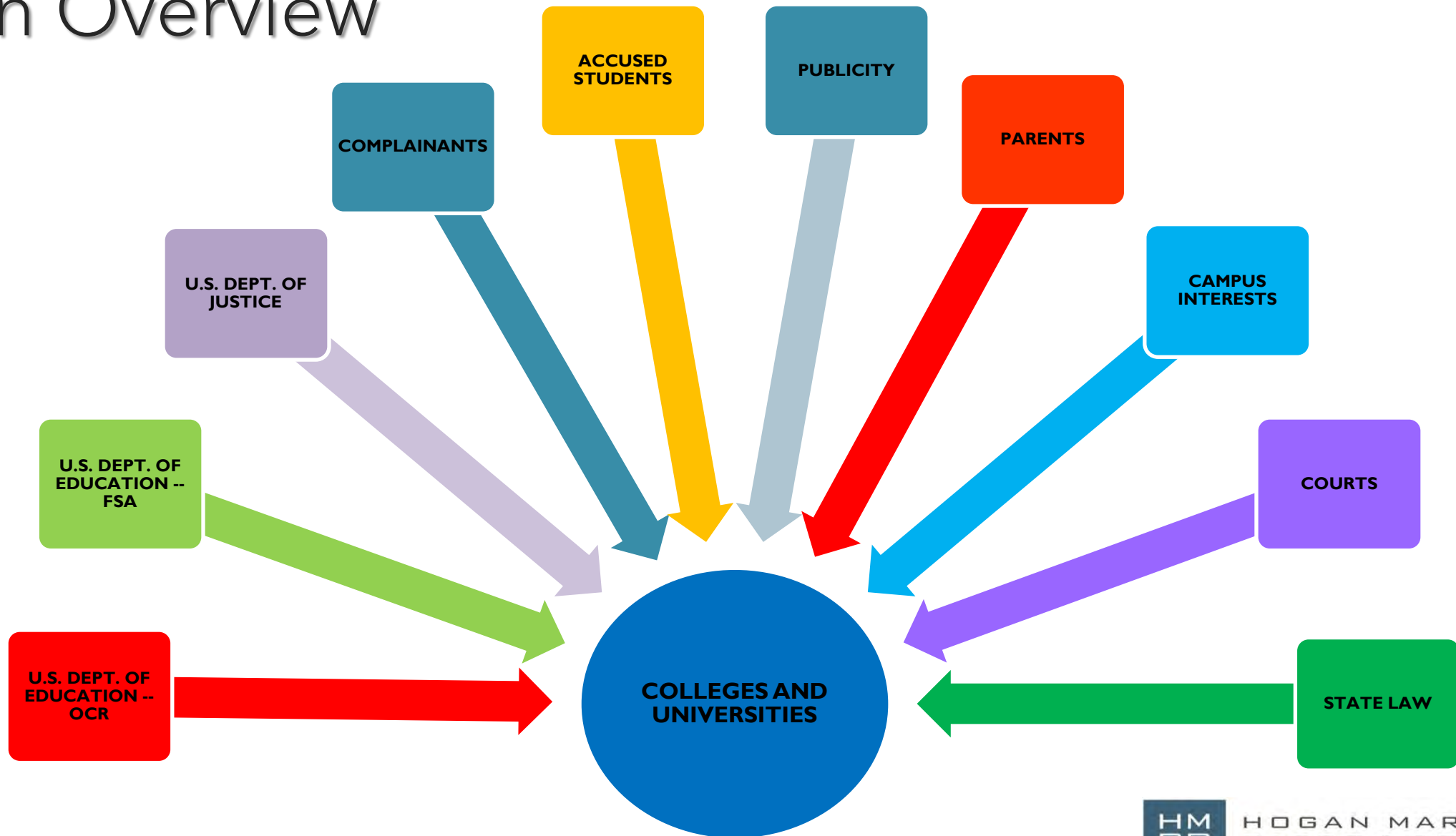
**Training
34 C.F.R. § §
106.45(b)(1)(iii)
and (b)(10)(i)(D)**

With respect to grievance processes for formal complaints, a school 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 school'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 school 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 school 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.

A school must maintain for a period of **seven years records** of all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A school must make these **training materials publicly available on its website**, or if the school does not maintain a website the school must make these materials available upon request for inspection by members of the public.

U.S. DEPARTMENT OF EDUCATION TRAINING REQUIREMENTS

An Overview



Illinois State Law Public Notice

- On website, must prominently publish, timely update and make the following information easily available:
- “Comprehensive policy”
- Options and resources for “survivors”
- Title IX Coordinator(s) name, contact information
- Explanation of the role, reporting obligations and level of confidentiality for:
 - Title IX coordinator(s)
 - Responsible employees
 - Campus security authorities (Clery)
 - Mandated reporters (state law)
- Contact information for confidential advisors, counseling services, and confidential resources
- Contact information for community-based, State and national hotlines

Illinois State Law Complaint Procedures

- Procedure should “begin promptly and proceed in a timely manner”
- Names of individuals who will resolve complaints and opportunity to request substitution for conflict of interest or recusal
- Preponderance of the evidence standard
- Information on how to obtain available interim protective measures and accommodations
- Protect privacy of both parties and witnesses in any proceeding, meeting or hearing
- Both parties must have the opportunity to provide or present witnesses
- Parties may not directly cross examine one another, but may - at discretion of the presiding official -- suggest and have questions posed to the other party
- Have an advisor at any meeting or proceeding
- Right to appeal
- School shall not disclose identify of either party, except as necessary to resolve complaint, implement interim measures and accommodations as when provided by State or federal law

Illinois State Law: Notice of Rights and Options

Must provide complainants with concise written notice “in plain language” of their rights and options, including:

1. The right to report or not report the incident to the school, law enforcement or both, including information about the right to privacy and which reporting methods are confidential;
2. Contact information for the Title IX coordinator(s), confidential advisors, a community-based sexual assault crisis center, campus law enforcement, and local law enforcement;
3. The right to request and receive assistance from campus authorities in notifying law enforcement;
4. The ability to request interim protective measures and accommodations for survivors, including without limitation changes to academic, living, dining, working, and transportation situations, obtaining and enforcing a campus-issued order of protection or no contact order, if such protective measures and accommodations are reasonably available, and an order of protection or no contact order in State court;
5. The school’s ability to provide assistance, upon request, in accessing and navigating campus and local health and mental health services, counseling, and advocacy services;
6. A summary of the school’s complaint resolution procedures, if the complainant reports a violation of the comprehensive policy.

Illinois State Law: Notice of Rights and Options



Additional requirements:

- Response due within 12 hours of receipt of report
- Amnesty policy
- Appeal rights
- Extensive training
- Annual reports to state

Illinois State Law - Workplace Transparency Act

Gov. Pritzker signs legislation to protect victims of sexual harassment in workplace



Gov. J.B. Pritzker delivers his first budget address on Wednesday, Feb. 20, 2019 to a joint session of the Illinois House and Senate at the Illinois State Capitol building in Springfield. (E. Jason Wambsgans/Chicago Tribune via AP, Pool)

What are we talking about when we talk about Title IX?

- Statute
- Regulations
- Federal guidance documents
 - Issued by U.S. Department of Education's Office of Civil Rights ("OCR")
- Federal court cases
- Individual resolution agreements between federal government and institutions



Title IX of the Education Amendments of 1972

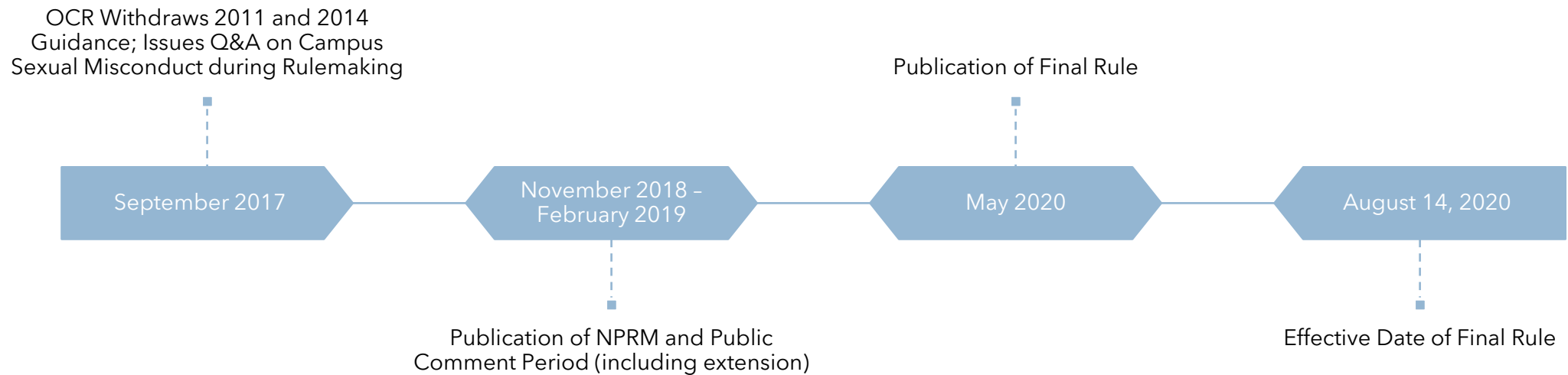
20 U.S.C. § 1681(a)

"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."

Regulations at 34 C.F.R. Part 106:

- Nondiscrimination Notice
- Title IX Coordinator
- "Prompt and Equitable" Grievance Procedures
- Prohibition on Sex Discrimination
- Retaliation

Timeline of New Title IX Regulations



Announcement of Final Title IX Regulations By Secretary Betsy DeVos May 6, 2020

<https://www.youtube.com/watch?v=hTb3yfMNGuA&t=782s>



Implementation Date

- August 14, 2020
- Litigation filed
- Deadline for Clery Act Reports extended to end of the year



Higher Standard of Liability: Deliberate Indifference 34 C.F.R. § 106.44(a) and 106.44(b)(2)	A school with actual knowledge of sexual harassment in an education program or activity of the school against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A school is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.
Updated Procedural Requirements 34 C.F.R. § 106.8 and 106.71	<ul style="list-style-type: none"> • Title IX Coordinator • Notice of Nondiscrimination • Grievance Procedures • Retaliation
New Requirements for "Sexual Harassment" 34 C.F.R. § 106.45	Specific new requirements for sexual harassment as defined by regulations: <ul style="list-style-type: none"> • Grievance process • Investigation and Adjudication
Outside the Scope of Title IX	<ul style="list-style-type: none"> • Title IX regulations and requirements do not apply • Schools have discretion as to how they handle these matters

NEW TITLE IX REGULATIONS – KEY CONCEPTS

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Recipient's Response to Sexual Harassment 34 C.F.R. §§ 106.44(a), 106.30	<p>A school with actual knowledge of sexual harassment in an education program or activity of the school against a person in the United States, must respond promptly in a manner that is not deliberately indifferent.</p> <p>A school is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. This section further states that a school'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.</p> <p>In response to a formal complaint, a school must follow a grievance process that complies with § 106.45. With or without a formal complaint, a school must comply with § 106.44(a).</p>
Actual Knowledge 34 C.F.R. § 106.30(a)	<p>"Actual knowledge" defined as notice of sexual harassment or allegations of sexual harassment to a school's Title IX Coordinator or any official of the school who has authority to institute corrective measures on behalf of the school, 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 school 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 school.</p> <p>"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).</p>

NEW TITLE IX REGULATIONS – SCHOOL'S RESPONSE AND THE DELIBERATE INDIFFERENCE STANDARD

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**Nondiscrimination
Notice
34 C.F.R. §
106.8(b)**

- Each school must notify persons entitled to a notification under Section 106.8(a) that:
1. The school does not discriminate on the basis of sex in the education program or activity that it operates;
 2. The school is required by Title IX and this part not to discriminate in such a manner;
 3. 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
 4. Inquiries about the application of Title IX and this part to such school may be referred to the school's Title IX Coordinator, to the OCR Assistant Secretary, or both.

Each school must prominently display the contact information required to be listed for the Title IX Coordinator under Section 106.8(a) and the nondiscrimination 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 Section 106.8(a). The section further states that a school must not use or distribute a publication stating that the school treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by Title IX or this part of the Title IX regulations.

**Grievance
Procedures
(general) and
Grievance Process
(sexual
harassment)
34 C.F.R §§
106.8(c) and (d)
and 106.45(b)**

Requires that a school 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 school must provide to persons entitled to a notification under § 106.8(a) notice of the school's grievance processes 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 school will respond. New § 106.8(d) states that the requirements of § 106(c), Adoption of grievance processes, apply only to sex discrimination occurring against a person in the United States.

For the purpose of addressing formal complaints of sexual harassment, a school'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 school 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.

NEW TITLE IX REGULATIONS – UPDATED GENERAL PROCEDURAL REQUIREMENTS

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**Title IX
Coordinator
34 C.F.R. §§
106.8(a)**

Each school must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part of the Title IX regulations, and that the employee must be referred to as the "Title IX Coordinator." The school 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 school, 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.

The Title IX Coordinator(s) cannot be the same as the decision-maker(s) in formal complaints of sexual harassment. This section also states that the Title IX Coordinator(s) are responsible for effective implementation of any remedies.

The Title IX Coordinator(s) cannot be the same as the decision-maker(s) in appeals of a determination regarding responsibility or from a school's dismissal of a formal complaint or any allegations therein.

NEW TITLE IX REGULATIONS – UPDATED GENERAL PROCEDURAL REQUIREMENTS

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**Retaliation
34 C.F.R. §
106.71**

No school 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 school 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).

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under paragraph (a) of this section.

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.

NEW TITLE IX REGULATIONS – UPDATED GENERAL PROCEDURAL REQUIREMENTS

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Complainant 34 C.F.R. § 106.30(a)	"Complainant" defined as an individual who is alleged to be the victim of conduct that could constitute sexual harassment. This section also states, under the definition of "formal complaint," that, 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 school with which the formal complaint is filed.
Respondent 34 C.F.R. § 106.30(a)	"Respondent" defined as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. The new regulations, at 34 C.F.R. § 106.45(b)(3), state that a school may dismiss a formal complaint if the respondent is no longer enrolled or employed by the school.
United States 34 C.F.R. § 106.8(d)	The requirements of § 106(c), adoption of grievance procedures, apply only to sex discrimination occurring against a person in the United States.
Education Program or Activity 34 C.F.R. § 106.44(a)	"Education program or activity" includes locations, events, or circumstances over which the school 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.

Illinois law: comprehensive procedures for reporting sexual misconduct are required "regardless of where the incident . . . occurred."

NEW TITLE IX REGULATIONS – SCOPE

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**Two Key
Questions**

1. Is the conduct within the scope of Title IX?

- If no, Title IX regulations do not apply.
- If yes, must not respond in a manner that is deliberately indifferent - by providing supportive measures.

2. For conduct within the scope of Title IX, was a formal complaint filed?

- If no, must still provide supportive measures.
- If yes, must also follow specific requirements for the sexual harassment grievance process.

NEW TITLE IX REGULATIONS – SPECIFIC NEW REQUIREMENTS FOR SEXUAL HARASSMENT

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Is the alleged misconduct within the scope of Title IX?

YES

- In **all cases**,
 - *Must* not respond with deliberate indifference
 - *Must* offer supportive measures
- Was a **formal complaint** filed?
 - If yes, *must* also comply with Section 106.45 requirements
 - If no, *must* offer supportive measures

NO

- *Must* dismiss formal complaint as *Title IX matter*
- *May* address as a non-Title IX matter

Grievance process for Formal Complaints of Sexual Harassment - Basic requirements 34 C.F.R. § 106.45(b)(1)	<p>--Informal resolution allowed (except for student complaints against employees)</p> <p>--Basic requirements for grievance process for formal complaints of sexual harassment:</p> <ul style="list-style-type: none"> (i) Equitable treatment of parties (ii) Objective evaluation of evidence (iii) No conflicts of interest or bias (iv) Presumption of "not responsible" for respondent (v) Reasonably prompt timeframes (vi) Disciplinary sanctions and remedies (vii) Standard of evidence (viii) Appeals (ix) Supportive measures (x) Restrictions relating to privileged information
Grievance Process for Formal Complaints of Sexual Harassment 34 C.F.R. § 106.45	<p>A school's treatment of a complainant in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX. A school's treatment of the respondent may also constitute discrimination on the basis of sex under Title IX.</p> <p>The following specific requirements for grievance processes used to address formal complaints of sexual harassment.</p> <ul style="list-style-type: none"> (1) Basic requirements for grievance process (see below); (2) Notice of allegations; (3) Dismissal of a formal complaint; (4) Consolidation of formal complaints; (5) Investigation of a formal complaint; (6) Hearings; (7) Determination regarding responsibility; (8) Appeals; (9) Informal resolution; and (10) Recordkeeping.

NEW TITLE IX REGULATIONS – GRIEVANCE PROCESS

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Supreme Court Title VII Decision



Photo by New York Times

- Landmark decision issued on June 15, 2020
- Title VII protects against discrimination on the basis of sexual orientation or transgender status
- Supreme Court specifically declined to address bathroom and facilities issues

Civil Litigation

Increased federal and state court action concerning the process and outcome of Title IX grievance procedures:

- Cases filed by complainants *and* respondents
- Possible injunctions and monetary damage awards
- Court decisions generally issued early in the case
- Most cases concern suspensions or expulsions

Court Challenges by Complainants



- **Title IX:** Deliberate indifference
- **Tort Law:** Negligence/duty of care
- **Other Claims:** Breach of contract, intentional infliction of emotional distress, and more

Court Challenges by Complainants

- **Title IX (gender bias)**

Do the alleged facts, if true, raise a plausible inference that the university discriminated against the respondent “on the basis of sex”?

- Erroneous outcome: flawed due to sex of a party
- Selective enforcement: similarly situated individuals of different sexes treated differently

- **Due Process**

- **Other Claims**: Breach of contract, intentional infliction of emotional distress, defamation and more

Key Issues Going Forward – under State and Federal Law

1. Due process, including hearings and cross examination
2. Gender bias
3. Definition of sexual harassment and obligation to respond
4. Standard of evidence
5. Off-campus harassment
6. Trauma-informed investigations
7. Enforcement by federal government