



D. STAFFORD
& ASSOCIATES

Title IX Coordinator- Law and Policy (Tier 1)

2020 Regulations

Presented by DSA Associates:

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Title IX Coordinator

Tier 1 – Law and Policy of the 2020 Title IX Regulations

- Title IX Law
- Title IX Regulations - Major Elements
- Title IX Grievance Procedures
- Clery Act (VAWA) Procedural Requirements
- Addressing “Non-Title IX” Cases

Adrienne Meador Murray, Vice President, **Equity Compliance and Civil Rights Services**



In January 2014, Adrienne Meador Murray joined D. Stafford & Associates where she currently serves as the Vice President, Equity Compliance and Civil Rights Services after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012 and the National Association of Clery Compliance Officers & Professionals (NACCOP) where she currently serves as Director of Training and Compliance Activities. Murray began her career in municipal law enforcement as a civilian employee with the City of Richmond Police Department (Virginia). She graduated from the Virginia Commonwealth University Police Training Academy and began her career as a sworn police officer for the University of Richmond (UR) Police Department (Virginia). At UR, Murray progressed through the ranks from a night shift patrol officer to Operations Lieutenant (overseeing criminal investigations, crime prevention and patrol) over the span of a decade before becoming the Chief of Police at Davidson

College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.).

As the Executive Director, Equity Compliance and Civil Rights Services for DSA, Murray builds on her 17-year career in law enforcement in which she became a nationally recognized expert in the field of best practice postsecondary institutional response to the sexual victimization of college women in the United States and in Canada. She is also a trained civil rights investigator and is well respected throughout the country for her ability to aid institutions in understating how to do best practice criminal and civil rights investigations concurrently. She is well known for her work in having provided support, advocacy and criminal investigative services for victims of sexual assault, stalking and intimate partner violence and is a sought-out speaker and investigator. She has expertise in the construction of best practice law enforcement standard operating procedures and training police officers to respond in best practice and trauma-informed ways to victims of sexual assault and intimate partner violence. In her current role, Murray coordinates curriculum development and instruction for national classes, including basic and advanced sexual misconduct investigation classes; an investigation of dating violence, domestic violence and stalking class; and a Title IX Coordinator/Investigator class offered through D. Stafford & Associates. To date, Murray has trained more than 3,500 criminal and civil rights investigators throughout the U.S.

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA



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Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based trainings pertaining to the resolution of sexual misconduct offenses on college and university campuses. Murray frequently presents at regional and national conferences on topics such as the *Sexual Victimization of College Women*, *Understanding Consent and Incapacitation*, and *Responding to Sexual Assault on Campus: Clery Act and Title IX Implications*. Murray also conducts provincially specific sexual misconduct trainings throughout Canada.

Murray is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management and of New England College, where she received her Master's Degree in Campus Public Safety Administration. Murray is also a graduate of the 235th session of the prestigious FBI National Academy where she was awarded a graduate certificate in Criminal Justice from the University of Virginia. She has authored numerous journal articles.



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Catherine Cocks, M.A.
Director, Student Affairs, Behavioral Threat Assessment and
Independent Investigation Services



Ms. Cocks has been a higher education professional for over thirty years. Her work with D. Stafford & Associates focuses on Title IX investigations and training; assessment of student affairs policies, practices and services; and behavioral threat assessment services. Cathy was the Director of Community Standards for the University of Connecticut for 14 years where she managed the student conduct process, which included managing all Title IX cases involving student respondents and chaired the University's student threat assessment team. Prior to that, she held several positions within Residential Life at the University of Connecticut and Roger Williams University.

She is a faculty member for the Association for Student Conduct Administration's (ASCA) Donald D. Gehring Academy teaching on subjects such as ethics, governance, threat assessment, media relations, and higher education trends. She was an affiliated faculty

member for many years in the University of Connecticut's Higher Education and Student Affairs Master's program teaching "The Law, Ethics, and Decision-Making in Student Affairs."

Cathy has co-authored the "Philosophy of Student Conduct" chapter in the 2nd edition of "Student Conduct Practice" (2020) and was a member of the writing team for CAS Standards' Cross-functional Framework for Identifying and Responding to Behavioral Concerns.

Cathy is a Past President of ASCA. She has also served as a Circuit representative, co-chair of the Public Policy and Legislative Issues Committee, and as a member of the ASCA Expectations of Members Task Force. Cathy has served in a variety of leadership roles in NASPA Region I.

She was the 2015 recipient of ASCA's Donald D. Gehring Award. She is a past recipient of the NASPA Region I Mid-Level Student Affairs Professional Award and the NASPA Region I Continuous Service Award.

She earned her Master's degree in Higher Education Administration from the University of Connecticut and Bachelor's degree in Communications/Media from Fitchburg State University.



NACCOP Title IX & Equity Alliance

The Alliance is a dedicated affinity group through which Title IX and Equity Professionals, and the practitioners who support and/or supervise them, can benefit from NACCOP's expertise in complying with the Clery Act, Title IX, and other civil rights laws that affect their work.

BENEFITS OF JOINING THE ALLIANCE

- **Access to NACCOP's annual 9 on IX webinar series at no additional cost (a \$710 value)**
 - These 60-minute succinct webinars will offer legal insight and practical guidance on Title IX topics from experts who have served or are currently serving as active practitioners on college and university campuses.
- **Alliance-Exclusive Professional Development Opportunities such as the Title IX & Equity Open House Discussion Series**
 - An Alliance-exclusive virtual open house will be held bi-monthly (every other month, 6 sessions annually) to engage with experts from NACCOP's partner organization, D. Stafford & Associates, as well as other invited guests, to discuss current trends and issues. Each open house will focus on a specific topic for discussion and participants will be encouraged to engage in the conversation.
- **Access to Alliance-Exclusive Whitepapers regarding Title VI, VII, and IX**
- **Connect and collaborate with other Title IX and Equity Professionals via an Alliance-restricted Listserv**
- **Discounted Professional Development Opportunities**
 - Coffee and Conversations webinar series and individual webinars focused on Title IX & Equity compliance issues
- **A 50% discount on the Title IX Notice Document Library developed by NACCOP's Partner Organization, D. Stafford & Associates (a \$335 value)**

Join the Alliance

Eligible individuals must have Institutional, Professional, or Committee Membership with NACCOP.

Cost: \$425 for 1 year subscription

(The first year of enrollment will be pro-rated to match the NACCOP membership expiration date.)

Request to Join: <https://naccop.memberclicks.net/join-the-alliance>

Questions? Contact us at info@naccop.org or 302-344-1068.



TITLE IX

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ISSUANCE OF CERTIFICATES FOR COMPLETION

To receive a certificate, attendees must attend the majority of the class and have paid class invoice in full. This applies to both in-person classes and virtual classes. We understand that attendees may need to miss class for a legitimate reason for longer periods of time or may need to leave the room during a class for a few minutes to take a phone call or attend to other business. If an attendee misses a significant amount of the class (depending on the length of the class) or they miss an attendance poll, they will not be issued a certificate of completion for the class.

Attendees should report each absence using the online form provided (each class has its own unique form that is sent to all attendees via email prior to class). Attendees should complete the form twice for each absence: once to record their departure, and again to record their return. Attendees should complete the form immediately before leaving class and as soon as practicable upon their return. If an attendee signs out but does not sign back in, they will be marked absent for the remainder of the day.

The criteria for receiving a certificate is determined based on missed class time and participation in the Attendance Polls that will be launched throughout each day of class. Attendance polls are left up for approximately 5 minutes and the instructor notifies the attendees that a poll is being launched to ensure that everyone who is present can respond to the poll. If an attendee is unable to respond to the attendance poll, the attendee would need to **immediately post "I am here"** in the chat feature within the Zoom platform. That way we can give the attendee credit for being in attendance for that specific poll. Notifying us after the attendance poll has been closed will not allow us to give the attendee credit for being in class during the poll.

Some of our classes may qualify for credit toward a Master's Degree at New England College (and regardless if you decide to seek credit or not, accreditation requirements mandate that we follow the same standards for all class attendees), so we have strict attendance standards that we follow for issuance of a certificate. For DSA & NACCOP, issuance of a Certificate of Completion is verification of attendance.

INVESTIGATION CLASS ACRONYMS

- ASR:** Annual Security Report (often used as a reference to the Annual Security Report and/or the Annual Security and Fire Safety Report) that must be published by each institution of higher education.
- CSA:** Campus Security Authority—Individuals on each campus who have been identified by the Department of Education as persons who are required to report crimes that they become aware of to the Reporting Structure at each institution.
- DCL:** Dear Colleague Letter—this is a formal name of the method of communication from the Department of Education to college campuses. It is like naming their official “memo” to campuses.
- FERPA:** Family Educational Rights and Privacy Act—governs the confidentiality of student records.
- FNE:** Forensic Nurse Examiners
- GO:** General Order—some departments describe their operating procedures as general orders
- HEOA:** Higher Education Opportunity Act—the broader law that contains the Clery Act language and the fire safety and missing person language that is in the law but not contained within the “Clery Act” portion of the law.
- HIPAA:** Health Insurance and Privacy and Portability Act—governs privacy of medical records.
- MOU:** Memorandum of Understanding—an official agreement developed between agencies.
- NIBRS:** National Incident-Based Reporting System. 1 of 2 crime reporting systems developed by the FBI, but not the system that you are required to use for Clery Reporting—the only portion of this system that is used for Clery Act purposes are the 4 forcible and 2 non-forcible sex offense definitions.
- OCR:** Office of Civil Rights—the unit of the Department of Education that oversees Title IX Compliance.
- PD:** Police Department
- PS:** Public Safety
- PNG:** Persona-non-Grata—process used by some campuses not keep students from entering certain areas of the campus or the entire campus (administrative process) versus legal bar notice or trespass warning.
- SACC:** Sexual Assault Crisis Center, also known as Women’s Center.
- SANE:** Sexual Assault Nurse Examiner

SART: Sexual Assault Response Team

SOP: Standard Operating Procedures—some departments describe their operating procedures as Standard Operating Procedures. Some call them General Orders, etc...

SWA: Senior Women's Administrator (Athletics)

TWN: Timely Warning Notice

UCR: Uniformed Crime Report. This is 1 of 2 crime statistics reporting systems developed by the FBI. Institutions are required to use UCR Standards for counting and classifying crimes for reporting the Clery statistics.

VAWA: Violence Against Women Act



2020 TITLE IX REGULATIONS



AGENDA

- Title IX Law
- Title IX Regulations - Major Elements
- Title IX Grievance Procedures
- Clery Act (VAWA) Procedural Requirements
- Addressing “Non-Title IX” Cases

TITLE IX LAW



FEDERAL LAW



Statutes

20 U.S.C.D.
§1681-1688



Regulatory Guidance

34 C.F.R. § 106



Sub-Regulatory Guidance

DCLs
Preamble to Regs
Executive Orders
OCR Website



Case Law

Circuit courts
District courts

TITLE IX, EDUCATION AMENDMENTS OF 1972, 20 U.S.C. § 1681

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.

§ 1681(a) - EXCEPTIONS

- Admission policies
- Institutions changing from single-sex status
- Religious institutions
- Military services or merchant marines
- Public traditional single-sex institutions
- Social fraternities or sororities
- Voluntary youth organizations
- Boy or girl conferences
- Father-son/mother-daughter activities
- “Beauty” pageants

§ 1681(c) - “EDUCATIONAL INSTITUTION”

Any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

TITLE IX REGULATIONS - MAJOR ELEMENTS



Air Traffic Control View

This section highlights the major elements, except for the grievance procedures.

Items related to the grievance procedures will be explained later in the class.

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34 C.F.R. § 106 - SUBPARTS

Subpart A: Introduction (106.1 – 106.9)

Subpart B: Coverage (106.11 – 106.18)

Subpart C: Admission and Recruitment (106.21 – 106.24)

Subpart D: Education Programs/Activities (106.31 – 106.46)

Subpart E: Employment (106.51 – 106.62)

Subpart F: Retaliation (106.71 – 106.72)

Subpart G: Procedures (106.81 – 106.82)

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TITLE IX REGULATIONS OVERVIEW

Applies to
Higher
Education and
K-12

Covers wide
range of sex
discrimination

SUBPART A: INTRODUCTION



SUBPART A: A FEW FYIs...



§ 106.2
Definitions



§ 106.3
Remedial Action



§ 106.3
Affirmative Action



§ 106.6
Preservation of rights

§ 106.8(a) - DESIGNATION OF COORDINATOR

Designate	Designate at least one person
Notify	Notify people of name or title and contact information
Receive	Receive reports in person, by mail, by phone, by email, or other
Accept	Accept reports during non-business hours

§ 106.8(b)(1) - NOTIFICATION OF POLICY

Who

Applicants - admission
Applicants - employment
Students
Employees
Unions, etc.

What

Does not discriminate
Required by Title IX
Includes admission & employment
Inquiries to Title IX or OCR
Grievance procedures & process
How to report or file a complaint of discrimination
How to report or file a complaint of harassment
How the school will respond



§ 106.8(b)(2) – PUBLICATIONS

What

- Contact information
- Policy

Where

- Website
- Handbook and/or catalogs

§ 106.8(c) - ADOPTION OF GRIEVANCE PROCEDURES

“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.”



§ 106.8(d)

Applies only to sex
discrimination occurring
against a person in the
United States

SUBPART B: COVERAGE



§ 106.11 – APPLICATION

Every recipient and its education program or activity which receives Federal financial assistance

§ 106.12 – EDUCATIONAL INSTITUTIONS CONTROLLED BY RELIGIOUS ORGANIZATIONS

May submit in writing seeking assurance of the exemption

Must identify the provision and explain how it conflicts with a specific tenet

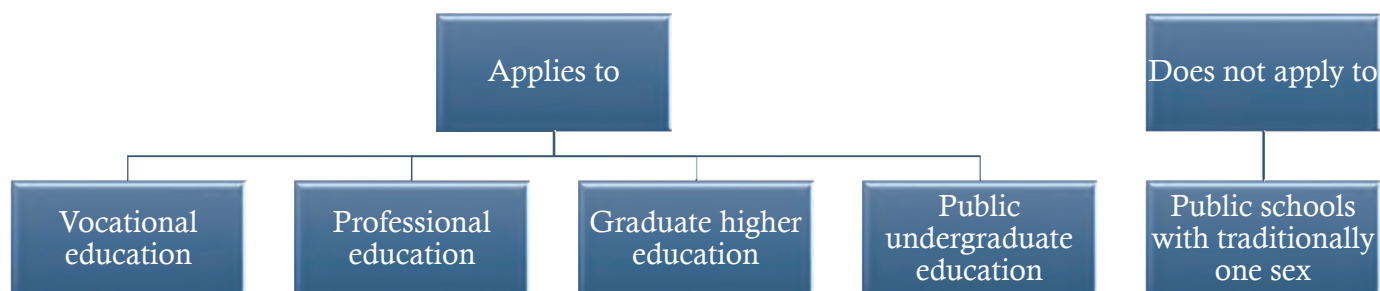
Not required to seek assurance

May raise its exemption at any time

§ § 106.13 & § 106.14 – EXEMPTIONS

- Military and merchant marine educational institutions
- Membership practices of certain organizations
 - Social fraternities and sororities
 - YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls
 - Voluntary youth service organizations

§ 106.15 – ADMISSIONS (EXCEPTIONS AND COVERAGE)



SUBPART C: ADMISSION & RECRUITMENT



§ 106.21 & § 106.23 – ADMISSION & RECRUITMENT

No ranking
separately

No number or
proportion
admissions

Testing cannot have
disproportionately
adverse effect

No rule relating to
marital or parental
status

No discrimination or
exclusion based on
pregnancy

Pregnancy and
related conditions
treated the same as
any other temporary
disability

No pre-admission
inquiries as to marital
status

Cannot recruit
primarily from single-
sex high schools

SUBPART D: EDUCATION PROGRAMS OR ACTIVITIES



§ 106.30 - Definitions

**COMING
SOON**

We will come back to this.

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§ 106.31 – EDUCATION PROGRAMS OR ACTIVITIES

No person on the basis of sex may be excluded from participation in,
be denied the benefits of, or be subjected to discrimination

§ 106.31(b) – SPECIFIC PROHIBITIONS



Aid, Benefit, or Service
Requirement or Condition
Provide or deny
Right or privilege
Advantage or opportunity



Academic, Extracurricular,
Research, Occupational Training
Eligibility for in-state tuition
Rules of behavior, sanctions



§ 106.32 – HOUSING

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).



§ 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.



§ 106.34 – ACCESS TO CLASSES & SCHOOLS

Cannot carry out any of its education programs or activities separately on the basis of sex, or refuse participation except...

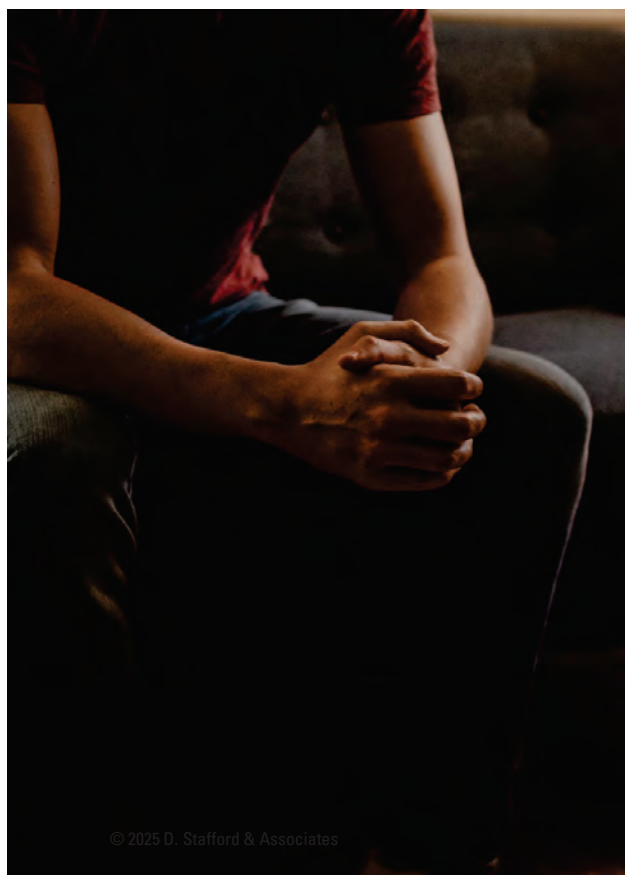
EXCEPTIONS

Contact sports

Ability grouping
in physical
education

Human sexuality
classes (K-12)

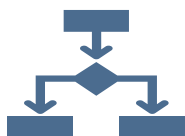
Choruses



§ 106.36 – COUNSELING

- Cannot discriminate in the counseling or guidance of students or admission applicants
- Cannot use different appraisal or counseling materials

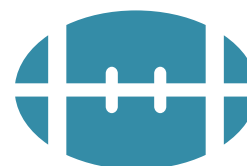
§ 106.37 – FINANCIAL ASSISTANCE



§ 106.37(a) – Can't discriminate in financial assistance



§ 106.37(b) Exceptions to rule that can't have single-sex scholarships



§ 106.37(c) – Athletic scholarships allocated proportionally based on participation numbers

§ 106.378 – EMPLOYMENT ASSISTANCE TO STUDENTS

§ 106.37 – HEALTH & INSURANCE

- When providing assistance to outside employers, the institution must ensure the outside employer does not discriminate on the basis of sex.
- An institution cannot provide services to any agency, organization, or person that discriminates on the basis of sex in its employment practices.
- Cannot discriminate on the basis of sex in providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students.
 - An institution must provide gynecological care if it provides full coverage health services.

§ 106.40 – MARITAL OR PARENTAL STATUS

No rule concerning a student's actual parental, family, or marital status which treats students differently on the basis of sex

No discrimination against students on the basis of pregnancy or related conditions

May require documentation as long as required for all students with similar physical or emotional conditions

May operate program or activity separately for pregnant students BUT it must be completely voluntary

Treat pregnancy and related conditions in the same manner as other temporary disabilities

If there is not a leave policy, must treat pregnancy as justification for a leave of absence



§ 106.41(a) – ATHLETICS

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.

§ 106.41 – ATHLETICS



Applies to intercollegiate, club,
& intramural



Separate teams are
permitted



§ 106.41(c) – EQUAL OPPORTUNITY

1. Accommodate the interests
 2. Equipment and supplies
 3. Scheduling (games and practice)
 4. Travel and per diem
 5. Coaching and tutoring
 6. Assignment and compensation for above
 7. Locker room and other facilities
 8. Medical and training services
 9. Housing and dining services
 10. Publicity
-

§ 106.44 -
Response to
Sexual
Harassment

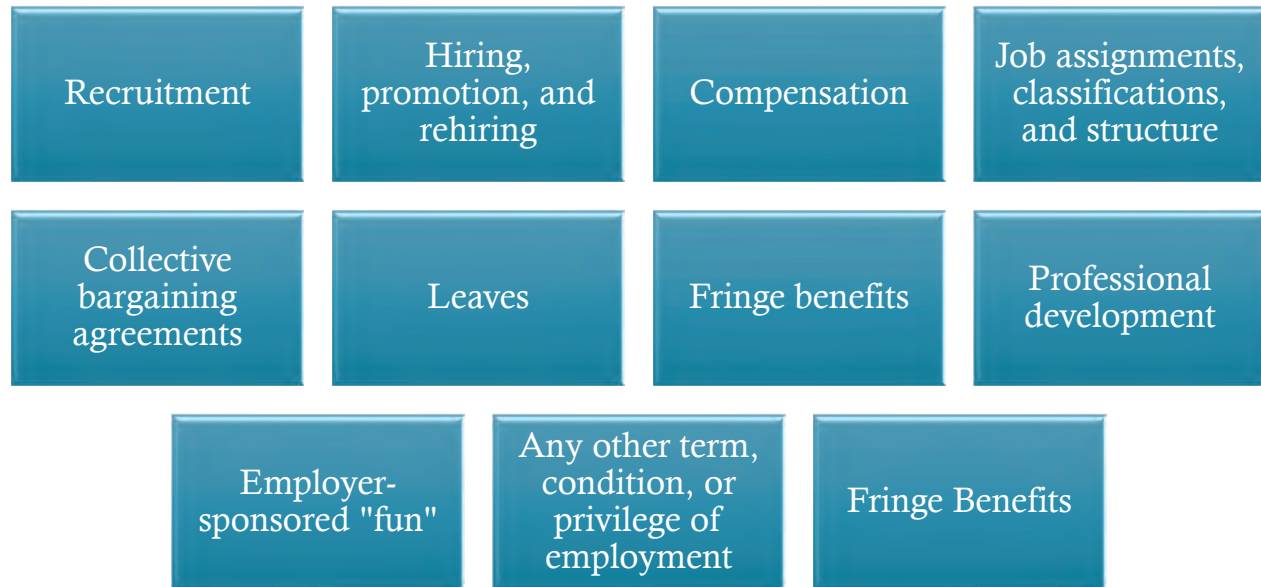
Coming
Soon

We will come back to this.

SUBPART E: EMPLOYMENT



§ § 106.51 - 106.56 – EMPLOYMENT



§ 106.57 – MARITAL OR PARENTAL STATUS



SUBPART F: RETALIATION



§ 106.71 RETALIATION

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. . .

§ 106.71 RETALIATION

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.

§ 106.71 - RETALIATION

Must keep confidential the identity of parties and witnesses

May use sex discrimination grievance procedures

Exercise of First Amendment does not constitute retaliation

Discipline for “materially false statement in bad faith” is not retaliation

Determination of responsibility alone does not mean a person provided a false statement

"Title IX Regulations Major Elements"



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TITLE IX GRIEVANCE PROCEDURES



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BEFORE WE BEGIN...

Sex Discrimination

§ 106.8(c)

- “grievance procedures that provide for the prompt and equitable resolution of student and employee complaints.”
- Any person may report sex discrimination to the Title IX Coordinator
- Must publish grievance procedures to address sex discrimination
- No requirement other than “prompt” and “equitable”

Sexual Harassment

§ 106.44 and § 106.45

Other Behaviors

Conduct codes



MORE REMINDERS

- Applies to K-12
- Incorporates the Clery Act
- Lots of guidance: 500+ pages of preamble plus more recent Q&As
- (This section is not in order of regulations)

PEOPLE DEFINITIONS



§ 106.30(a) - DEFINITIONS

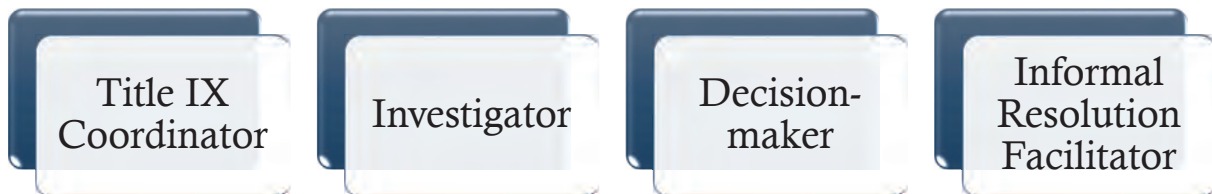
Complainant

- An individual who is alleged to be the victim of conduct that could constitute sexual harassment

Respondent

- An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

TITLE IX PERSONNEL



DUTIES OF THE TITLE IX COORDINATOR

- § 106.8(a) Must be referred to as the “Title IX Coordinator”
- § 106.8(a) Coordinate efforts to comply
- § 106.44(a) Receive reports and promptly contact the complainant
- § 106.30 Sign formal complaints
- § 106.30 Responsible for coordinating the effective implementation of supportive measures

§ 106.45(b)(1)(iii) - TRAINING

All Title IX Personnel

- Definition of sexual harassment
- 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
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

§ 106.45(b)(1)(iii) - TRAINING

Decision-makers

- Technology to be used at a live hearing
- 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

Investigators

- Issues of relevance to create an investigative report that fairly summarizes relevant evidence

ADVISOR OF CHOICE



May be but is not required to be an attorney



May accompany to any meeting or proceeding



Institution may restrict participation (except at hearing)



Receives the draft and final reports



Conducts cross-examination at hearing

SEXUAL HARASSMENT DEFINITIONS



§ 106.30(a) - 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;
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).

PRONG 1: QUID PRO QUO

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

(§ 106.30(a))

QUID PRO QUO (FROM THE PREAMBLE)



“This for that” harassment



Must be an employee respondent (not volunteer, visitor, student)



“Unwelcome” is subjective element (submission vs. consent)



Does not need to meet pervasiveness element



Limited need to show impact - single instance could jeopardize access

PRONG 2: HOSTILE ENVIRONMENT+ (THE DAVIS STANDARD)

*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*



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§ 106.30(a) - HOSTILE ENVIRONMENT+

Referred to in preamble as “The Davis Standard”

Not the same Title VII “hostile environment” or 2001 Guidance

First Amendment protections

Must show the “effectively denies” to reach the bar

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PRONG 3: THE VAWA OFFENSES

“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)

(§ 106.30(a))

THE VAWA OFFENSES

Severity, pervasiveness, and offensiveness are not elements

Denial of equal access is not an element - it is assumed

Includes multiple offenses

§ 106.30(a) - THE VAWA OFFENSES



Sexual Assault

Rape
Fondling
Incest
Statutory Rape



Intimate Partner Violence

Dating Violence
Domestic Violence



Stalking

SEXUAL ASSAULT

*“Sexual assault” as defined in 20
U.S.C. 1092(f)(6)(A)(v)*



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CLERY DEFINITIONS OF SEXUAL ASSAULT

- **Rape** - The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
- **Fondling** - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental incapacity.
- **Incest** - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape** - Sexual intercourse with a person who is under the statutory age of consent.

34 CFR 668 Appendix A

§ 106.30(a) - CONSENT

The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault.

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SEXUAL ASSAULT DEFINITION CONSIDERATIONS

Includes attempts

Can broaden based on “consent” definition

Can specify which body parts are “private” and whether touching is over or under clothes

“Severity” of rape vs. fondling

Naming the offense in the policy

INCEST AND STATUTORY RAPE CONSIDERATIONS

State law
definitions

Complainant
as a non-
student

Conduct codes



INTIMATE PARTNER VIOLENCE

“dating violence” as defined in
34 U.S.C. 12291(a)(10),
“domestic violence” as defined in
34 U.S.C. 12291(a)(8)

DATING VIOLENCE - 34 U.S.C. 12291(A)(10)

The term “dating violence” means violence committed by a person—
(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

DATING VIOLENCE - CLERY REGULATION ADDITIONS

(ii) For the purposes of this definition -

(A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(B) Dating violence does not include acts covered under the definition of domestic violence.

DOMESTIC VIOLENCE - 34 U.S.C. 12291(A)(8)

The term “domestic violence” includes felony or misdemeanor crimes of violence committed by

- a current or former spouse or intimate partner of the victim,
- by a person with whom the victim shares a child in common,
- a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

INTIMATE PARTNER VIOLENCE CONSIDERATIONS

Consistency in
assigning
violations

Severity,
pervasiveness,
and offensiveness
not elements

Denial of equal
access is not an
element



STALKING

“stalking” as defined in 34 U.S.C. 12291(a)(30)

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STALKING - 34 U.S.C. 12291(A)(30)

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- Fear for the person’s safety or the safety of others; or
- Suffer substantial emotional distress.

STALKING - CLERY REGULATION ADDITIONS

(ii) For the purposes of this definition -

(A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

(C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

TITLE IX JURISDICTION - PERSON



At the time of filing a formal complaint...the complainant must be participating in or attempting to participate in the education program or activity.” (§106.30(a))



The recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

“ATTEMPTING TO PARTICIPATE”

- Has withdrawn due to alleged harassment and has desire to re-enroll
- Has graduated but intends to apply to new program or participate in alumni programs
- Is on a leave of absence and still enrolled or intends to re-apply
- Has applied for admission

NON-STUDENT OR NON-EMPLOYEE COMPLAINANTS (Q&A)

There are circumstances when a Title IX Coordinator may need to sign a formal complaint that obligates the school to initiate an investigation regardless of the complainant's relationship with the school or interest in participating in the Title IX grievance process.

- Examples:
 - Perpetrator in a position of authority
 - Potential for harm to other students

TITLE IX JURISDICTION – CONTEXT OF EDUCATIONAL PROGRAMS OR ACTIVITIES

Locations, events or circumstances in which the institution has control over the respondent AND context

Or

Any building owned or controlled by a student organization that is officially recognized

And

Occurred in the United States

OFF-CAMPUS JURISDICTION



Hotel
On field trip



Home
While tutoring



Bus
For athletic travel



Virtual
During class

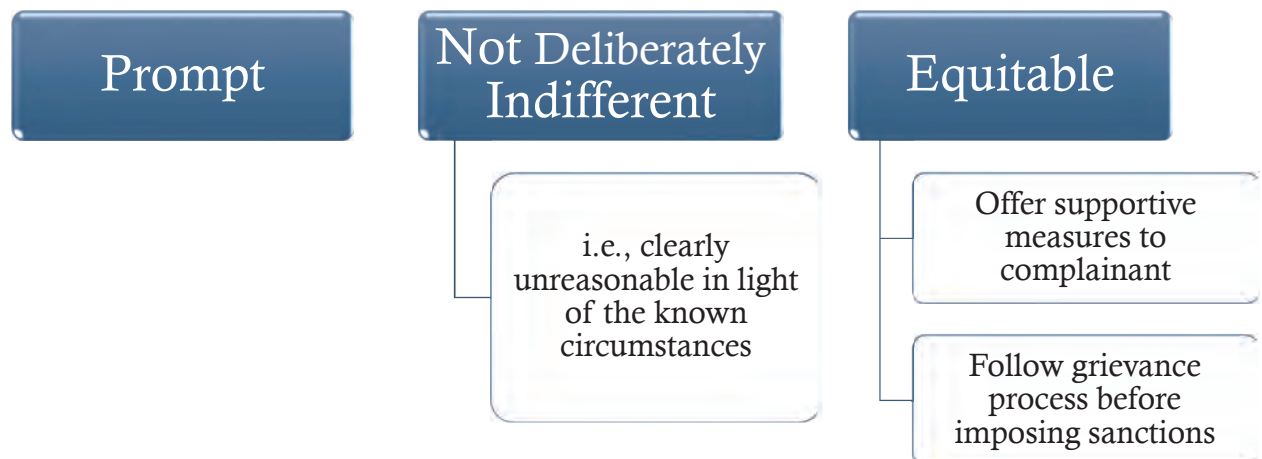


Business
At internship

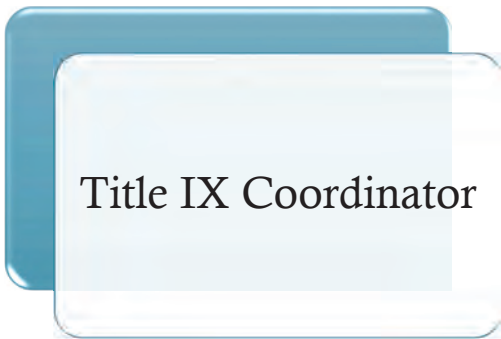
RECEIVING REPORTS



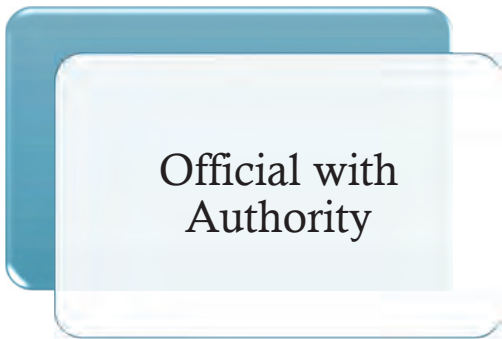
§ 106.44(a) - GENERAL RESPONSE TO SEXUAL HARASSMENT



§ 106.30(a) - ACTUAL KNOWLEDGE

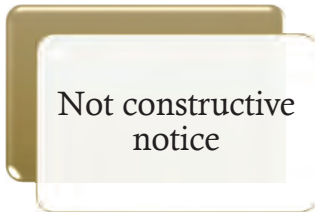


Title IX Coordinator

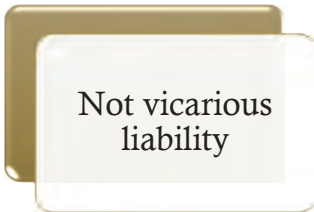


Official with
Authority

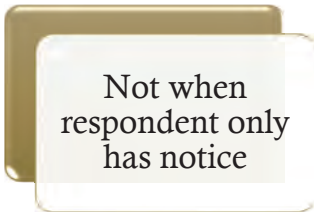
NO ACTUAL KNOWLEDGE § 106.30(a)



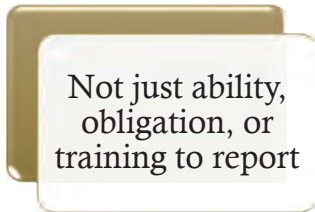
Not constructive
notice



Not vicarious
liability



Not when
respondent only
has notice



Not just ability,
obligation, or
training to report



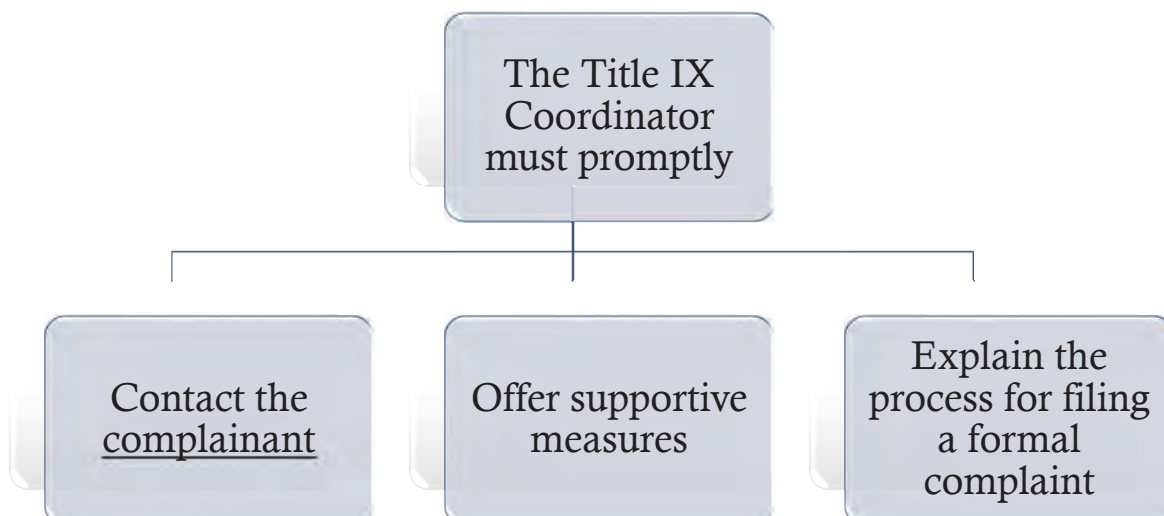
WHO MAY REPORT (FROM THE Q&A)

“A school may receive actual knowledge of sexual harassment from any person. There is no requirement that the person be participating in or attempting to participate in a school program or activity to report sexual harassment.”

- Complainant
- Friend
- Parent
- Witness

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RESPONSE TO A REPORT



§ 106.30(a) - SUPPORTIVE MEASURES

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

Non-disciplinary and non-punitive	Individualized	Offered as appropriate	Reasonably available
Without fee or charge	Complainant or the respondent	Before or after the filing of a formal complaint or where no formal complaint has been filed	Must keep confidential

SUPPORTIVE MEASURE EXAMPLES § 106.30(a)

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

Other similar measures

WHAT COULD “UNREASONABLY BURDEN”?

Change in
class schedule

Housing
adjustment

Sports team
membership

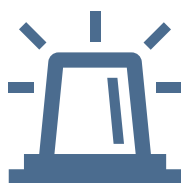
Student
government
position

Extracurricular
activity
participation

Suspension

Expulsion

LEAVE OPTIONS



Emergency removal



Administrative leave

§ 106.44(c) - EMERGENCY REMOVAL



Immediate
threat to
physical health
or safety



Must arise
from the
allegations



Provide notice
and
opportunity to
challenge

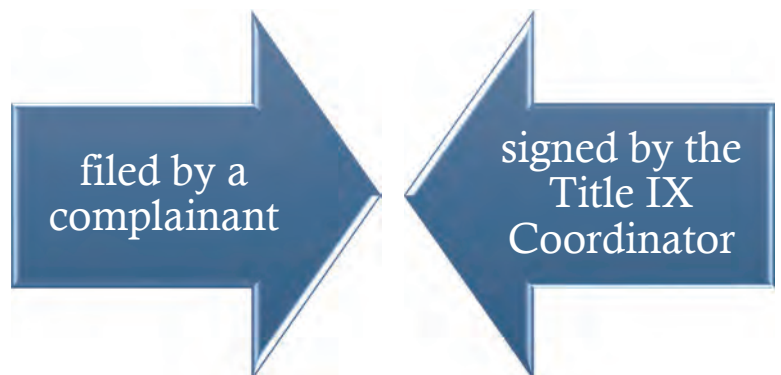


SUPPORTIVE MEASURES FROM GUIDANCE

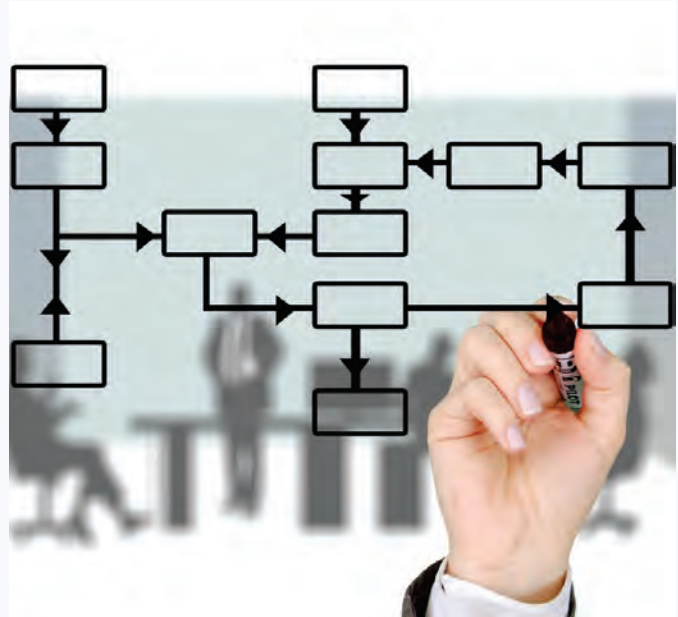
- Fact-specific determinations of supportive measures
- If considered as a potential sanction, it is a burden
- Emergency removal can include removal from all or part of the educational program
- No contact orders do not have to be mutual
- Student workers straddle both removal options



§ 106.30(a) - FORMAL COMPLAINT



§ 106.45 - GRIEVANCE PROCESS FOR FORMAL COMPLAINTS OF SEXUAL HARASSMENT



§ 106.45(a) - RECIPIENT'S TREATMENT OF PARTIES

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.

§106.45 (b)(1)(i-iii) - GRIEVANCE PROCESS

Equitable

Objective Evaluation
(inculpatory and
exculpatory)

No conflict of
interest or bias

§ 106.45 (b)(1)(iv-x) - GRIEVANCE PROCESS

Presumption
of not
responsible

Prompt time
frames

Range of
sanctions

Standard of
evidence

Appeal
Procedures

Range of
supportive
measures

Limits on
privileged
evidence

§ 106.45(b)(2) - NOTICE OF ALLEGATIONS

Grievance
process

Sufficient details
and sufficient
time to prepare

Identities of the
parties, alleged
conduct

Date and
location of
incident

Presumed not
responsible

Advisor of
choice

False statements

§ 106.45(b)(2)(ii) - Additional Allegations

An amended notice must
be sent to the parties when
additional allegations will
be investigated that were
not in the original notice
letter.

§ 106.45(b)(3) - DISMISSAL OF FORMAL COMPLAINT

Must Dismiss

- If the conduct alleged in the formal complaint would not constitute sexual harassment
- Did not occur in the educational program or activity
- Did not occur in the United States

May Dismiss

- Complainant withdraws the formal complaint
- Respondent is no longer enrolled/employed
- Insufficient evidence

§ 106.45(b)(4) - CONSOLIDATION OF COMPLAINTS

Multiple
respondents

More than one
complainant
against one or
more respondent

One party
against other
party

§ 106.45(b)(9) - INFORMAL RESOLUTION



Notice



Voluntary



Not allowed for
Employee/student

§ 106.45(b)(5) - INVESTIGATION OF A FORMAL COMPLAINT



§ 106.45(b)(5)(i-iii) - INVESTIGATION

Burden of proof
is on the
institution

Equal opportunity
to present
witnesses and
facts

No restriction on
discussing
allegations

§ 106.45(b)(5)(iv-vii) - INVESTIGATION

Advisor of
choice

Notice of
meetings

Right to
inspect
evidence and
respond

Receive
investigative
report and
may respond

§ 106.45(b)(6) - HEARINGS

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§ 106.45(b)(6)(i) - HEARINGS



Live hearing



Cross-examination

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§ 106.45(b)(6)(i) - CROSS-EXAMINATION BY ADVISOR OF CHOICE

- Directly, orally, and in real time by the party's advisor of choice
- If a party does not have an advisor, 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.



§ 106.45(b)(6)(i) - RELEVANCY DETERMINATION

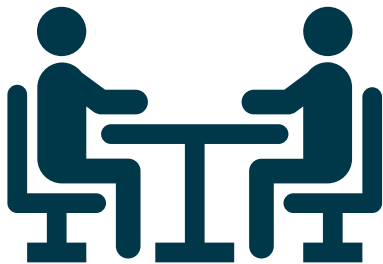
Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

§ 106.45(b)(6)(i) - RELEVANCY - SEXUAL PREDISPOSITION AND HISTORY

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless

- offered to prove that someone other than the respondent committed the conduct, 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.

§ 106.45(b)(6)(i) - "PHYSICALLY PRESENT"



§ 106.45(b)(6)(i) - HEARING RECORDING



Audio



Video



Transcript

§ 106.45 (b)(7)(i) - DETERMINATION REGARDING RESPONSIBILITY



Made by the decision-maker



Decision-maker can have no other role



Applying the standard of evidence

§ 106.45 (b)(7)(ii) - DETERMINATION REGARDING RESPONSIBILITY

Allegations

Procedural steps

Findings of fact

Conclusion/application

Rationale

Appeal procedures

SANCTIONS AND REMEDIES



Sanctions:
Disciplinary/punitive



Remedies:
Restore or preserve access

§ 106.45(b)(8) - APPEALS

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§ 106.45(b)(8) - APPEALS

- Mandatory grounds
 - Procedural irregularity that affected the outcome
 - New evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome
 - The Title IX Coordinator, investigator, or decision-maker had a general or specific conflict of interest or bias against the complainant or respondent that affected the outcome
- Additional grounds are permitted

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§ 106.45(b)(8)(iii) - APPEALS

Notification to both parties of an appeal submission

Appeal officer cannot be the hearing decision-maker

Appeal officer must be trained and be without bias/conflict

Give both parties an opportunity to respond

Notification of decision to both parties

§ 106.45(b)(10) - RECORDKEEPING



Case Materials



Training materials

"Title IX Grievance Procedures"



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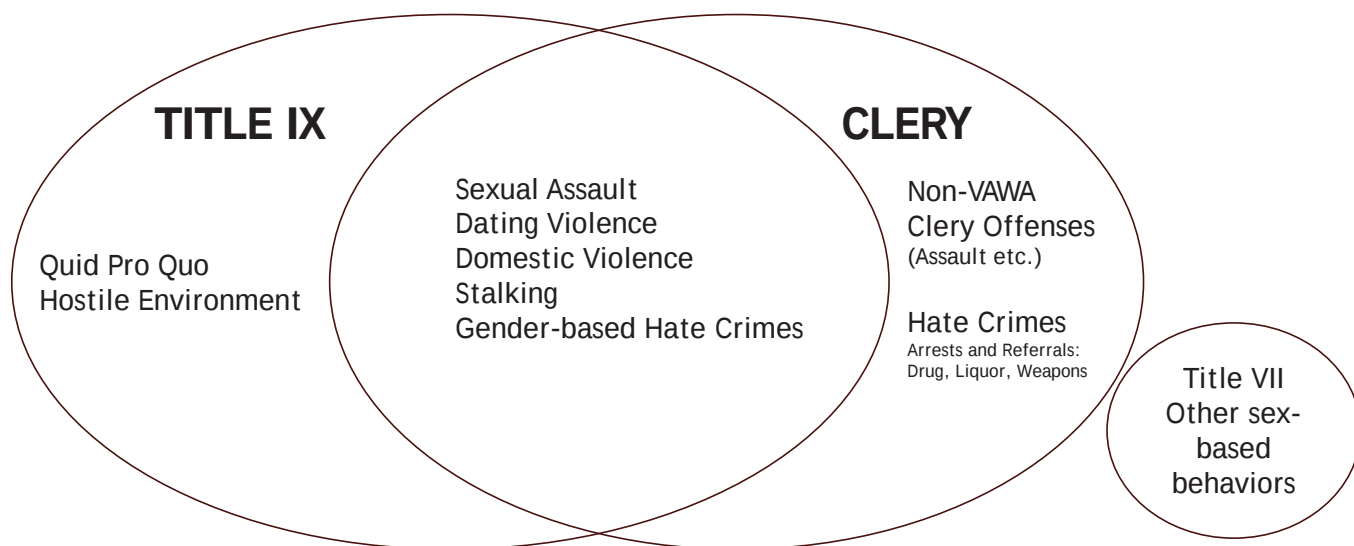
VAWA PROCEDURAL REQUIREMENTS



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OVERLAPPING CONDUCT ALLEGATIONS



34 C.F.R. § 668.46(a) - VAWA OFFENSES



Rape



Fondling



Incest



Statutory
Rape



Dating
Violence



Domestic
Violence



Stalking

§ 668.46 - RESPONSE REQUIREMENTS FOR VAWA OFFENSES

Procedures victims of VAWA Offenses should follow



Procedures an institution will follow when offense reported



and make sure it is all in WRITING.

§ 668.46(b)(11)vii) - WRITTEN EXPLANATION OF STUDENT OR EMPLOYEE'S RIGHTS

When a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options, as described in paragraphs (b)(11)(ii) through (vi) of this section. . .

§ 668.46(b)(11)(ii) - WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

1. **The importance of preserving evidence** that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order

- Not required but recommended: Where to obtain forensic exams, contact info, does not require police report and can have exam now, decide later

2. **How and to whom the alleged offense should be reported**

- List any person or organization that can assist the victim
- Recommended: Also include community organizations

§ 668.46(b)(11)(ii) - WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

3. **Notification of the victim's option to**

- Notify proper law enforcement authorities, including on-campus and local police
- Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses
- Decline to notify such authorities

4. **The rights of victims and the institution's responsibilities for**

- Orders of protection
- "No contact" orders
- Restraining orders
- Similar lawful orders issued by a criminal, civil, tribal, or institutional

§ 668.46(b)(11)(ii) - WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

5. To students AND employees about existing

- Counseling, health, mental health services
- Victim Advocacy
- Legal Assistance
- Visa and Immigration Assistance
- Student Financial Aid
- Other services available for victims

6. Options for, available assistance in, and how to request changes to (if requested and reasonably available)

- Academic, living, transportation, working

§ 668.46(b)(11)(ii) - WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

7. Confidentiality

- Publicly available recordkeeping has no personally identifying information about the victim (not required for the respondent but best practice in most cases)
- Accommodations and protective measures are confidential (to the extent they can be without impairing the ability to provide them)

8. Disciplinary Procedures

- An explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as required

RESPONSE TO “ACTUAL KNOWLEDGE”

Title IX

- Contact the complainant
- Offer and/or implement supportive measures
- Explain the process for filing a formal complaint

Clery Act

- Written explanation of victim’s rights and options
- Assess for Timely Warning Notice and Emergency Notification

CLERY ACT REQUIREMENTS FOR DISCIPLINARY PROCEEDINGS



Anticipated timelines (“reasonably prompt”)



Decision-making process



How to and options for filing a school complaint (with contact info)



How school determines which process to use



Who makes decisions



Include employee procedures



Use procedures regardless of Clery geography

§ 668.46(k)(2)(iii-iv)- ADVISORS

- Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice
- Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution 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

INFORMAL RESOLUTIONS

Title IX

- Can offer, but may not require
- Not allowed for “employee on student” sexual harassment
- Party may withdraw up to a point

Clery Act

- Written information about procedures the institution will follow for VAWA offenses (does not differentiate between formal vs informal)

FORMAL COMPLAINT RIGHTS

Title IX

- Treat equitably with goal to restore/preserve access to education; due process for respondent
- Reasonably prompt time-frames

Clery Act

- Prompt, fair and impartial investigation and resolution
 - Anticipated timeframes
 - List all possible sanctions for each offense (employees and students)
 - Consistent with policy and transparent
 - Not required to list all protective measures

WRITTEN DETERMINATION

Title IX

- Identification of the allegations
- Procedural steps taken from receipt through determination
- Findings of fact supporting the determination
- Conclusions regarding the application of code of conduct to the facts
- Result (responsibility, rationale, sanctions, remedies for each allegation)
- Appeals procedures
- When results become final (post appeal)

Clery Act

- Result (include any sanctions and rationale for results and sanction)
- Appeals procedures
- Any change to the result
- When such results become final

§ 668.46(k)(2)(ii) - BIAS FREE AND TRAINING FOR “OFFICIALS”

Annual training on the issues related to dating violence, domestic violence, sexual assault and stalking and on how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability

APPEALS

Title IX

- Must offer both parties an appeal
- Based on specific grounds

Clery Act

- Not required (but must provide notice if allowed along with appeal procedures)
- Simultaneous written decision describing result, sanction, any changes to the result, when it becomes final

"Clery Act (VAWA) Procedural Requirements"



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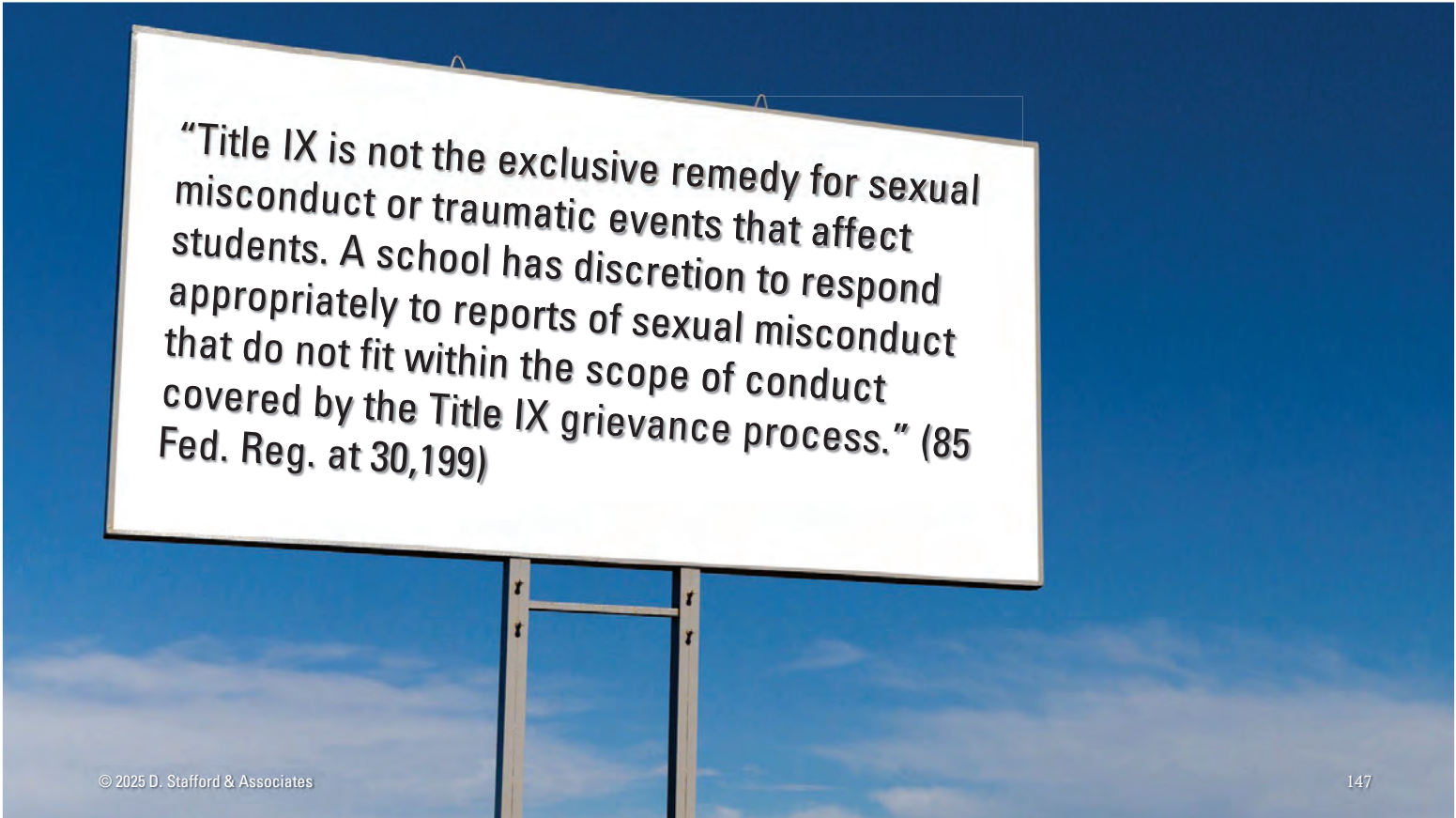


ADDRESSING "NON-TITLE IX" CASES



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"Title IX is not the exclusive remedy for sexual misconduct or traumatic events that affect students. A school has discretion to respond appropriately to reports of sexual misconduct that do not fit within the scope of conduct covered by the Title IX grievance process." (85 Fed. Reg. at 30,199)

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EXAMPLE BEHAVIORS OUTSIDE THE TITLE IX DEFINITIONS

Administering a date
rape drug

Touching non-private
body part with
perpetrator's private
body part

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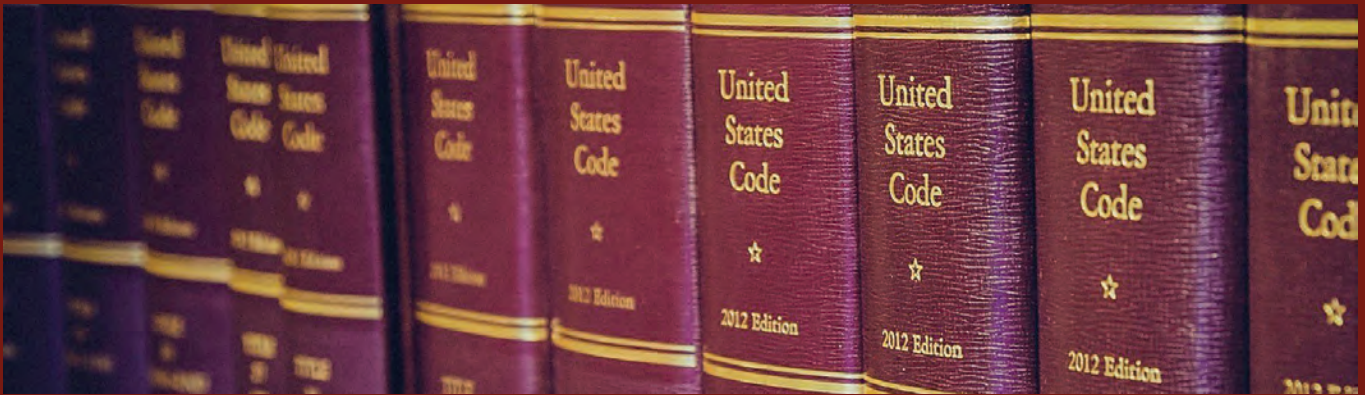
LOCATIONS OUTSIDE THE DEFINITION

- Outside an education program or activity
- Outside the U.S.



"Addressing Non-Title IX"





THANK YOU





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