

Title IX Update: 2024 Final Regulations

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Agenda

- Scope
- Notice, policy, training requirements
- Response requirements
- Grievance procedure requirements
- Other forms of sex discrimination
- Permissible sex separation or differentiation





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When an Institution Must Respond

- Institution with knowledge of conduct that reasonably may constitute sex discrimination
 - No longer actual knowledge standard
- In its education program or activity
 - Broader scope
- In the United States



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Conduct Occurring in Education Program or Activity



- Sex discrimination occurring under education program or activity in the United States
 - Occurs in education program/activity if :
 - Building owned/controlled by student organization
 - Under institution's disciplinary authority
 - In the United States
 - Title IX does not apply extraterritorially, but...
- Obligation to respond even when some conduct alleged to be contributing to the hostile environment occurred outside the education program or activity or outside the United States

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Sex Discrimination



- Includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation and gender identity
- Non-harassment sex discrimination
 - Differential treatment
 - Failure to provide reasonable modifications for pregnancy and related conditions
 - Retaliation
- Sex-based harassment

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Sex-based Harassment



- Means sexual harassment and other harassment on the basis of sex that is:
 - Quid pro quo harassment
 - Hostile environment harassment
 - Specific offenses (sexual assault, dating violence, domestic violence, stalking)

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Quid Pro Quo Harassment

- An employee, agent, or **other person authorized by the institution to provide an aid, benefit, or service under the institution's education program or activity** explicitly or impliedly conditioning the provision of an aid, benefit, or service on a person's participation in unwelcome sexual conduct
 - o "Other person" could include a student
 - o Applies to all aspects of education program or activity, including extracurricular

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Hostile Environment Sex-Based Harassment

- Unwelcome sex-based conduct that, based on the totality of the circumstances, is *subjectively and objectively offensive* and is so *severe or pervasive* that it *limits or denies* a person's ability to participate in or benefit from the institution's education program or activity

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Hostile Environment Sex-Based Harassment

- Factors for determining whether hostile environment
 - o Effect on complainant's ability to access education program or activity
 - o Type, frequency, and duration of the conduct
 - o Parties' ages, roles, previous interactions, and other factors about each party relevant to evaluating effects of conduct
 - o Location of conduct and context in which conduct occurred
 - o Other sex-based harassment in education program or activity

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Notice, Policy, and Procedures

- Nondiscrimination Policy
- Grievance Procedures
- Notice of Nondiscrimination
 - o Revives requirement to place in each handbook, catalog, announcement, bulletin, and application form it makes available to notice recipients or which are otherwise used in connection with the recruitment of students or employees
 - o Short version: The institution prohibits sex discrimination in any education program or activity that it operates and that individuals may report concerns or questions to the Title IX Coordinator, and provide location of the notice on the Institution's website.

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Notice of Nondiscrimination

- Required elements
 - o Nondiscrimination statement
 - o Inquiries can go to Title IX Coordinator or OCR
 - o Name and contact info for Title IX Coordinator
 - o How to locate policy and grievance procedures
 - o How to report and how to make a complaint
- Can include religious exemption language

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Training

- Who
 - o All employees
 - o Investigators
 - o Decisionmakers
 - o Persons responsible for implementing grievance procedures
 - o Persons with authority to modify or terminate supportive measures
 - o Facilitators of informal resolution process
 - o Title IX Coordinator and designees
- Requirements for all trainings
 - o At hire or change of position, **annually** thereafter
 - o Must not rely on sex stereotypes

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Training—All Employees



- Required content for all employees:
 - Institution's obligation to address sex discrimination in education program/activity
 - Scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment
 - Employee notification requirements (discrimination and pregnancy)

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Training—Employees with Heightened Responsibility in Grievance Process



- Investigators, decisionmakers, persons responsible for implementing grievance procedures, persons with authority to modify or terminate supportive measures
- Required Content:
 - Institution's obligations to respond to sex discrimination
 - Institution's grievance procedures
 - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
 - Meaning and application of the term "relevant" and types of impermissible evidence

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Training—Facilitators of Informal Resolution Process



- Required content
 - Rules and practices associated with the institution's informal resolution process
 - How to serve impartially, including by avoiding conflicts of interest and bias

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Training—Title IX Coordinator and Designee



- Required content
 - Specific responsibilities to coordinate institution's compliance with Title IX
 - Rights and reasonable modifications applicable to pregnancy and related conditions
 - Responding to reports/complaints
 - Supportive measures
 - Recordkeeping
 - Any other trainings necessary to coordinate compliance with Title IX
- Must also receive all other trainings

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Recordkeeping



- Make training materials available upon request
- No recordkeeping requirements related to pregnancy requirements
 - Unless information regarding sex discrimination

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Barriers to Reporting



- Title IX Coordinator must monitor education program or activity for barriers to reporting
 - Includes barriers for students with disabilities, individuals with limited English proficiency, and other populations
 - Other barriers: inaccessible complaint reporting processes, confusing grievance procedures, difficult-to-reach Title IX Coordinators or staff, poorly managed grievance procedures
 - No particular mandated steps for monitoring
- Take steps reasonably calculated to address identified barriers

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When an Institution Must Respond

- Institution with knowledge of conduct that reasonably may constitute sex discrimination
- In its education program or activity
- In the United States

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How an Institution Must Respond

- Promptly and effectively
- In compliance with Title IX regulations

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Employee Reporting Obligations

- Category 1:
 - Any employee who has authority to institute corrective measures on behalf of the institution (excluding confidential employees)
 - Any employee who has responsibility for administrative leadership, teaching, or advising (excluding confidential employees)
- Category 2:
 - All other employees (excluding confidential employees)

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Employee Reporting Obligations

- When an employee has information about conduct that may reasonably constitute sex discrimination
 - Category 1 employees must notify Title IX Coordinator
 - Category 2 employees must either:
 - Notify Title IX Coordinator (*recommended approach*); or
 - Provide contact information of Title IX Coordinator and information about how to make a complaint of sex discrimination to any person who provided information
- Employees may move between category 1 and 2 if job duties change

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Employee Reporting Obligations

- Student-employees
 - Institution must determine and specify whether and under what circumstances a student-employee has reporting obligations
 - Factors to consider:
 - Whether primary relationship with institution is as student or employee
 - Context for how reportable information was learned
 - Other relevant factors

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Employee Reporting Obligations

- Obligation triggered by employee:
 - Witnessing conduct
 - Receiving a report of conduct
 - Receiving information from another source (applications, interviews, personal statements, academic paper, other)
- Knowledge of non-confidential employee is imputed to institution
- Employee reporting obligations do not apply if employee is personally subjected to sex discrimination

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Definition of Confidential Employee

- An employee whose communications are privileged or confidential under federal or state law; and
- An employee designated by institution as confidential for the purposes of providing services to persons related to sex discrimination

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Confidential Employees

- Institution must notify all participants in program or activity how to contact confidential employees, if any
- Confidential employee must provide specific information to any person who informs employee of conduct that reasonably may constitute sex discrimination

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Confidential Employee Obligations

- Confidential employee must explain
 - Employee's status as confidential, including circumstances when employee is not required to notify Title IX Coordinator
 - How to contact Title IX Coordinator
 - How to make a complaint of sex discrimination
 - Title IX Coordinator may be able to offer and coordinate supportive measures
 - Title IX Coordinator may be able to initiate informal resolution process or an investigation under the grievance procedures
- Institution may require confidential employees to self attest that they provided the required info upon being informed of sex discrimination

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Public Awareness Events

- Public event to raise awareness about sex-based harassment held on campus or through an online platform sponsored by institution
- Title IX Coordinator generally not obligated to act in response to information about conduct that may constitute sex-based harassment provided at public awareness event
- Title IX Coordinator still must use information to inform efforts to prevent sex-based harassment

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Public Awareness Events

- Caution!
 - Must still respond to sex discrimination other than sex-based harassment disclosed at event
 - Must still respond if required by Title VII or other legal obligations
 - Employees must still report sex-based harassment disclosed at event to Title IX Coordinator
 - Title IX Coordinator must respond if information indicates an imminent and serious threat to the health or safety of a complainant, any students, employees, or other persons (same standard as emergency removal – should effectuate emergency removal if exception is met)
- Employees are not required to attend

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How an Institution Must Respond

- When notified of conduct that reasonably may constitute sex discrimination, Title IX Coordinator must take action to promptly and effectively end any sex discrimination in institution's program or activity, prevent its recurrence, and remedy its effects
- No specific timeframe for "prompt"
- Effective: reasonable steps calibrated to address possible sex discrimination based on all available information

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How an Institution Must Respond to Report



- Treat complainant and respondent equitably
- Offer and coordinate supportive measures
- Notify complainant of grievance procedures and informal resolution process (if available and appropriate)
- If complainant does not move forward with complaint, determine whether Title IX Coordinator will initiate a complaint

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Supportive Measures



- Must not unreasonably burden either party
- Must be designed to protect the safety of the parties or the educational environment or to provide support during grievance procedures
- May not be imposed for punitive or disciplinary reasons
 - Action is not punitive just because same action could be taken after finding of responsibility
- Available to complainant upon report; available to respondent when made aware (informal process or grievance procedure)

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Supportive Measures



- May modify or terminate supportive measures at the conclusion of the grievance procedures or informal resolution as appropriate
- Should not be coordinated by confidential employee
- Must keep confidential; only share to extent necessary

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Supportive Measures

- Parties have a right to request modification or reversal of decisions regarding supportive measures applicable to them
- An impartial employee not involved in underlying decision considers request; must have authority to modify or reverse the decision
- Applicable question: Was the decision regarding the supportive measure inconsistent with the definition of supportive measure?
- Must provide opportunity to seek additional modification or termination of a supportive measure applicable to them if circumstances change materially

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Emergency Removal

- May remove a respondent from the education program or activity on an emergency basis if
 - Undertake individualized safety and risk analysis
 - Determine that an imminent and serious threat to health or safety justifies removal
 - Provide notice to respondent and immediate opportunity to challenge the decision after removal
- Partial removal permitted

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Administrative Leave

- Nothing precludes an institution from placing an employee respondent, including student-employees, on administrative leave from employment responsibilities during grievance process
- Administrative leave for student-employee would extend only to employment responsibilities; cannot impose sanctions before conclusion of process

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Definition of Complainant and Respondent

- Complainant
 - A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination; or
 - A person other than a student or employee who
 - Is alleged to have been subjected to conduct that could constitute sex discrimination; and
 - Was participating or attempting to participate in the institution's education program or activity at the time of the alleged sex discrimination
- Respondent
 - A person who is alleged to have violated the institution's prohibition on sex discrimination



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Definition of "Complaint"

- An oral or written request to the institution that *objectively* can be understood as a request for the institution to investigate and make a determination about alleged discrimination



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Who Can Make A Complaint

Sex Discrimination

differential treatment, failure to modify/accommodate & retaliation

- Complainant
- Parent, guardian, or authorized legal representative with legal right to act on behalf of complainant
- Title IX Coordinator (limited circumstances)

Sex-Based Harassment

- Complainant
- Parent, guardian, or authorized legal representative with legal right to act on behalf of complainant
- Title IX Coordinator (limited circumstances)



- Any student or employee
- Any person who was participating or attempting to participate in education program or activity at the time of the alleged discrimination



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Determining Whether Title IX Coordinator Will Initiate Complaint



- Fact specific determination that must consider at least the following
 - o Complainant's request not to proceed with initiation of a complaint
 - o Complainant's reasonable safety concerns regarding initiation of a complaint
 - o Risk that additional acts of sex discrimination would occur if a complaint is not initiated
 - o Severity of alleged sex discrimination, including whether finding of responsible would require removal of respondent
 - o Age and relationship of the parties, including whether the respondent is an employee
 - o Scope of alleged sex discrimination
 - o Availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred
 - o Whether institution could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures

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Determining Whether Title IX Coordinator Will Initiate Complaint



- Ultimate questions:
 - o Does the conduct as alleged present an imminent and serious threat to the health or safety of complainant or other person?
 - If yes, may effectuate emergency removal and initiate grievance process
 - o Does the conduct as alleged prevent the institution from ensuring equal access on the basis of sex to its education program or activity?
 - If yes, may initiate grievance process
- Should only initiate without complainant in very limited circumstances
- If initiating complaint, notify complainant prior to doing so and address reasonable safety concerns
- With or without complaint, take other appropriate prompt and effective steps to ensure sex discrimination does not continue or recur

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How an Institution Must Respond to Complaint



- Notify respondent of grievance procedures and informal resolution process (if available and appropriate)
- Initiate grievance procedures or informal resolution process

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Informal Resolution

- May offer anytime prior to determination
 - Unless complaint includes allegations that an employee engaged in sex-based harassment of a K-12 student
 - Unless offer or process would conflict with federal, state, or local law
- May offer without complaint (but need notice of allegations)
- If providing informal resolution, must take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur
- Institution may decline to offer informal resolution despite one or more parties' wishes
- Must be voluntary for parties
- Facilitator cannot be investigator or decisionmaker


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Informal Resolution

- Before initiating informal process, must provide to the parties notice that explains
 - Consistent content with 2020 regulations
 - Allegations, requirements of informal process, that party may withdraw prior to agreeing to informal resolution and initiate or resume grievance process, what information institution will maintain and whether and how the institution could disclose such information for use in grievance process
 - New required content
 - Parties' agreement to a resolution would preclude the parties from initiating or resuming grievance process arising from same allegations
 - Potential terms that may be requested or offered in informal resolution agreement
 - Informal resolution agreement is binding only on the parties


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All Grievance Procedures

- Must be in writing
- If use different procedures for some types of cases, must state how institution decides which procedures to use
- Reasonably prompt timeframes for major stages (evaluation of whether to dismiss or investigate; investigation; determination; appeal—if any)
 - Process that allows for reasonable extensions on case-by-case basis for good cause
 - Must provide notice that includes the reason for the delay


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All Grievance Procedures

- Title IX Coordinator or investigator can also serve as decisionmaker (single investigator model)
- Title IX Coordinator, investigator and decisionmaker free of conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent
- Treat complainants and respondents equitably
- Include presumption that respondent is not responsible for sex discrimination until a determination is made at the conclusion of the grievance procedures
- Credibility determinations cannot be based on person's status as complainant, respondent or witness
- Standard of Proof
 - Preponderance of the evidence, unless clear and convincing is used in all other comparable proceedings

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All Grievance Procedures

- Take steps to protect privacy of the parties and witnesses during grievance procedures
 - Cannot restrict ability of parties to:
 - Obtain and present evidence, including speaking to witnesses
 - Consult with their family members, confidential resources or advisors
 - Prepare for or participate in grievance procedures

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All Grievance Procedures

- Objective evaluation of all relevant evidence and not otherwise impermissible
 - Including inculpatory and exculpatory evidence
 - Impermissible evidence and (questions seeking evidence)
 - Cannot be considered, disclosed or used (unless exception met)
 - Regardless of whether relevant

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All Grievance Procedures

- Categories of impermissible evidence
 - Legal privilege or confidential employee
 - Unless person who holds the privilege voluntarily waives privilege or confidentiality
 - Party or witness's records made by physician, psychologist or other recognized professional or paraprofessional in connection with provision of treatment
 - Unless written consent for use in grievance procedure

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All Grievance Procedures

- Categories of impermissible evidence (cont.)
 - Evidence that relates to complainant's sexual interest or prior sexual conduct
 - Unless:
 - Offered to prove that someone other than respondent committed alleged conduct
 - Evidence about specific incidents of complainant's sexual conduct with respondent and offered to prove consent to sex-based harassment
 - Prior consensual sexual conduct between parties does not itself demonstrate or imply consent to alleged sex-based harassment or preclude finding that it occurred

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Grievance Procedures

Section 106.45 General Grievance Procedures (Postsecondary and K-12 institutions) <i>Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination</i>	Section 106.46 Heightened Grievance Procedures (Postsecondary institutions only) <i>Apply to complaints of sex-based harassment involving a student party</i>
- Differential treatment - Failure to provide reasonable modifications for pregnancy and related conditions - Retaliation	Sex-based harassment at post-secondary institution where at least one party is a student*
Sex-based harassment between employees*	
Sex-based harassment in K-12	

*VAWA may impose additional requirements in post-secondary environment if sexual assault, dating violence, domestic violence, or stalking

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When Heightened Procedures Apply

- If individual is both student and employee, fact-specific inquiry considering:
 - Whether party's primary relationship with institution is to receive an education
 - Whether the alleged sex-based harassment occurred while the party was performing employment-related work



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All Grievance Procedures: Notice of Allegations

- Upon initiation of grievance procedures
- Provide to all known parties
- Required before informal resolution



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Notice of Allegations	General Grievance Procedures (Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination	Heightened Grievance Procedures (Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party
Written	Optional	✓
Grievance Procedures	✓	✓
Informal Resolution (if applicable)	✓	✓
Sufficient information available at the time to allow party to respond: • Identities of parties • Conduct alleged to constitute sex discrimination/sex-based harassment • Date(s) and location(s) of alleged incident(s)	✓	✓
Statement Retaliation is prohibited	✓	✓



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Notice of Allegations	General Grievance Procedures (Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination	Heightened Grievance Procedures (Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party
Statement that parties entitled to equal opportunity to access relevant and not otherwise impermissible evidence or <u>accurate description of evidence</u>	✓	
Statement that parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an <u>investigative report</u> that accurately summarizes this evidence		✓
Statement that if school provides description of evidence/investigative report, parties are entitled to request access to relevant and not otherwise impermissible evidence	✓	✓
Must notify of additional allegations	✓	✓

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Notice of Allegations	General Grievance Procedures (Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination	Heightened Grievance Procedures (Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party
Statement that respondent is presumed not responsible until a determination is made at the conclusion of the grievance procedures		✓
Statement that prior to the determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker		✓
Statement that parties may have an advisor of choice and that advisor may be, but is not required to be, an attorney		✓
If applicable, code of conduct prohibits knowingly making false statements or knowingly submitting false information during grievance process		✓

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All Grievance Procedures: Dismissal of Complaint
• Institution <i>may</i> dismiss if: - o Unable to identify respondent after taking reasonable steps to do so - o Respondent is not participating in school's education program or activity and is not employed - o Complainant voluntarily withdraws any or all allegations in complaint and • Title IX Coordinator declines to initiate complaint • School determines, remaining allegations (if any), would not constitute sex discrimination - o Conduct alleged in complaint, even if proven, would not constitute sex discrimination • Must make reasonable efforts to clarify the allegations with complainant before dismissal

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Dismissal of Complaint	General Grievance Procedures (Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination	Heightened Grievance Procedures (Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party
Obtain complainant's withdrawal in writing if dismissing a complaint based on complainant's voluntary withdrawal		✓
Offer supportive measures to complainant and respondent (if applicable)	✓	✓
Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur	✓	✓

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Notice of Dismissal	General Grievance Procedures (Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination	Heightened Grievance Procedures (Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party
Promptly notify the complainant of the basis for dismissal	✓ (Oral or Written)	✓ (Written)
If dismissal occurs after respondent has been notified, notify respondent of the basis for the dismissal promptly following notification to complainant or simultaneously if in writing	✓ (Oral or Written)	✓ (Written)
Notify complainant (and respondent if applicable) that dismissal may be appealed and provide opportunity to appeal on the following grounds: - Procedural irregularity - New evidence that wasn't reasonably available - Conflict of interest - Other?	✓ (Oral or Written)	✓ (Written)

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Appeal of Dismissal	General Grievance Procedures (Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination	Heightened Grievance Procedures (Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party
Notify the parties if appeal filed, provide Notice of Allegations to Respondent (if not previously provided)	✓ (Oral or Written)	✓ (Written)
Provide parties reasonable and equal opportunity to make a statement in support of or challenging outcome	✓ (Oral or Written)	✓ (Written)
Notify the parties of result of appeal and rationale	✓ (Oral or Written)	✓ (Written)

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All Grievance Procedures: Consolidation of Complaints



- May consolidate complaints with more than one complainant or respondent, or by one party against another
- When the allegations arise out of the same facts or circumstances
- If some allegations involve post-secondary sex-based harassment involving at least one student, then must use those heightened procedures for all allegations
- Caution – no FERPA exception

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Heightened Grievance Procedures: Additional Requirements



- Notice of meetings
- Advisors
- Additional person present, if any



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Heightened Grievance Procedures: Notice of Meetings



- Must provide to a party whose participation is invited or expected, written notice of all meetings or proceedings with sufficient time for the party to prepare to participate
- Notice must include:
 - o Date
 - o Time
 - o Location
 - o Participants
 - o Purpose

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Heightened Grievance Procedures: Advisors



- Must provide parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney
- Must not limit the choice or presence of the advisor in any meeting or proceeding
- May establish restrictions regarding extent of advisor participation, as long as apply equally
- Cannot prohibit party from selecting an advisor who may be a witness in the process

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Heightened Grievance Procedures: Additional Person Present



- Provide the parties with the same opportunities, if any, to have persons other than the advisor of the parties' choice present during any meeting or proceeding
- May not allow additional person if doing so would violate FERPA
 - Does not violate FERPA if person is required by law
 - Does not violate FERPA if all impacted individuals (parties and witnesses as applicable) provide written consent
- Need for language interpreter or disability accommodation may result in only one party having additional person present

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All Grievance Procedures: Investigation



- Must be adequate, reliable and impartial
- Burden on school to conduct investigation and gather sufficient evidence to make a determination
- Equal opportunity for parties to present witnesses
- Not required to allow expert witnesses
- Only include relevant and not impermissible evidence
- Regulations permit character evidence, but still must be relevant

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Access to Evidence	General Grievance Procedures (Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination	Heightened Grievance Procedures (Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party
Provide parties with equal opportunity to access relevant and not otherwise impermissible evidence or <u>accurate description of evidence</u> (oral or written)	✓	
Provide each party with equal opportunity to access the relevant and not otherwise impermissible evidence or a <u>written, investigative report</u> that accurately summarizes this evidence		✓
If school provides description of evidence/investigative report, parties are entitled to request access to relevant and not otherwise impermissible evidence	✓	✓
Reasonable opportunity to respond	✓	✓

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Access to Evidence	General Grievance Procedures (Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination	Heightened Grievance Procedures (Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party
Reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through grievance procedures	✓	✓
Reasonable steps to prevent and address the advisors' unauthorized disclosure of information and evidence obtained solely through grievance procedures		✓

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All Grievance Procedures: Providing Access to Evidence
- Must state in policy when school will provide access to description/investigation report vs. all relevant and not impermissible evidence - Do not have to provide physical or electronic copy of evidence - Do not have to provide continuous access - Options: electronic file sharing site; institution's copy for on-site review; other - Reasonable timeframe for review may vary based on nature and volume of evidence

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Questioning Parties and Witnesses to Aid in Evaluating Allegations and Assessing Credibility	General Grievance Procedures (Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination	Heightened Grievance Procedures (Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party
Decisionmaker must ask parties and witnesses questions to adequately assess credibility to the extent credibility is in dispute and relevant	✓	
Investigator or decisionmaker must ask parties and witnesses questions either during individual meetings OR at live hearing		✓
Parties propose questions and follow-up questions for any party/witness to be asked by the investigator or decisionmaker during individual meetings OR at live hearing		✓
If no live hearing, must provide each party with a recording or transcript of interviews/meetings with enough time for reasonable opportunity to propose follow-up questions		✓

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When Credibility Is in Dispute

- Determination relies on testimonial evidence, including when decisionmaker has to choose between competing narratives to resolve case
- Credibility is not in dispute if
 - Respondent admits to facts at issue
 - Evidence other than complainant's statements leads to outcome (e.g., security footage)

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Heightened Procedures: Individual Meetings

- Must provide each party with a recording or transcript of interviews/meetings with enough time for reasonable opportunity to propose follow-up questions
- Will require multiple rounds of providing access to transcripts, requesting lists of questions, and reinterviewing

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Heightened Procedures: Live Hearing

- Must allow each party to propose questions for parties and witnesses
- Relevant questions asked by decisionmaker or advisors
 - Questioning may not be conducted by a party personally
 - If advisor-conducted questioning and a party does not have advisor, institution must provide an advisor for the purpose of advisor-conducted questioning

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Written Determination	General Grievance Procedures (Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination	Heightened Grievance Procedures (Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party
Description of the alleged sex-based harassment		✓
Information about policies and procedures institution used to evaluate the allegations		✓
Evaluation of the relevant and not otherwise impermissible evidence		✓
Determination of whether sex discrimination occurred	✓	✓
Rationale for determination	✓	✓

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Written Determination	General Grievance Procedures (Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination	Heightened Grievance Procedures (Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party
Any disciplinary sanctions	✓ must notify complainant	✓
Whether remedies will be provided		✓
Procedures and permissible bases for complainant and respondent to appeal (if applicable)	✓ (if applicable)	✓
Simultaneous delivery	✓	✓

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All Grievance Procedures: Effective Date of Determination of Responsibility



- Determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of any appeal or if no party appeals, date on which appeal would no longer be timely

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Appeal of Determination



Appeal that is at a minimum the same as offered in comparable proceedings (if any)

Three set appeal bases must be offered

- Procedural irregularity
- New evidence that wasn't reasonably available
- Conflict of interest
- Other?

General Grievance Procedures

(Postsecondary and K-12 institutions)
Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination



Heightened Grievance Procedures

(Postsecondary institutions only)
Apply to complaints of sex-based harassment involving a student party



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Effective Date and Application



- Regulations effective August 1, 2024
- Apply 2024 regulations for conduct alleged to have occurred on or after August 1, 2024
- Apply 2020 regulations for conduct alleged to have occurred before August 1, 2024

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Other Forms of Sex Discrimination

- Retaliation
- Pregnancy and related conditions



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Retaliation

- Intimidation, threats, coercion, or discrimination against any person
- By institution, a student, or an employee or other person authorized by institution to provide aid, benefit, or service under education program or activity
- Retaliation against a person for complaining of sex discrimination is discrimination on the basis of sex
- Covers only those actions taken for:
 - The purpose of interfering with Title IX rights, or
 - Because the person participated in the Title IX process

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Retaliation

- A school cannot discipline someone for false statements or consensual sexual conduct if based solely on determination whether sex discrimination occurred
- A school can continue to enforce its code of conduct unless it has a retaliatory motive
 - Schools are not required to adopt amnesty policies
- Cross-complaint is not retaliation as long as there is another reason for the cross-complaint that is not pretext for sex-based retaliation

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Retaliation: Employees

- Schools can require an employee or other person authorized to provide aid, benefit, or service under the program or activity to participate as a witness in, or assist with an investigation, proceeding, or hearing
- Employees may decline to make a complaint under Title IX and may not be penalized for that decision
 - But if Title IX Coordinator determines risk of additional acts occurring and initiates a complaint, the school may require the employee to testify as a witness

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Pregnancy or Related Conditions

- Definition:
 - Pregnancy, childbirth, termination of pregnancy, or lactation;
 - Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
 - Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions

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Pregnancy or Related Conditions

- May not discriminate based on **current, potential, or past** pregnancy or related condition
 - Complaints of discrimination processed under general grievance procedures
- Must provide:
 - Reasonable modifications for pregnancy or related conditions
 - Reasonable break time for employees to express breast milk or breastfeed
 - Lactation space for students and employees
- Must treat same as other temporary medical conditions
- Changes to what documentation an institution can require of students

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Pregnancy or Related Conditions

- Employee notification requirement
 - When student informs **any employee** about the student's pregnancy or related conditions, employee must
 - Provide them with Title IX Coordinator's contact information; and
 - Inform them that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure equal access
 - Exception: If employee reasonably believes Title IX Coordinator has been notified
- Institution must notify the student of the institution's obligations toward them

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Permissible Sex Separation or Differentiation

- Schools can separate and differentiate based on sex for restrooms, locker rooms, access to classes and activities, and appearance codes
- But cannot prevent a person from participating consistent with the person's gender identity

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Permissible Sex Separation or Differentiation

- In the following contexts, schools can prevent a person from participating in a program or activity consistent with the person's gender identity:
 - Male and female athletic teams
 - Sex-separate living facilities
- Other exceptions: religious exemption, military and merchant marine educational institutions, fraternities and sororities, YMCA, YWCA, Girl Scouts, Boy Scouts, Camp Fire Girls, voluntary youth service organizations

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trainED Resources for Compliance with 2024 Regulations

- Cost-sharing Title IX policy program
- Unlimited training for individuals with heightened responsibility for flat fee of \$5000 per year with a two-year contract
- Faith-friendly customized training modules for students and employees to satisfy training requirements under VAWA and new requirements under Title IX



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Upcoming Trainings

- More sessions on 2024 Final Regulations: TBD
- Annual Training for Advanced Title IX Coordinators and Deputy Coordinators: July 23, 2024
- Title IX/VAWA Investigator Training: July 24, 2024
- Annual Training for New Title IX Coordinators and Deputy Coordinators: July 30, 2024
- Annual Training for Advanced Title IX Coordinators and Deputy Coordinators: July 31, 2024
- Title IX/VAWA Investigator Training: August 1, 2024



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