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2024 Title IX Regulations for Higher Education

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WELCOME!




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PRESENTER

David J. Sipusic, JD

Recognized for his work in the fields of preventive assessment and civil rights law in education, notably in Title IX, David has served as Chief Equity Compliance Officer and Title IX Coordinator for the University of Dayton and John Carroll University.

Mr. Sipusic has also served as Associate General Counsel for Youngstown State University and as a featured Title IX panelist with the Higher Education Recruitment Consortium (HERC) and as a member of the ModernThink advisory board on improving campus climate.

David's ongoing work with the U.S. Dept. of Education has enabled him to gain valuable insight and perspective on a number of Title IX issues, which he is excited to share with you today!



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Title IX

TITLE IX:
 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.

Title IX of the Education Amendments of 1972

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Title IX – Developments

- 2001- U.S. DOE Revised Sexual Harassment Guidance
- 2006- Dear Colleague Letter on Sexual Harassment
 - (Re-affirming 2001 Guidance)
- 2011 – U.S. DOE Dear Colleague Letter
- 2014 – U.S. DOE Q&A
- 2015 – Title IX Resource Guide
- 2017 – U.S. DOE Dear Colleague Letter
- 2020 – Aug. 14 – New regs take effect
- 2022 – 50th Anniversary of Title IX
 - Proposed Rule Changes Announced
- 2024 – Aug. 1 – New regs take effect

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OVERVIEW

Agenda

1. Introduction
2. Definitions -106.2
3. Title IX Implementation - 106.8
4. Pregnancy – 106.40/106.57
5. Responding to Reports – 106.44
6. Grievance Procedures – 106.45
7. Higher Ed. Grievance Add-on - 106.46
8. Miscellaneous Provisions
9. Q&A

NOTE: Training Certificates will be issued following completion of the program.

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106.2
Definitions



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106.2 - Definitions

Administrative law judge means a person appointed by the reviewing authority to preside over a hearing held under § 106.81.

Administratively separate unit means a school, department, or college of an educational institution (other than a local educational agency), admission to which is independent of admission to any other component of such institution

Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

Applicant as used in the definition of educational institution in this section and as used in § 106.4, means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

Assistant Secretary means the Assistant Secretary for Civil Rights of the Department.

Complainant means:
 (1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part; or
 (2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part and who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.

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106.2 - Definitions

Complain means an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or this part.

Confidential employee means:
 (1) An employee of a recipient whose communications are privileged or confidential under Federal or State law. The employee's confidential status, for purposes of this part, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
 (2) An employee of a recipient whom the recipient has designated as confidential under this part for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services; or
 (3) An employee of a postsecondary institution who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination—but the employee's confidential status is only with respect to information received while conducting the study.

Department means the Department of Education.

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106.2 - Definitions

Disciplinary sanctions means consequences imposed on a respondent following a determination under Title IX that the respondent violated the recipient's prohibition on sex discrimination.

Educational institution means a local educational agency (LEA) as defined by section 8101 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (20 U.S.C. 7801(30)), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education.

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106.2 - Definitions

Federal financial assistance means any of the following, when authorized or extended under a law administered by the Department:

- (1) A grant or loan of Federal financial assistance, including funds made available for:
 - (i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and
 - (ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.
- (2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.
- (3) Provision of the services of Federal personnel.
- (4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.
- (5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

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106.2 - Definitions

Institution of graduate higher education means an institution which:

- (1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or
- (2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or
- (3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

Institution of professional education means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary.

Institution of undergraduate higher education means:

- (1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or
- (2) An institution offering academic study leading to a baccalaureate degree; or
- (3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

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106.8 - Implementation

(d) - Training

(1) All employees

- (i) The recipient's obligation to address sex discrimination in its education program or activity;
- (ii) The scope of conduct that constitutes sex discrimination under Title IX and this part, including the definition of sex-based harassment; and
- (iii) All applicable notification (reporting) and information requirements under §§ 106.40(b)(2) and 106.44.

(2) Investigators, decision makers, others who implement grievance procedures or have authority to modify or terminate supportive measures

- (i) The recipient's obligations under § 106.44;
- (ii) The recipient's grievance procedures under § 106.45, and if applicable § 106.46;
- (iii) How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and
- (iv) The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under § 106.45, and if applicable § 106.46.



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106.8 - Implementation

(d) - Training (cont.)

(3) Facilitators of informal resolution process

all facilitators of an informal resolution process under § 106.44(k) must be trained on the rules and practices associated with the recipient's informal resolution process and on how to serve impartially, including by avoiding conflicts of interest and bias.

(4) Title IX Coordinator and designees

In addition to the training requirements in paragraphs (d)(1) through (3) of this section, the Title IX Coordinator and any designees under paragraph (a) of this section must be trained on their specific responsibilities under paragraph (a) of this section, §§ 106.40(b)(3), 106.44(f) and (g), the recipient's recordkeeping system and the requirements of paragraph (f) of this section, and any other training necessary to coordinate the recipient's compliance with Title IX.

(e) - Students with Disabilities

If a complainant or respondent is a postsecondary student with a disability, the Title IX Coordinator may consult, as appropriate, with the individual or office that the recipient has designated to provide support to students with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.



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106.8 - Implementation

(f) - Recordkeeping

A recipient must maintain for a period of at least seven years:

- (1) For each complaint of sex discrimination, records documenting the informal resolution process under § 106.44(k) or the grievance procedures under § 106.45, and if applicable § 106.46, and the resulting outcome.
- (2) For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or this part, including notifications under § 106.44(c)(1) or (2), records documenting the actions the recipient took to meet its obligations under § 106.44.
- (3) All materials used to provide training under paragraph (d) of this section. A recipient must make these training materials available upon request for inspection by members of the public. (NO REQUIREMENT TO POST ON WEBSITE!)



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106.40
Parental,
Family, Marital
and Pregnancy
Conditions
(STUDENTS)



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106.40 – Family and
Pregnancy
(Students)

The following topics are outlined in Section 106.40 – Parental, Family, Marital Status, **Pregnancy and Related Conditions**

NOTE: Section 106.40 applies to STUDENTS

- (a) – Prohibits policy or practice that discriminates against students based on current, potential or past parental, family or marital status.
- (b) – Prohibits discrimination against students based on current, potential or past pregnancy or related conditions.
 - (1) Nondiscrimination – a recipient does not engage in prohibited discrimination when it allows as student, based on pregnancy or related conditions, to voluntarily participate in a separate portion of its education or activity provided the recipient ensures that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions.
 - (2) Responsibility to inform – When a student, or a person who has a legal right to act on behalf of the student, informs ANY employee of the student's pregnancy or related conditions, unless the employee reasonably believes that the Title IX Coordinator has been notified, the employee must promptly provide the person with the Title IX Coordinator's contact information and inform the person that the Title IX Coordinator can ensure equal access to the education program and coordinate actions (b)(3)(i) – (iv) to prevent sex discrimination.

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106.40 – Family and
Pregnancy
(Students)

The following topics are outlined in Section 106.40 – Parental, Family, Marital Status, Pregnancy and Related Conditions

NOTE: Section 106.40 applies to STUDENTS

- (b)(3) – Recipient must take specific actions under (b)(3)(i) – (iv) once the Title IX Coordinator has been notified.
 - (i) The recipient must inform the student, and if applicable, the person who notified the Title IX Coordinator of the student's pregnancy or related conditions and has a legal right to act on behalf of the student, of the recipient's obligations under paragraphs (b)(1) through (5) of this section and § 106.44(j) and provide the recipient's notice of nondiscrimination under § 106.8(c)(1).
 - (ii) (A) Recipient must consult with the student and make reasonable modifications to prevent sex discrimination and ensure equal access to the education program or activity. Any modification that, if demonstrated, would fundamentally alter the nature of the education program or activity is NOT a reasonable accommodation.
 - (B) Student has discretion to accept or decline each reasonable modification offered. If student accepts the offered reasonable modification, then it must be implemented.
 - (C) Reasonable modifications may include, but are not limited to, breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom; intermittent absences to attend medical appointments; access to online or homebound education; changes in schedule or course sequence; extensions of time for coursework and rescheduling of tests and examinations; allowing a student to sit or stand, or carry or keep water nearby; counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access, or other changes to policies, practices, or procedures

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106.40 – Family and Pregnancy (Students)

The following topics are outlined in Section 106.40 – Parental, Family, Marital Status, Pregnancy and Related Conditions

NOTE: Section 106.40 applies to STUDENTS

(b)(3) (cont.) – Recipient must take specific actions under (b)(3)(i) – (iv) once the Title IX Coordinator has been notified.

(iii) Must allow student to voluntarily access any separate and comparable portion of the recipient’s education program or activity under (b)(1) of this section.

(iv) Must allow students to voluntarily take a leave of absence from the recipient’s education program or activity to cover, at a minimum, the period of time deemed medically necessary by the student’s licensed healthcare provider. If the student qualifies for a leave policy maintained by recipient that is greater than the medically necessary time period, then the student must be permitted to take leave under that policy instead if the student so chooses. Once the student returns, the student must be reinstated to academic status and as practicable, the extracurricular status held when the leave began.

(v) Lactation Space - The recipient must ensure that the student can access a lactation space, which must be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.



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106.40 – Family and Pregnancy (Students)

The following topics are outlined in Section 106.40 – Parental, Family, Marital Status, Pregnancy and Related Conditions

NOTE Section 106.40 applies to STUDENTS

(b)(3) (cont.)

(vi) Limits on supporting documentation.

A recipient must not require supporting documentation under paragraphs (b)(3)(ii) through (v) unless the documentation is necessary and reasonable for the recipient to determine the reasonable modifications to make or whether to take additional specific actions under paragraphs (b)(3)(ii) through (v).

Examples of situations when requiring supporting documentation is not necessary and reasonable include, but are not limited to, when the student’s need for a specific action under paragraphs (b)(3)(ii) through (v) is obvious, such as when a student who is pregnant needs a bigger uniform; when the student has previously provided the recipient with sufficient supporting documentation; when the reasonable modification because of pregnancy or related conditions at issue is allowing a student to carry or keep water nearby and drink, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom, when the student has lactation needs; or when the specific action under paragraphs (b)(3)(ii) through (v) is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.



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106.40 – Family and Pregnancy (Students)

The following topics are outlined in Section 106.40 – Parental, Family, Marital Status, Pregnancy and Related Conditions

NOTE: Section 106.40 applies to STUDENTS

(b)(4) Comparable treatment to other temporary medical conditions.

To the extent consistent with paragraph (b)(3) of this section, a recipient must treat pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions with respect to any medical or hospital benefit, service, plan, or policy the recipient administers, operates, offers, or participates in with respect to students admitted to the recipient’s education program or activity.

(b)(5) Certification to participate.

A recipient must not require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in the recipient’s class, program, or extracurricular activity unless:

- (i) The certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;
(ii) The recipient requires such certification of all students participating in the class, program, or extracurricular activity; and
(iii) The information obtained is not used as a basis for discrimination prohibited by this part.



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106.57
Parental,
Family, Marital
and Pregnancy
Conditions
(EMPLOYEES)



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106.57 – Family and
Pregnancy (Employees)

The following topics are outlined in Section 106.57 – Parental, Family, Marital Status, Pregnancy and Related Conditions

NOTE: Section 106.57 applies to EMPLOYEES

(a) Status generally.
A recipient must not adopt or implement any policy, practice, or procedure, or take any employment action, on the basis of sex:
(1) Concerning the current, potential, or past parental, family, or marital status of an employee or applicant for employment, which treats persons differently; or
(2) That is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) Pregnancy or related conditions.
A recipient must not discriminate against any employee or applicant for employment on the basis of current, potential, or past pregnancy or related conditions.

(c) Comparable treatment to other temporary medical conditions.
A recipient must treat pregnancy or related conditions as any other temporary medical conditions for all job-related purposes, including commencement, duration and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; and reinstatement; and under any fringe benefit offered to employees by virtue of employment

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106.57 – Family and
Pregnancy (Employees)

The following topics are outlined in Section 106.57 – Parental, Family, Marital Status, Pregnancy and Related Conditions

NOTE: Section 106.57 applies to EMPLOYEES

(d) Voluntary leaves of absence.
In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient must treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(e) Lactation time and space.
(1) A recipient must provide reasonable break time for an employee to express breast milk or breastfeed as needed.
(2) A recipient must ensure that an employee can access a lactation space, which must be a space other than a bathroom that is clean, shielded from view, free from intrusion from others, and may be used by an employee for expressing breast milk or breastfeeding as needed

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106.44
Response to
Reports of Sex
Discrimination



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106.44 - Response

The following topics are outlined in Section 106.44 – Response to Reports of Sex Discrimination:

- (a) – General Response Requirements
- (b) – Barriers to Reporting
- (c) – Mandatory Reporting Requirements
- (d) – Confidential Employee Requirements
- (e) – Public Awareness Events
- (f) – T-IX Coordinator Requirements
- (g) – Supportive Measures
- (h) – Emergency Removal
- (i) – Administrative Leave
- (j) – Prohibited Disclosure of Personally Identifiable Information
- (k) – Informal Resolution Options

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106.44 - RESPONSE

The following topics are outlined in Section 106.44 - Response

(a) General.

- (1) A recipient with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must respond promptly and effectively, and
- (2) A recipient must also comply with this section to address sex discrimination in its education program or activity.

(b) Barriers to reporting.

A recipient must require its Title IX Coordinator to:

- (1) Monitor the recipient's education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX or this part; and
- (2) Take steps reasonably calculated to address such barriers.

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106.45
Grievance
Procedures



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106.45 – Grievance Procedures

The following topics are outlined in Section 106.45 – Grievance Procedures:

- (a) – General
- (b) – Basic Requirements
- (c) – Notice of Allegations
- (d) – Dismissal of a Complaint
- (e) – Consolidation of Complaints
- (f) – Complaint Investigation
- (g) – Questioning Parties and Witnesses
- (h) – Determination whether Discrimination occurred
- (i) – Appeals
- (j) – Additional Provisions
- (k) – Informal Resolution Options

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106.45 – GRIEVANCE

The following topics are outlined in Section 106.45 - Grievance Procedures

(a)(1) **General.**
A recipient's grievance procedures for the prompt and equitable resolution of complaints of sex discrimination must be in writing and include provisions that incorporate the requirements of this section. The requirements related to a respondent apply only to sex discrimination complaints alleging that a person violated the recipient's prohibition on sex discrimination. When a sex discrimination complaint alleges that a recipient's policy or practice discriminates on the basis of sex, the recipient is not considered a respondent.

(a)(2) **Complaint.**
The following persons have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that the recipient investigate and make a determination about alleged discrimination under Title IX or this part:

- (i) A complainant;
- (ii) A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant;
- (iii) The Title IX Coordinator, after making the determination specified in § 106.44(f)(1)(v);
- (iv) With respect to complaints of sex discrimination other than sex-based harassment, in addition to the persons listed in paragraphs (a)(2)(i) through (iii) of this section,
 - (A) Any student or employee; or
 - (B) Any person other than a student or employee who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.

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106.45 - GRIEVANCE

The following topics are outlined in Section 106.45 - Grievance Procedures

(b) **Basic requirements for grievance procedures. A recipient's grievance procedures must:**

- (1) Treat complainants and respondents equitably;
- (2) Require that any person designated as a Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The decisionmaker may be the same person as the Title IX Coordinator or investigator;
- (3) Include a presumption that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of the recipient's grievance procedures for complaints of sex discrimination;
- (4) Establish reasonably prompt timeframes for the major stages of the grievance procedures, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay. Major stages include, for example, evaluation (i.e., the recipient's decision whether to dismiss or investigate a complaint of sex discrimination); investigation; determination; and appeal, if any;
- (5) Require the recipient to take reasonable steps to protect the privacy of the parties and witnesses during the pendency of a recipient's grievance procedures, provided that the steps do not restrict the ability of the parties to: obtain and present evidence, including by speaking to witnesses, subject to § 106.71; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures;



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106.45 - GRIEVANCE

The following topics are outlined in Section 106.45 - Grievance Procedures

(b)(6) Require an objective evaluation of all evidence that is relevant, as defined in § 106.2, and not otherwise impermissible under paragraph (b)(7) of this section—including both inculpatory and exculpatory evidence—and provide that credibility determinations must not be based on a person's status as a complainant, respondent, or witness.

- (7) Exclude the following types of evidence, and questions seeking that evidence, as impermissible, regardless of whether they are relevant:
 - (i) Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
 - (ii) A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the recipient obtains that party's or witness's voluntary, written consent for use in the recipient's grievance procedures; and
 - (iii) Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred; and
- (8) If a recipient adopts grievance procedures that apply to the resolution of some, but not all, complaints articulate consistent principles for how the recipient will determine which procedures apply.



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106.45 - GRIEVANCE

The following topics are outlined in Section 106.45 - Grievance Procedures

(c) **Notice of allegations.**

Upon initiation of the recipient's grievance procedures, a recipient must provide notice of the allegations to the parties whose identities are known.

- (1) The notice must include:
 - (i) The recipient's grievance procedures under this section, and if applicable § 106.46, and any informal resolution process under § 106.44(k);
 - (ii) Sufficient information available at the time to allow the parties to respond to the allegations. Sufficient information includes the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination under Title IX or this part, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to the recipient;
 - (iii) A statement that retaliation is prohibited; and
 - (iv) A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence as set out in paragraph (1)(4) of this section; and if the recipient provides a description of the evidence, the parties are entitled to an equal opportunity to access to the relevant and not otherwise impermissible evidence upon the request of any party.
- (2) If, in the course of an investigation, the recipient decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided under paragraph (c) of this section or that are included in a complaint that is consolidated under paragraph (e) of this section, the recipient must provide notice of the additional allegations to the parties whose identities are known.



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106.45 - GRIEVANCE

The following topics are outlined in Section 106.45 - Grievance Procedures

(d) Dismissal of a complaint

- (1) A recipient may dismiss a complaint of sex discrimination made through its grievance procedures under this section, and if applicable § 106.46, for any of the following reasons:
 - (i) The recipient is unable to identify the respondent after taking reasonable steps to do so;
 - (ii) The respondent is not participating in the recipient's education program or activity and is not employed by the recipient;
 - (iii) The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint under § 106.44(f)(1)(v), and the recipient determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX or this part even if proven; or
 - (iv) The recipient determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX or this part. Prior to dismissing the complaint under this paragraph, the recipient must make reasonable efforts to clarify the allegations with the complainant.
- (2) Upon dismissal, a recipient must promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the recipient must also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing



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106.45 - GRIEVANCE

The following topics are outlined in Section 106.45 - Grievance Procedures

- (d)(3) A recipient must notify the complainant that a dismissal may be appealed and provide the complainant with an opportunity to appeal the dismissal of a complaint on the bases set out in § 106.46(f)(1). If the dismissal occurs after the respondent has been notified of the allegations, then the recipient must also notify the respondent that the dismissal may be appealed on the bases set out in § 106.46(f)(1). If the dismissal is appealed, the recipient must:
 - (i) Notify the parties of any appeal, including notice of the allegations consistent with paragraph (c) of this section if notice was not previously provided to the respondent;
 - (ii) Implement appeal procedures equally for the parties;
 - (iii) Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
 - (iv) Ensure that the decisionmaker for the appeal has been trained as set out in § 106.5(d)(2);
 - (v) Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
 - (vi) Notify the parties of the result of the appeal and the rationale for the result.
- (d)(4) A recipient that dismisses a complaint must, at a minimum:
 - (i) Offer supportive measures to the complainant as appropriate under § 106.44(g);
 - (ii) For dismissals under paragraph (d)(1)(iii) or (iv) of this section in which the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate under § 106.44(g); and
 - (iii) Require its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity under § 106.44(f)(1)(vi).



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106.45 - GRIEVANCE

(e) Consolidation of complaints

A recipient may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. If one of the complaints to be consolidated is a complaint of sex-based harassment involving a student complainant or student respondent at a postsecondary institution, the grievance procedures for investigating and resolving the consolidated complaint must comply with the requirements of § 106.46 in addition to the requirements of this section. When more than one complainant or more than one respondent is involved, references in this section and in § 106.46 to a party, complainant, or respondent include the plural, as applicable.



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106.45 - GRIEVANCE

f. Complaint Investigation. A recipient must provide for adequate, reliable, and impartial investigation of complaints. To do so, the recipient must:

- (1) Ensure that the burden is on the recipient—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred;
- (2) Provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible;
- (3) Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance, consistent with § 106.2 and with paragraph (b)(7) of this section; and
- (4) Provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, consistent with § 106.2 and with paragraph (b)(7) of this section, in the following manner:
 - (i) A recipient must provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence. If the recipient provides a description of the evidence, it must further provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.
 - (ii) A recipient must provide a reasonable opportunity to respond to the evidence or to the accurate description of the evidence described in paragraph (f)(4)(i) of this section; and
 - (iii) A recipient must take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. For purposes of this paragraph, disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.



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106.45 - GRIEVANCE

g. Questioning parties and witnesses to aid in evaluating allegations and assessing credibility.
A recipient must provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.

h. Determination whether sex discrimination occurred.
Following an investigation and evaluation of all relevant and not otherwise impermissible evidence under paragraphs (f) and (g) of this section, the recipient must:

- (1) Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred, unless the recipient uses the clear and convincing evidence standard of proof in all other comparable proceedings, including proceedings relating to other discrimination complaints, in which case the recipient may elect to use that standard of proof in determining whether sex discrimination occurred. Both standards of proof require the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness; if the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker must not determine that sex discrimination occurred.
- (2) Notify the parties in writing of the determination whether sex discrimination occurred under Title IX or this part including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable;



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106.45 - GRIEVANCE

(h)(3) If there is a determination that sex discrimination occurred, as appropriate, require the Title IX Coordinator to coordinate the provision and implementation of remedies to a complainant and other persons the recipient identifies as having had equal access to the recipient's education program or activity limited or denied by sex discrimination, coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions, and require the Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity under § 106.44(f)(1)(vii). A recipient may not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the recipient's grievance procedures that the respondent engaged in prohibited sex discrimination;

(h)(4) Comply with § 106.45, and if applicable § 106.46, before the imposition of any disciplinary sanctions against a respondent; and

(h)(5) Not discipline a party, witness, or others participating in a recipient's grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the recipient's determination whether sex discrimination occurred.

(i) Appeals.
In addition to an appeal of a dismissal consistent with paragraph (d)(3) of this section, a recipient must offer the parties an appeal process that, at a minimum, is the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints. For a complaint of sex-based harassment involving a student complainant or student respondent, a postsecondary institution must also offer an appeal on the bases set out in § 106.46(j)(1).



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106.45 - GRIEVANCE

(j) Additional provisions.
If a recipient adopts additional provisions as part of its grievance procedures for handling complaints of sex discrimination, including sex-based harassment, such additional provisions must apply equally to the parties.

(k) Informal resolution.
In lieu of resolving a complaint through the recipient's grievance procedures, the parties may instead elect to participate in an informal resolution process under § 106.44(k) if provided by the recipient consistent with that paragraph.

(l) Provisions limited to sex-based harassment complaints.
For complaints alleging sex-based harassment, the grievance procedures must:

- (1) Describe the range of supportive measures available to complainants and respondents under § 106.44(g); and
- (2) List, or describe the range of, the possible disciplinary sanctions that the recipient may impose and remedies that the recipient may provide following a determination that sex-based harassment occurred.

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106.46
Grievance
Procedures
Higher-Ed.
Students



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106.46 - Grievance (Higher Ed.)

The following topics are outlined in Section 106.45 - Grievance Procedures:

(a) - General	(b) - Student Employees
(c) - Written Notice of Allegations	(d) - Dismissal of a Complaint
(e) - Complaint Investigation	(f) - Questioning Parties and Witnesses
(g) - Live Hearing Procedures	(h) - Written determination whether Sex-Based harassment occurred
(i) - Appeals	(j) - Informal Resolution

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106.46 - Grievance

The following topics are outlined in Section 106.45 - Grievance Procedures

(a) General.

A postsecondary institution's written grievance procedures for prompt and equitable resolution of complaints of sex-based harassment involving a student complainant or student respondent must include provisions that incorporate the requirements of § 106.45 and this section.

(b) Student employees.

When a complainant or respondent is both a student and an employee of a postsecondary institution, the postsecondary institution must make a fact-specific inquiry to determine whether the requirements of this section apply. In making this determination, a postsecondary institution must, at a minimum, consider whether the party's primary relationship with the postsecondary institution is to receive an education and whether the alleged sex-based harassment occurred while the party was performing employment-related work.

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106.46 - GRIEVANCE

(c) Written notice of allegations.

Upon the initiation of the postsecondary institution's sex-based harassment grievance procedures under this section, a postsecondary institution must provide written notice to the parties whose identities are known with sufficient time for the parties to prepare a response before any initial interview.

(1) The written notice must include all information required under § 106.45(c)(1)(i) through (iii) and also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the grievance procedures under this section and that prior to the determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker;

(ii) They may have an advisor of their choice to serve in the role set out in paragraph (e)(2) of this section, and that the advisor may be, but is not required to be, an attorney;

(iii) They are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigative report that accurately summarizes this evidence as set out in paragraph (e)(6) of this section; and if the postsecondary institution provides access to an investigative report, the parties are entitled to an equal opportunity to access to the relevant and not otherwise impermissible evidence upon the request of any party; and

(iv) If applicable, the postsecondary institution's code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance procedure.

(2) If, in the course of an investigation, the recipient decides to investigate additional allegations of sex-based harassment by the respondent toward the complainant that are not included in the written notice provided under paragraph (c) of this section or that are included in a complaint that is consolidated under § 106.45(e), the recipient must provide written notice of the additional allegations to the parties whose identities are known.

(3) To the extent the postsecondary institution has reasonable concerns for the safety of any person as a result of providing this notice, the postsecondary institution may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

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106.46 - GRIEVANCE

The following topics are outlined in Section 106.45 - Grievance Procedures

(d) Dismissal of a complaint.

When dismissing a complaint alleging sex-based harassment involving a student complainant or a student respondent, a postsecondary institution must:

(1) Provide the parties, simultaneously, with written notice of the dismissal and the basis for the dismissal, if dismissing a complaint under any of the bases in § 106.45(d)(1), except if the dismissal occurs before the respondent has been notified of the allegations, in which case the recipient must provide such written notice only to the complainant; and

(2) Obtain the complainant's withdrawal in writing if dismissing a complaint based on the complainant's voluntary withdrawal of the complaint or allegations under § 106.45(d)(1)(iii).

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(f)(1)(ii) When a postsecondary institution chooses to conduct a live hearing under paragraph (g) of this section, the process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses under §§ 106.2 and 106.45(b)(7), including questions challenging credibility, must allow the decisionmaker to ask such questions, and either:

(A) Allow each party to propose such questions that the party wants asked of any party or witness and have those questions asked by the decisionmaker, subject to the requirements under paragraph (f)(3) of this section; or

(B) Allow each party's advisor to ask any party or witness such questions, subject to the requirements under paragraph (f)(3) of this section. Such questioning must never be conducted by a party personally. If a postsecondary institution permits advisor-conducted questioning and a party does not have an advisor to ask questions on their behalf, the postsecondary institution must provide the party with an advisor of the postsecondary institution's choice, without charge to the party, for the purpose of advisor-conducted questioning. In those instances, the postsecondary institution must not appoint a confidential employee and may appoint, but is not required to appoint, an attorney to serve as an advisor.

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(f)(2) Compliance with § 106.45(a). Compliance with paragraph (f)(1)(i) or (ii) of this section satisfies the requirements of § 106.45(g) (Questioning process).

(3) Procedures for the decisionmaker to evaluate the questions and limitations on questions. The decisionmaker must determine whether a proposed question is relevant under § 106.2 and not otherwise impermissible under § 106.45(b)(7), prior to the question being posed, and must explain any decision to exclude a question as not relevant or otherwise impermissible.

If a decisionmaker determines that a party's question is relevant and not otherwise impermissible, then the question must be asked except that a postsecondary institution must not permit questions that are unclear or harassing of the party or witness being questioned. The decisionmaker must give a party an opportunity to clarify or revise a question that the decisionmaker has determined is unclear or harassing and, if the party sufficiently clarifies or revises a question to satisfy the terms of this paragraph, the question must be asked. A postsecondary institution may also adopt and apply other reasonable rules regarding decorum, provided they apply equally to the parties.

(4) Refusal to respond to questions and inferences based on refusal to respond to questions. A decisionmaker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The decisionmaker must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

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(g) Live hearing procedures.

A postsecondary institution's sex-based harassment grievance procedures may, but need not, provide for a live hearing. If a postsecondary institution chooses to conduct a live hearing, it may conduct the live hearing with the parties physically present in the same geographic location.

At the postsecondary institution's discretion the institution may, or upon the request of either party it must, conduct the live hearing with the parties physically present in separate locations, with technology enabling the decisionmaker and parties to simultaneously see and hear the party or the witness while that person is speaking. A postsecondary institution must create an audio or audiovisual recording or transcript, of any live hearing and make it available to the parties for inspection and review.

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Miscellaneous Provisions

106.6 Effect of other requirements and preservation of rights*****

(b) Effect of State or local law or other requirements. The obligation to comply with Title IX and this part is not obviated or alleviated by any State or local law or other requirement that conflicts with Title IX or this part.*****

(e) Effect of Section 444 of General Education Provisions Act (GEPA)/Family Educational Rights and Privacy Act (FERPA). The obligation to comply with Title IX and this part is not obviated or alleviated by FERPA, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99.*****

(g) Exercise of rights by parents, guardians, or other authorized legal representatives. Nothing in Title IX or this part may be read in derogation of any legal right of a parent, guardian, or other authorized legal representative to act on behalf of a complainant, respondent, or other person, subject to paragraph (e) of this section, including but not limited to making a complaint through the recipient's grievance procedures for complaints of sex discrimination.

106.10 Scope

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



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Miscellaneous Provisions

106.11 Application

Except as provided in this subpart, this part applies to every recipient and to all sex discrimination occurring under a recipient's education program or activity in the United States. For purposes of this section, conduct that occurs under a recipient's education program or activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by a postsecondary institution, and conduct that is subject to the recipient's disciplinary authority. A recipient has an obligation to address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States.

106.15 Admissions

(b) Administratively separate units. For purposes only of this section and subpart C, each administratively separate unit shall be deemed to be an educational institution.

106.21 Admissions

a) General. No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies.***** (c) Parental, family, or marital status; pregnancy or related conditions. In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies: (1) Must treat pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions; and (2) Must not: (i) Adopt or implement any policy, practice, or procedure concerning the current, potential, or past parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex; (ii) Discriminate against any person on the basis of current, potential, or past pregnancy or related conditions, or adopt or implement any policy, practice, or procedure that so discriminates; and (iii) Make a pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss or Mrs." A recipient may ask an applicant to self-identify their sex, but only if this question is asked of all applicants and if the response is not used as a basis for discrimination prohibited by this part.



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Miscellaneous Provisions

106.31 Education Programs or Activities

(a) General.

(1) Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance.

(2) In the limited circumstances in which Title IX or this part permits different treatment or separation on the basis of sex, a recipient must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, except as permitted by 20 U.S.C. 1681(a)(1) through (3) and the corresponding regulations §§ 106.12 through 106.15, 20 U.S.C. 1686 and its corresponding regulation § 106.32(b)(1), or § 106.41(b). Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

(3) This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of: (i) A recipient to which subpart C does not apply; or (ii) An entity, not a recipient, to which subpart C would not apply if the entity were a recipient.

106.47 Assistant Secretary review of Sex-Based Harassment Complaints

The Assistant Secretary will not deem a recipient to have violated this part solely because the Assistant Secretary would have reached a different determination in a particular complaint alleging sex-based harassment than a recipient reached under § 106.45, and if applicable § 106.46, based on the Assistant Secretary's independent weighing of the evidence.



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Miscellaneous Provisions

106.60 Pre-Employment Inquiries

(a) Marital status. A recipient must not make a pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."
(b) Sex. A recipient may ask an applicant for employment to self-identify their sex, but only if this question is asked of all applicants and if the response is not used as a basis for discrimination prohibited by Title IX or this part.

106.71 Retaliation

A recipient must prohibit retaliation, including peer retaliation, in its education program or activity. When a recipient has information about conduct that reasonably may constitute retaliation under Title IX or this part, the recipient is obligated to comply with § 106.44. Upon receiving a complaint alleging retaliation, a recipient must initiate its grievance procedures under § 106.45, or, as appropriate, an informal resolution process under § 106.44(k). As set out in § 106.45(e), if the complaint is consolidated with a complaint of sex-based harassment involving a student complainant or student respondent at a postsecondary institution, the grievance procedures initiated by the consolidated complaint must comply with the requirements of both §§ 106.45 and 106.46.



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Compliance

LITIGATION

What are the costs?

Personal: Incidents can cause long-term physical and emotional harm to students, staff, and faculty.

Reputational: Damaging headlines can go viral within seconds due to social media and 24/7 news cycles.

Financial: Bottom line impact due to claims and legal expenses as well as decrease in alumni donations. Avg. cost to settle a Title IX legal claim = \$350,000

Organizational Chaos: Administrators in "crisis mode" are distracted from their mission. Strained relationships and divisions may result in less efficient reporting structures



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Questions and Answers

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