The 2024 Title IX Regulations: What You Need to Know

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CUPA-HR Webinar

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 (FEPRA Questions)
https://studentprivacy.ed.gov/?src=fpcos
§ 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

<table>
<thead>
<tr>
<th>Designate</th>
<th>“Designate and authorize” at least one employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delegate</td>
<td>May delegate “specific duties”</td>
</tr>
<tr>
<td>But…</td>
<td>One person must retain “ultimate oversight”</td>
</tr>
</tbody>
</table>
### § 106.2 – Definitions: Parties

<table>
<thead>
<tr>
<th>Complainant</th>
<th>Respondent</th>
<th>Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>A student or employee or Non-student/employee who was participating/attempting to participate at the time of the alleged sex discrimination</td>
<td>A person who is alleged to have violated the recipient’s prohibition on sex discrimination</td>
<td>A complainant or respondent</td>
</tr>
</tbody>
</table>
§ 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

Sex-based harassment … is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

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

<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001 Guidance</td>
<td><strong>Responsible Employees:</strong> Employee with authority to take action; given the duty of reporting misconduct; or student would reasonably believe has this authority</td>
</tr>
<tr>
<td>2020 Regulations</td>
<td><strong>Officials with Authority</strong> to institute corrective measures</td>
</tr>
<tr>
<td>2024 Regulations</td>
<td><strong>Employees with authority to take corrective action or responsibility for administrative leadership, teaching, or advising.</strong> (BUT ALL MUST DO SOMETHING!)</td>
</tr>
</tbody>
</table>
§ 106.44(c)(2) – Notification Requirements

<table>
<thead>
<tr>
<th>Employee Role</th>
<th>Notify Title IX</th>
<th>Provide Title IX info</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confidential Employee</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Category 1:</strong> Employee with ability to institute corrective measures OR responsible for administrative leadership, teaching, or advising</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td><strong>Category 2:</strong> All other employees</td>
<td></td>
<td>Either or (SCHOOL DECIDES)</td>
</tr>
</tbody>
</table>
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”

<table>
<thead>
<tr>
<th><strong>Informal resolution</strong></th>
<th><strong>Can use for employee/student harassment</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Supportive Measures</strong></td>
<td><strong>Little more flexibility</strong></td>
</tr>
<tr>
<td><strong>Prohibited Disclosures</strong></td>
<td><strong>Throughout the regulations</strong></td>
</tr>
</tbody>
</table>
§ 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

Complaint
Notice
Investigate
Written Determination
§ 106.45(f) – Complaint investigation

- Investigator gathers evidence
- Parties present fact witnesses and evidence
- Investigator reviews evidence for relevancy
- Investigator provides access to relevant evidence
- Parties have a reasonable opportunity to respond
\section*{§ 106.45(f)(4) – Access to evidence}

- Evidence Option
- Description Option
106.46 - Procedure B
§ 106.46(e) Complaint Investigation

1. Must provide notice of meetings, time to prepare
2. Must allow advisor of choice
3. May allow a support person
4. May allow expert witness
5. Must allow reasonable extensions of time
6. Must provide party and advisor access to relevant evidence
§ 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”
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

Based on the student’s individualized needs
Student must be consulted
Cannot fundamentally alter the nature of the program or activity

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

Must ensure access to a lactation space

May be used for expressing breast milk or breastfeeding as needed

Clean

Shielded from view

Can’t be a bathroom

May be used for expressing breast milk or breastfeeding as needed

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

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

§ 106.40(b)(3)(vi)
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

§ 106.40(b)(5)
106.57 – Pregnancy or Related Conditions - 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
- **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](http://www.naccop.org))
- Appellate Officer ([www.naccop.org](http://www.naccop.org))
- Constructing Resolution Processes ([www.naccop.org](http://www.naccop.org))
- Title IX Webinars ([www.naccop.org](http://www.naccop.org))

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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
Thank You

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