



D. STAFFORD
& ASSOCIATES

Title IX Coordinator

(Tiers 1, 2, and 3)

May 2024

Presented by:

Cathy Cocks, Adrienne Murray and Ann Todd
Associates

Dolores A. Stafford

President and CEO

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Title IX Coordinator Comprehensive Course

Below is generally the agenda for the Charleston class. The D. Stafford & Associates team wants to ensure the topics are covered to the extent needed for the participants; therefore, some topics may extend into a time block or start earlier than anticipated.

Day 1 – Monday, May 6, 2024

All-Day Session

- Law and Policy
- Pregnancy and Related Conditions

Day 2 – Tuesday, May 7, 2024

Morning Session

- Spotlight: Domestic Violence, Dating Violence, and Stalking (Coordinators and Investigators)
- Safety & Risk Analyses

Afternoon Session

- Sex Discrimination and Sex-Based Harassment Response

Day 3 – Wednesday, May 8, 2024

Morning Session, Part One

- Sex Discrimination and Sex-Based Harassment Responses continued

Morning Session, Part Two (Coordinators and Investigators)

- Identities
- Closing Activity



TITLE IX

Copyright

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ISSUANCE OF CERTIFICATES FOR COMPLETION

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

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

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

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



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



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

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

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

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



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

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



Catherine Cocks, M.A.
Consultant, Student Affairs, Title IX, and
Equity Compliance Services



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

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

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

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

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

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

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



Ann Todd

Consultant, Equity Compliance and Civil Rights Investigations



Ann Todd, Esq is a seasoned civil rights investigator in higher education for D. Stafford & Associates (DSA). Ms. Todd is a graduate of Davidson College with a degree in psychology and holds a JD from the University of Nebraska. Prior to joining DSA, she practiced law in Charlotte, NC, specializing in employment and civil rights and worked for a number of non-profit organizations. She returned to her alma mater (Davidson College) in 2008 and worked there through March of 2016 serving as the Assistant Director of Human Resources with the responsibility of managing employee relations and the learning and development function while also serving as the deputy Title IX Coordinator.

Ms. Todd joined the DSA in 2015 and currently serves as the Consultant, Equity Compliance and Civil Rights Investigations. She is the Senior Investigator for the DSA Title IX Investigation Team. She conducts external investigations on behalf of colleges and universities, specializing in investigating student allegations of sex discrimination, sexual assault, intimate partner violence, and stalking. Additionally, she brings a strong Human Resources background to investigating a range of employee misconduct—from performance issues to discrimination.

In addition to conducting investigations, Ms. Todd is a frequent speaker and consultant on Title IX investigations, conducting 20-30 courses every year on best practices for investigating sex discrimination and sex crimes on campus. She works with schools to draft policies and processes that provide equity and fairness to



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all parties involved and is adept at facilitating discussions with institutions to ensure the end product represents the values of the campus community.

Ms. Todd is licensed private investigator and a member of the NC Bar. She is a Certified Clery Compliance Officer through the National Association of Clery Compliance Officers and Professionals (NACCOP) and she is also a certified 360 facilitator through the Center for Creative Leadership. Ms. Todd lives in Davidson, NC where she volunteers on a number of local and town boards.



TITLE IX COORDINATOR - LAW & POLICY



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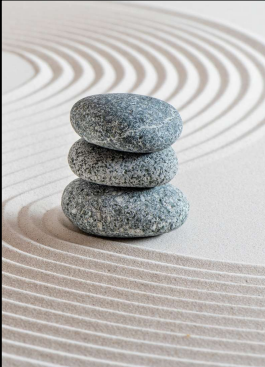
A NOTE ON TRAINING



**This is not legal advice,
consult your lawyer!**

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AGENDA

- The Law
- Subpart A: Introduction
- Subpart B: Coverage
- Subpart C: Admission & Recruitment
- Subpart D: Educational Programs or Activities
- Subpart E: Employment
- Subpart F: Retaliation
- Clery Act (VAWA) Procedural Requirements

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THE LAW







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FEDERAL LAW

 <p>Statutes</p> <p>20 U.S.C.D. § 1681-1689</p>	 <p>Regulatory Guidance</p> <p>34 C.F.R. § 106</p>	 <p>Sub-Regulatory Guidance</p> <p>DCLs Preamble to Regs Executive Orders OCR Website</p>	 <p>Case Law</p> <p>Circuit courts District courts</p>
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STATUTES



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

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

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§ 1681(a) – EXCEPTIONS

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

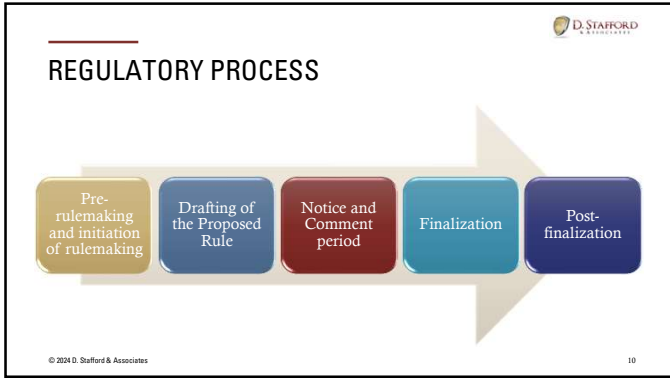
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REGULATIONS

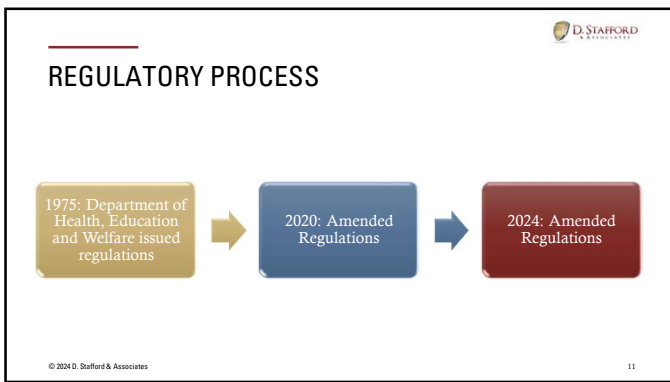


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SUB-REGULATORY GUIDANCE

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE ASSISTANT SECRETARY
April 4, 2011

Dear Colleague:

Education has long been recognized as the great equalizer in America. The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and in the case of sexual violence, is a crime.

Title IX of the Education Amendments of 1972 (Title IX, 20 U.S.C. §§ 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106), prohibits discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX, in order to assist recipients, which include school districts, colleges, and universities (hereinafter "schools" or "recipients") in meeting their obligations, this letter explains that the requirements of Title IX pertaining to sexual harassment also cover sexual violence, and they can be searched for "requirements applicable to sexual violence." Sexual violence, as that term is used in this letter, refers to physical sexual acts perpetrated against a person's will when a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape.

¹ This guidance was developed and written by Dear Colleague Letter 11-14 "Highly sensitive document" under the Office of Education's records management and disclosure policies. Title IX, 20 U.S.C. 1681.

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SUB-REGULATORY GUIDANCE

A horizontal timeline arrow pointing right, containing ten colored circles representing milestones. Above the arrow are the years 1972, 2001, 2008, 2011, and 2015. Below the arrow are the years 1997, 2006, 2010, 2014, and 2017.

- 1972 Title IX passed
- 1997 Guidance
- 2001 Guidance
- 2006 Guidance
- 2008 Guidance
- 2010 Guidance
- 2011 Guidance
- 2014 Guidance
- 2015 Guidance
- 2017 Guidance

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SUB-REGULATORY GUIDANCE

A horizontal timeline arrow pointing right, containing six colored circles representing milestones. Above the arrow are the years 2021 and 2024. Below the arrow are the years 2018, 2020, 2022, and 2022.

- 2018 NPRM
- 2020 Regulations (Preamble)
- 2021 Executive Order and Q&A
- 2022 NPRM
- 2022 Draft Regulations (and preamble)
- 2022 Reissued Q&A
- 2024 Regulations (Preamble)

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2024 REGULATIONS RELEASE

Overview


Fact Sheet

Resource


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2024 REGULATIONS



Amendments to
Regulations: 15 pages



Amendments and
Preamble: 423 pages

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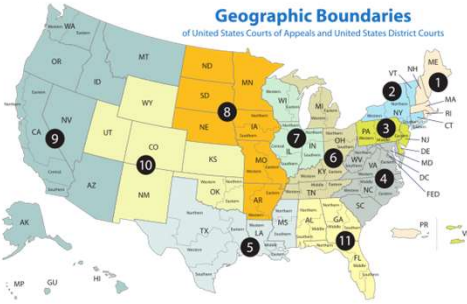
CASE LAW



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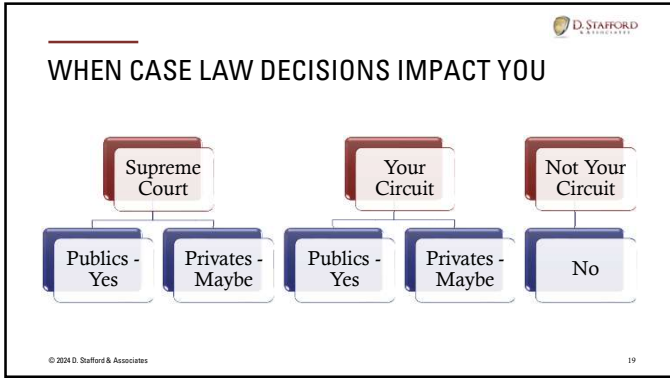
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Geographic Boundaries
of United States Courts of Appeals and United States District Courts

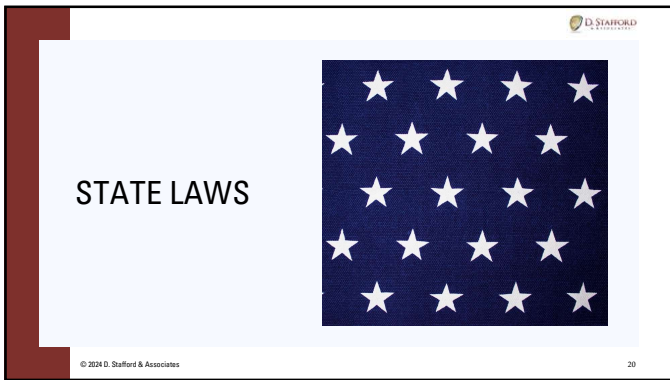


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STATE LAWS AND THE REGULATIONS


§ 106.6(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.

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OVERVIEW OF THE 2024 TITLE IX REGULATIONS



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Sex Discrimination

Sex-Based Harassment

- Sexual Assault
- Dating /Domestic Violence
- Stalking
- Hostile Environment
- Quid Pro Quo

Sex Discrimination

- Sex stereotypes
- Sex characteristics
- Pregnancy or related conditions
- Sexual orientation
- Gender identity

Applies in . . .
Admission, Employment, Educational Programs, and Activities

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MISCONCEPTIONS



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IMPLEMENTATION DATE: AUGUST 1, 2024



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TECHNICAL ASSISTANCE FROM THE DEPARTMENT

Office for Civil Rights (To assist with compliance)
<https://ocrcas.ed.gov/contact-ocr>

Student Privacy Policy Office (FEPPRA Questions)
<https://studentprivacy.ed.gov/?src=fpco>

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FIRST AMENDMENT

*§ 106.6(d) Constitutional protections.
Nothing in this part requires a recipient to:
(1) Restrict any rights that would otherwise
be protected from government action by the
First Amendment of the U.S. Constitution*

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34 C.F.R. § 106 – SUBPARTS

- Subpart A: Introduction (106.1 – 106.9)
- Subpart B: Coverage (106.11 – 106.18)
- Subpart C: Admission and Recruitment (106.21 – 106.24)
- Subpart D: Education Programs/Activities (106.31 – 106.46)
- Subpart E: Employment (106.51 – 106.62)
- Subpart F: Retaliation (106.71 – 106.72)
- Subpart G: Procedures (106.81 – 106.82)

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**SUBPART A:
INTRODUCTION**



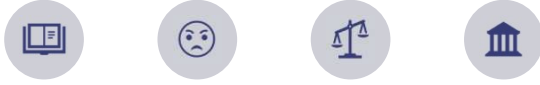
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SUBPART A: A FEW FYIS...




- § 106.2 Definitions
- § 106.3(a) Remedial Action
- § 106.3(b) Affirmative Action
- § 106.6 Preservation of rights

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§ 106.2 – DEFINITIONS

Admission	Applicant	Party
Postsecondary institution	Pregnancy or related conditions	Program or activity
Recipient	Student	Student with a disability

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§ 106.2 – DEFINITIONS

Complaint	Complainant	Confidential employee	Disciplinary sanctions
Peer retaliation	Sex-based Harassment	Relevant	Remedies
Respondent	Retaliation	Supportive measures	

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NOT DEFINED

Credibility	Consent	Employee
Sex Discrimination	Sexual assault (but link)	

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§ 106.2 – DEFINITIONS: PARTIES

Complainant	Respondent	Party
<ul style="list-style-type: none"> A student or employee, <u>or</u> Non-student/employee who was participating/attempting to participate <u>at the time of the alleged sex discrimination</u> 	<ul style="list-style-type: none"> A <u>person</u> who is alleged to have violated the recipient's prohibition on sex discrimination 	<ul style="list-style-type: none"> A complainant or respondent

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SEX-BASED HARASSMENT DEFINITIONS



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§ 106.2 – SEX-BASED HARASSMENT

Sex-based harassment prohibited by this part is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in § 106.10, that is:

- 1. Quid pro quo*
- 2. Hostile Environment*
- 3. Specific offenses*

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 **RECOMMENDED LANGUAGE**

Sex-based harassment prohibited by this part is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity:

1. *Quid pro quo*
2. *Hostile Environment*
3. *Specific offenses*

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 **QUID PRO QUO HARASSMENT**

An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.


§ 106.2
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 **QUID PRO QUO NOTES**




Unwelcome



Explicit and implicit



Aid, benefit, or service



Employee, agent, or other person

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HOSTILE ENVIRONMENT 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 recipient’s education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:...”

§ 106.2

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UNPACKING HOSTILE ENVIRONMENT

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graph TD
    A[Unwelcome] --- B[Sex-based]
    B --- C[Totality of Circumstances]
    C --- D[Subjective and Objective]
    C --- E[Severe or Pervasive]
    C --- F[Limits or Denies]
  
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HOSTILE ENVIRONMENT “FACT-SPECIFIC INQUIRY”


- Degree affected educational access
- Type, frequency, duration
- Parties’ ages, roles, previous interactions, other factors
- Location and context in which occurred
- Other sex-based harassment in educational setting

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HOSTILE ENVIRONMENT NOTES




Jurisdiction



Beyond Sex-Based Harassment

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SPECIFIC OFFENSES

Sexual assault

Dating violence

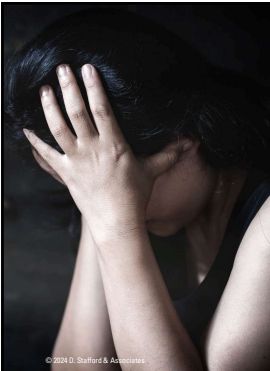
Domestic violence


Stalking

§ 106.2 44

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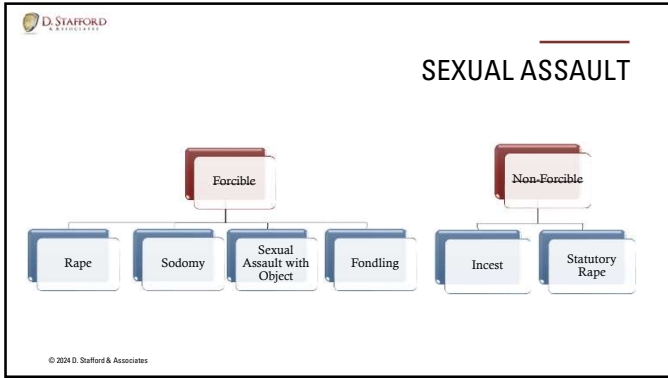
SEXUAL ASSAULT

“Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation”

§ 106.2

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NON-CONSENSUAL SEXUAL PENETRATION

Rape - (Except Statutory Rape) The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

Sodomy - Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

Sexual Assault With An Object - To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

FBI, Uniform Crime Reporting Program: National Incident-Based Reporting System (2018)

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NON-CONSENSUAL SEXUAL TOUCHING

Fondling - The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

FBI, Uniform Crime Reporting Program: National Incident-Based Reporting System (2018)

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INCEST AND STATUTORY RAPE

Incest - Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

Statutory Rape - Nonforcible sexual intercourse with a person who is under the statutory age of consent

FBI, Uniform Crime Reporting Program: National Incident-Based Reporting System (2018)

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DATING VIOLENCE

Dating violence means violence committed by a person:

- (A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (1) The length of the relationship;
 - (2) The type of relationship; and
 - (3) The frequency of interaction between the persons involved in the relationship

§ 106.2

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DOMESTIC VIOLENCE

Domestic violence meaning felony or misdemeanor crimes committed by a person who:

- (A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;
- (B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (C) Shares a child in common with the victim; or
- (D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction

§ 106.2

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STALKING

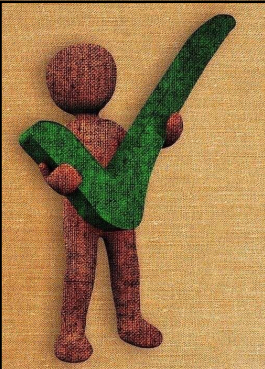
Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- (A) Fear for the person's safety or the safety of others; or
- (B) Suffer substantial emotional distress.

§ 106.2

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NOTE ON CONSENT

The Assistant Secretary will not require a recipient to adopt a particular definition of consent, where that term is applicable with respect to sex-based harassment.

§ 106.2

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TITLE IX COORDINATOR AND NOTICE OF POLICIES

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§ 106.8(a)(1)-(a)(2) – DESIGNATION OF COORDINATOR

Designate	“Designate and authorize” at least one employee
Delegate	May delegate “specific duties”
But...	One person must retain “ultimate oversight”

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§ 106.8(b)(1) – NONDISCRIMINATION POLICY

Adopt

↓

Publish

↓

Implement



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§ 106.8(b)(2) – GRIEVANCE PROCEDURES


Adopt

↓

Publish

↓

Implement



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§ 106.8(c) – NOTIFICATION OF NONDISCRIMINATION

Who [§ 106.8(c)]

- Students
- Parents, guardians, legal reps (K-12)
- Employees
- Applicants for admission or employment
- Unions and professional organizations

What [§ 106.8(c)(1)(i)]

- Does not discriminate
- Inquiries to Title IX or OCR
- Name **or** title, office, email, telephone
- How to locate policy and procedures
- How to report or make a complaint

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§ 106.8(c)(2) – PUBLICATIONS



- Website
- Each handbook, catalog, announcement, bulletin and application form for recruitment
- One sentence option
- Cannot say people are treated differently on the basis of sex

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§ 106.8(d)(1) ALL EMPLOYEE TRAINING REQUIREMENTS

“promptly upon hiring or change of position that alters duties under Title IX and annually thereafter”



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ALL EMPLOYEE TRAINING



- Prohibit Sex Discrimination
- Prohibited Conduct
- Duty to provide contact info to pregnant students
- Duty to report or provide contact info

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PREVENTION PROGRAMS FOR STUDENTS

- Not required under Title IX
- Is required under Clery/VAW
- May be required by
 - State law
 - NCAA (if athletics)

The Clery Act (VAWA Amendments)
 34 CFR § 668.46(j) *“primary prevention and awareness programs for all incoming students and new employees”*

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§106.8(d)(2)-(4) – TRAINING PERSONS WHO ARE RESPONSIBLE FOR IMPLEMENTING PROCEDURES

- Title IX Coordinator and Designees
- Investigators
- Decisionmakers (including appeals of determination and dismissal)
- Informal Resolution Facilitator
- Person with authority to modify/terminate Supportive Measures
- Others?

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§106.8(e) – STUDENTS WITH DISABILITIES


- An individual with a disability, as defined in the Rehabilitation Act of 1973 or a child with a disability, as defined in the Individuals with Disabilities Education Act
- The Title IX Coordinator may consult, as appropriate, with the individual or office designated to support students with disabilities to determine compliance with disability law.

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**SUBPART B:
COVERAGE**




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**TITLE IX'S
COVERAGE OF
SEX
DISCRIMINATION**



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§ 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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§ 106.11 – APPLICATION

- Sex discrimination in education program or activity
- Sex-based hostile environment even when some contributing conduct occurred off campus
- Could be broadened by “disciplinary authority”

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§ 106.12 – EDUCATIONAL INSTITUTIONS CONTROLLED BY RELIGIOUS ORGANIZATIONS

May submit in writing seeking assurance of the exemption

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

Not required to seek assurance

May raise its exemption at any time

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SUBPART C: ADMISSION & RECRUITMENT



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§ 106.15 – ADMISSIONS (EXCEPTIONS AND COVERAGE)

Applies to

- Vocational education
- Professional education
- Graduate higher education
- Public undergraduate education

Does not apply to

- Public schools with traditionally one sex

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Discrimination and Admissions

- **Subpart B (Exceptions):** Undergraduate private institutions can discriminate
- **Subpart C (Admissions):** Everyone else cannot discriminate in admissions
- **Subpart D (Programs or Activities):** Once they are in, discrimination is prohibited, except, again with admissions...

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§ 106.21 & § 106.23 – ADMISSION & RECRUITMENT

No limits or proportions	No ranking separately	Testing cannot have adverse effect
Pregnancy	Parenting or marital status	Recruitment from single-sex high schools
Can ask gender but...		

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SUBPART D: EDUCATIONAL PROGRAMS OR ACTIVITIES

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§ 106.31(a)(2) – EDUCATION PROGRAMS OR ACTIVITIES

(1) *“Except as provided elsewhere...no person, on the basis of sex...*


(2) *“in the limited circumstances...this part permits different treatment ...on the basis of sex, ...must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, except as permitted Adopting a policy or engaging in a practice that prevents a person from participating...consistent with the person’s gender identity subjects a person to more than de minimis harm on the basis of sex.”*

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"EXCEPT AS PERMITTED BY..."






- Religious exemption
- Military and merchant marine educational institutions
- Fraternalities and sororities
- YMCA/YWCA/Girl Scouts/Boy Scouts/Camp Fire Girls
- Voluntary youth service organization
- Undergraduate private admissions
- Sex-separate housing
- Sex-separate athletic teams

§ 106.31(a)(2) & § 106.31(a)(3)

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PERMISSIBLE DIFFERENT TREATMENT CAN'T CAUSE MORE THAN "DE MINIMIS HARM"


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§ 106.31(b) – SPECIFIC PROHIBITIONS




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




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

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§ 106.37 – FINANCIAL ASSISTANCE



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




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



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

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§ 106.31(b)(4) – EQUITY IN DISCIPLINE

Rules of Behavior

Sanctions

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§ 106.32 – HOUSING

A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

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§ 106.33 – COMPARABLE FACILITIES

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

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§ 106.40 – PARENTAL, FAMILY, OR MARITAL STATUS; PREGNANCY OR RELATED CONDITIONS (STUDENTS)

No policies, practices, or procedures treating a student's current, potential, or past parental, family, or marital status differently
§ 106.40(a)

No discrimination against students on the basis of pregnancy or related conditions
§ 106.40(b)(1)

Responsibility to provide Title IX Coordinator's contact and other information
§ 106.40(b)(2)

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§ 106.40(b)(3) – SPECIFIC ACTIONS

Information about the institution's obligations

Reasonable modifications


Provide voluntary access to separate and comparable portion of program or activity

Voluntary leaves of absence

Lactation space

Limitation on supporting documentation

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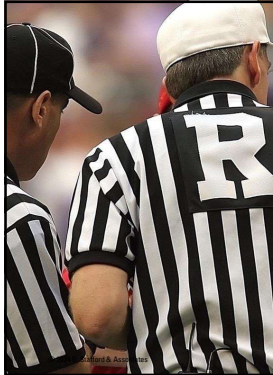
§ 106.40(b)(4-5) – COMPARABLE TREATMENT AND CERTIFICATIONS


Must treat in the same manner and under the same policies as any other temporary medical conditions

Must not require a certification from a healthcare provider or any other person that the student is physically able to participate

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§ 106.41(a) – ATHLETICS


No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

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§ 106.41 – ATHLETICS



Applies to intercollegiate, club, & intramural



Separate Teams are permitted

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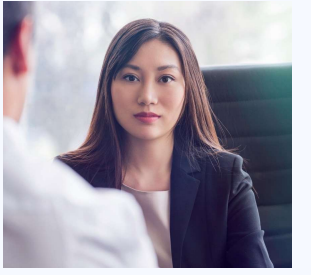
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§ 106.41(c) – EQUAL OPPORTUNITY

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

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§ 106.44 RESPONSE TO SEX DISCRIMINATION

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§ 106.44 – RESPONSE

- § 106.44(a) General
- § 106.44(b) Barriers to reporting
- § 106.44(c) Notification requirements
- § 106.44(d) Confidential employee requirements
- § 106.44(e) Public awareness events
- § 106.44(f) Title IX Coordinator requirements
- § 106.44(g) Supportive measures
- § 106.44(h) Emergency removal
- § 106.44(i) Administrative leave
- § 106.44(j) Prohibited disclosures of PII
- § 106.44(k) Discretion to offer informal resolution


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§ 106.44(a) – GENERAL (RESPONSE)


If knowledge of conduct that reasonably may constitute sex discrimination



Promptly



Effectively



Compliantly

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§ 106.44(c)(2)(ii) – NOTIFICATION REQUIREMENT

(A) Notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX...

(B) Provide the contact information of the Title IX Coordinator and information about how to make a complaint of sex discrimination...

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REPORTING REQUIREMENTS

2001 Guidance

Responsible Employees: Employee with authority to take action; given the duty of reporting misconduct; or student would reasonably believe has this authority

↓

2020 Regulations

Officials with Authority to institute corrective measures

↓

2024 Regulations

Employees with authority to take corrective action or responsibility for administrative leadership, teaching, or advising. (BUT ALL NON-CONFIDENTIAL MUST DO SOMETHING!)

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§ 106.44(c)(2) – NOTIFICATION REQUIREMENTS

Type of Employee	Notify Title IX	Provide Title IX contact and how make complaint
Confidential Employee	No	Yes (and more!)
Category 1: Employee with ability to institute corrective measures OR responsible for administrative leadership, teaching, or advising	Yes	
Category 2: All other employees	Either or (SCHOOL DECIDES)	

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STUDENT EMPLOYEE REPORTING REQUIREMENTS




“A postsecondary institution must reasonably determine and specify whether and under what circumstances a person who is both a student and an employee is subject to [the reporting requirements]...”

§ 106.44(c)(3)


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§ 106.2 – CONFIDENTIAL EMPLOYEES DEFINED



Privileged (in role)



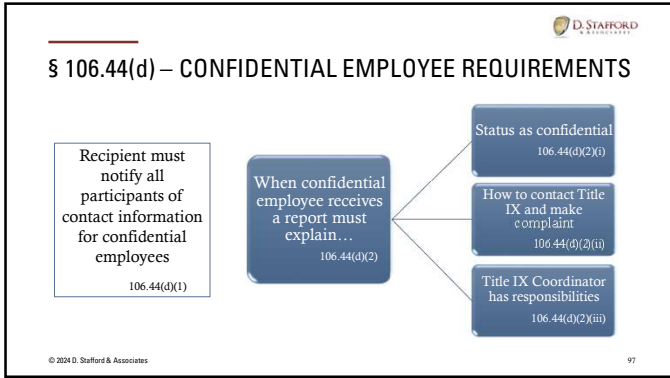
Designated (when providing services)



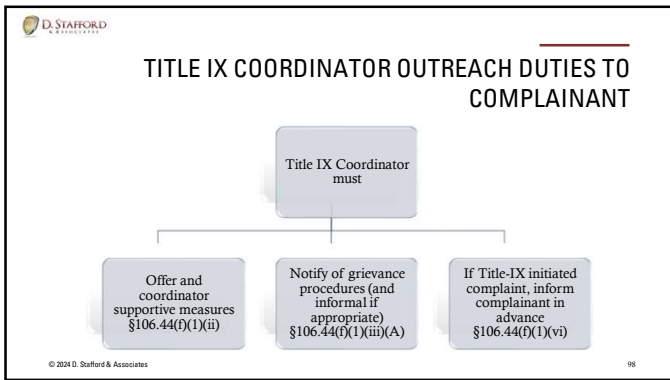
Human-subjects research on sex discrimination

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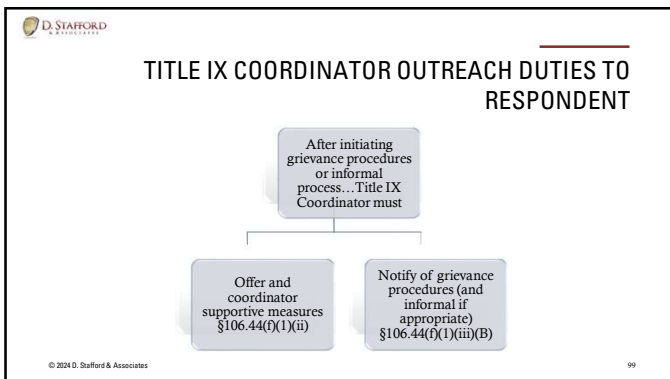
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§ 106.44(f)(1) – Title IX Coordinator Requirements




Treat both parties equitably
106.44(f)(1)(i)



If requested, initiate grievance procedures or informal process
106.44(f)(1)(iv)




Determine if need to initiate grievance procedures in absence of complaint
106.44(f)(1)(v)



Take other appropriate prompt and effective steps
106.44(f)(1)(vii)

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§ 106.44(f)(v) – TITLE IX-INITIATED COMPLAINTS

In the absence of a complaint or the withdrawal of any or all of the allegations in a complaint, and in the absence or termination of an informal resolution process, determine whether to initiate a complaint of sex discrimination

(A) To make this fact-specific determination, the Title IX Coordinator must consider, at a minimum, the following factors:

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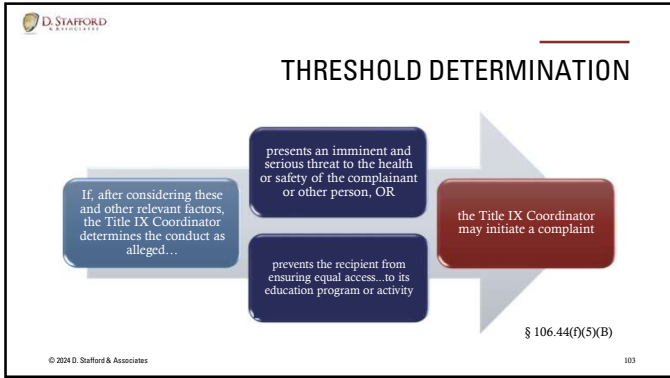


EIGHT FACTORS TO CONSIDER

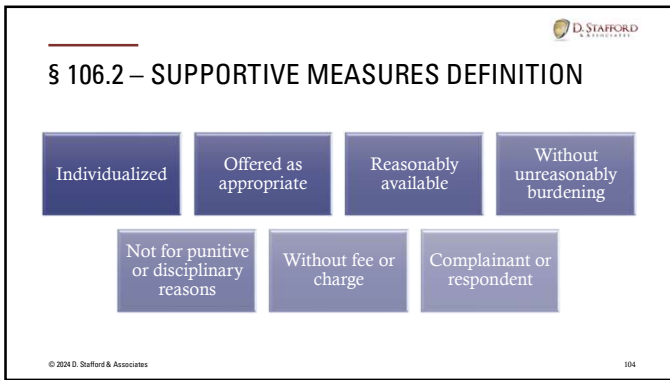
Complainant's request	Safety concerns	Risk of additional acts	Severity of allegation
Age and relationship	Scope and pattern	Evidence	Alternatives to resolve

§ 106.44(f)(1)(v)(A)
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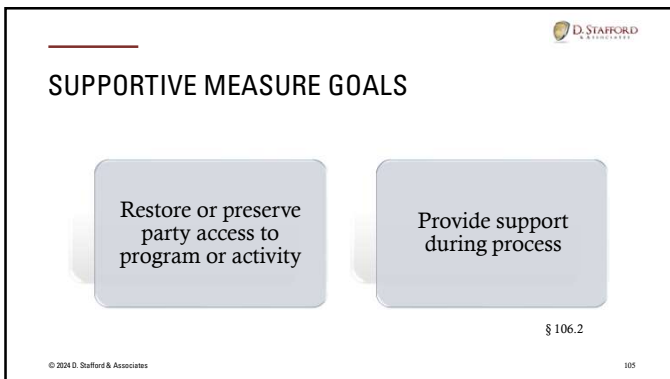
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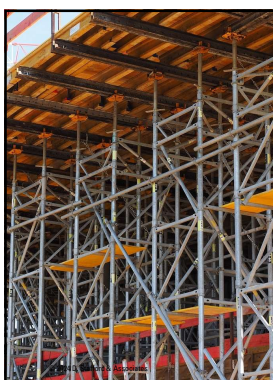
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§ 106.44(g)(1) – SUPPORTIVE MEASURE EXAMPLES

- Counseling
- Extensions of deadlines and other course-related adjustments
- Campus escort services
- Increased security and monitoring of certain areas of the campus
- Restrictions on contact applied to one or more parties
- Leaves of absence
- Changes in class, work, housing, extracurricular or other
- Training and education

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106.44(g)(2) – SUPPORTIVE MEASURES EXPLAINED

- Must not unreasonably burden either party
- Must be designed to
 - protect safety of parties or
 - safety of educational environment or
 - Provide support during grievance procedures or informal process
- Must not be imposed for punitive or disciplinary reasons

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OTHER CONSIDERATIONS FOR SUPPORTIVE MEASURES

- §106.44(g)(3) May modify, terminate, or continue at conclusion of grievance procedures or informal process.
- §106.44(g)(4) Must provide timely opportunity to challenge supportive measure decision
- §106.44(g)(5) Must not disclose unless need to provide measure, restore/preserve access or exception applies
- §106.44(g)(6)(ii) Title IX may consult with disability office when implementing


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LEAVE OPTIONS



Emergency removal







Administrative leave

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§ 106.44(h) – EMERGENCY REMOVAL


-  Imminent and serious threat to the health or safety of any persons
-  Arises from the allegations
-  Provide notice and opportunity to challenge immediately following the removal
-  Cannot modify any rights under IDEA, Section 504, or the ADA


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§ 106.44(k) – INFORMAL RESOLUTION


 Allowed for employee/student in postsecondary

 Discretion to offer or decline

 Voluntary for parties

 Provide notice

 Facilitator must not be investigator or decisionmaker

 Can include restrictions

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§ 106.44(k)(3) – INFORMAL NOTICE

Allegations	Requirements	Right to withdraw
Cannot initiate or resume grievance procedures once final	Potential terms	Information that will be maintained

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ADDITIONAL RESPONSE REQUIREMENTS

 Monitor for Barriers to reporting § 106.44(b)(1)	 Take steps to Remove Barriers § 106.44(b)(1)	 Response to disclosures at Public Awareness Events § 106.44(c)	 Prohibited Disclosures of PII § 106.44(j)
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§ 106.45 GRIEVANCE PROCEDURES FOR SEX DISCRIMINATION



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§ 106.45 – GRIEVANCE PROCEDURES

- § 106.45(a)(1) General
- § 106.45(a)(2) Complaint
- § 106.45(b) Basic requirements for grievance procedures
- § 106.45(c) Notice of allegations
- § 106.45(d) Dismissal of a complaint
- § 106.45(e) Consolidation of complaints
- § 106.45(f) Complaint investigation
- § 106.45(g) Questioning parties and witnesses
- § 106.45(h) Determination whether sex discrimination occurred
- § 106.45(i) Appeals
- § 106.45(j) Additional provisions
- § 106.45(k) Informal resolution
- § 106.45(l) Provisions limited to sex-based harassment complaints

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§ 106.45(a)(2) – COMPLAINT

Sex discrimination other than sex-based harassment	Sex-based harassment
<ul style="list-style-type: none"> • Complainant • Parent or other • Title IX Coordinator • Any student or employee • Other person participating 	<ul style="list-style-type: none"> • Complainant • Parent or other legal representative • Title IX Coordinator

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§ 106.45(b) – BASIC REQUIREMENTS FOR GRIEVANCE PROCEDURES

- Treat complainants and respondents equitably
- Free of bias and conflict of interest
- Presumption of not responsible
- Reasonably prompt timeframes with extensions for good cause
- Reasonable steps to protect privacy
- Objective evaluation of all evidence that is relevant
- Exclude certain evidence as impermissible
- Articulate consistent principles for applying grievance procedures

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TITLE IX PERSONNEL

The decisionmaker may be the same person as the Title IX Coordinator or investigator.

§ 106.459b(2)

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§ 106.45(c)(2) – Additional Allegations



If decided to investigate additional allegations, must provide notice of to parties whose identities are known.

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§ 106.45(d)(1)(i-iv) – DISMISSAL OF A COMPLAINT

May dismiss if..

Unable to identify respondent	Respondent is not participating or employed
Complainant voluntarily withdraws complaint	Conduct, if proven, would not constitute sex discrimination

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DUTIES BEFORE DISMISSAL

Unable to identify the respondent	• Reasonable steps to identify respondent
Complainant withdraws allegation(s)	• Must consider initiating the complaint
Allegation if proven not discrimination?	• Prior to dismissing, must clarify with the complainant

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ADDITIONAL DISMISSAL NOTES

Notice

Appeal

Support

Stop

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§ 106.45(e) – CONSOLIDATION OF COMPLAINTS


Multiple respondents

More than one complainant against one or more respondent


One party against another party

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§ 106.45(b)(7) – RELEVANT AND NOT OTHERWISE IMPERMISSIBLE EVIDENCE



Privileged information




Physician/psychologist records



Complainant's sexual interest or prior sexual conduct

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PROTECTING THE PRIVACY OF PERSONS

§ 106.44(j)


- Must not disclose personally identifiable information obtained except...
 - With prior written consent
 - To carry out the purposes of this part

§ 106.45(b)(5)

- Take reasonable steps to protect the privacy of the parties and witnesses
- Steps cannot restrict the ability of the parties to:
 - Obtain and present evidence, including by speaking to witnesses
 - Consult with their family members, confidential resources, or advisors
 - Otherwise prepare for or participate in the grievance procedures

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PROTECTING THE PRIVACY OF INFORMATION

§ 106.44(k)(3)

- Before the initiation of an informal process, provide notice that explains...
 - What information will maintain
 - How the institution could disclose for use in grievance procedures

§ 106.45(f)(4)(iii)

- Take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence solely through the grievance procedures

§ 106.46(e)(6)(iii)

- Parties' and their advisors' unauthorized disclosure

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MINIMUM REQUIREMENTS UNDER § 106.45

Complaint

↓

Notice

↓

Investigate

↓

Written Determination

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§ 106.45(f) – COMPLAINT INVESTIGATION

Investigator gathers evidence

Parties present fact witnesses and evidence

Investigator reviews evidence for relevancy

Investigator provides access to relevant evidence




Parties have a reasonable opportunity to respond

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ADMISSIBILITY OF WITNESSES

Always admissible	Discretionary admissibility	
 Fact Witness <small>§ 106.45(f)(2)</small>	 Expert <small>§ 106.46(e)(4)</small>	 Character <small>Preamble</small>


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§ 106.45(f)(4) – Access to evidence



Evidence Option



Description Option

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§ 106.45(g)-(h) – DECISIONMAKERS

(g) Question parties and witnesses to assess credibility

(h)(1) Determine whether sex discrimination occurred

(h)(2) Notify parties of outcome in writing

(h)(3) If occurred, provide remedies, sanctions and prevent future acts

(h)(5) No discipline for false statement based solely on determination

(i) Offer appeal if offer in all other comparable proceedings

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§ 106.45(h)(1) – STANDARD OF PROOF

Preponderance of the evidence

➔

Unless use clear and convincing in all other proceedings then **MAY**

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WRITTEN DETERMINATION

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

§ 106.45(h)(2)

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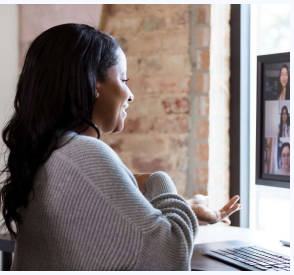
FINAL POLICY NOTES ON § 106.45

- Written Policy/Procedures
- Single-investigator model is an option
- Informal resolution option before or after complaint
- If harassment - range of supportive measures
- If harassment - list of sanctions

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**§ 106.46
GRIEVANCE
PROCEDURES
SEX-BASED
HARASSMENT
INVOLVING
STUDENTS**



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§ 106.46 – SEX-BASED HARASSMENT INVOLVING STUDENTS

§ 106.46(a) General	§ 106.46(g) Live hearing procedures
§ 106.46(b) Student employees	§ 106.46(h) Written determination
§ 106.46(c) Written notice of allegations	§ 106.46(i) Appeals
§ 106.46(d) Dismissal of a complaint	§ 106.46(j) Informal resolution
§ 106.46(e) Complaint investigation	
§ 106.46(f) Questioning parties and witnesses	

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§ 106.46(b) – STUDENT EMPLOYEES

“When a complainant or a respondent is both a student and an employee...must make a fact-specific inquiry to determine whether the requirements of this section apply.”

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TWO GRIEVANCE PROCEDURES

Procedure A (106.45)

- Sex discrimination
- Employee on employee sex-based harassment
- K-12 complaints
- Retaliation

➔

Procedure B (106.46)

- Sex-based harassment involving student complainants or student respondents at postsecondary institutions

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COMPARING NOTICE

	§106.45(c) not required to be in writing	§106.46 (c) required to be in writing
Grievance Procedures	YES	YES
"Sufficient information" (parties, conduct, date, location)	YES	YES
Statement that retaliation prohibited	YES	YES
Access to relevant evidence	YES	YES
Respondent is presumed not responsible		YES
Right to advisor of choice		YES
Prohibition on false statements		YES

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§ 106.46 TWEAKS

AMENDED NOTICE:
Must be in writing §106.46(c)(2)

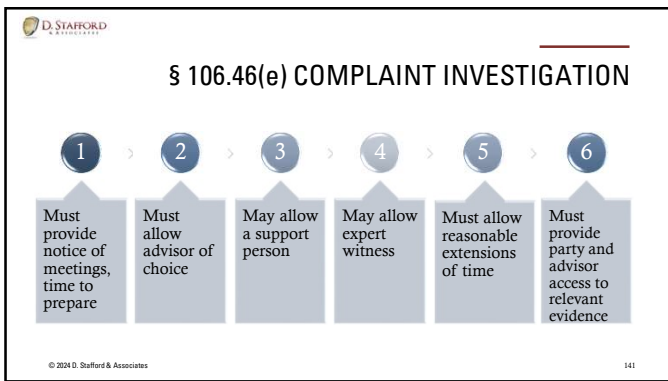
NOTICE:
May reasonably delay providing notice if safety concern §106.46(c)(3)

DISMISSAL:
Written simultaneous notice of dismissal of a complaint §106.46(d)(1)


DISMISSAL:
Obtain complainant's voluntary withdrawal in writing §106.46(d)(2)

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ADVISOR OF CHOICE




May be but is not required to be an attorney
106.46(e)(2)




May accompany to any meeting or proceeding
106.46(e)(2)



Institution may restrict participation
106.46(e)(2)




Receives access to relevant evidence
106.46(f)(ii)(B)




May conduct cross-examination at hearing if allowed
106.46(1)(f)(ii)(B)

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§ 106.46(e)(6)(i) – Access to evidence




Evidence Option



Investigative Report Option

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REVIEW AND RESPOND TO EVIDENCE

A postsecondary institution must provide the parties with a reasonable opportunity to review and respond to the evidence or the investigative report...

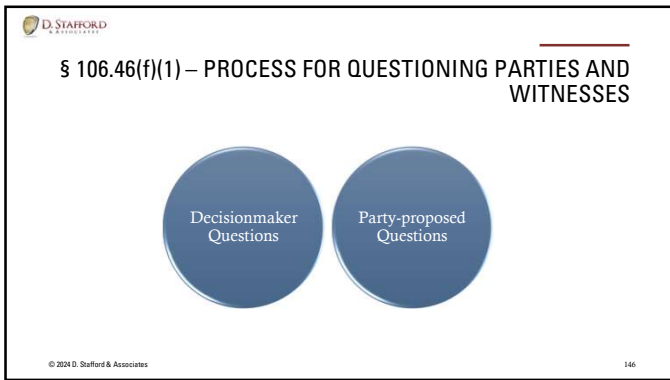
§ 106.46(e)(6)(ii)

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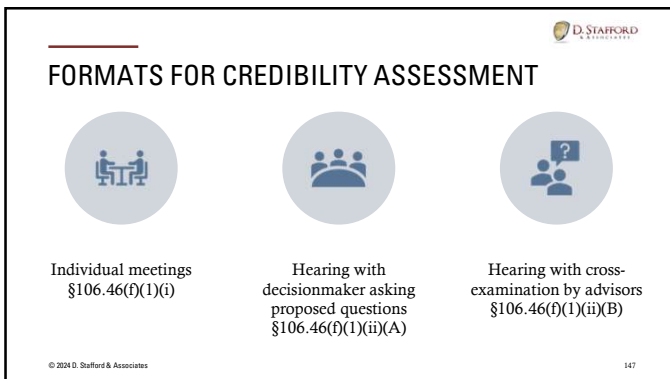
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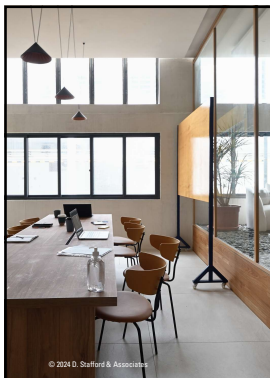
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§ 106.46(f)(1)(i) – NON-HEARING OPTION

- Must hold individual meetings with the complainant, respondent, and any witnesses
- The investigator or decisionmaker may ask relevant and permissible questions
- Each party may propose relevant and permissible questions to be asked by the investigator or decisionmaker
- Provide each party with the recording or transcript with an opportunity to propose follow-up questions
- There could be several rounds of meetings

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§ 106.46(f)(1)(ii) –HEARING OPTION

- The decisionmaker may ask relevant and permissible questions
- Each party may propose relevant and permissible questions to be asked by the decisionmaker
- No questions may be asked directly by a party
- If the institution uses advisor-conducted questioning and a party does not have an advisor, the institution must provide one without charge (cannot be a confidential employee)

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LIVE HEARING

The decisionmaker must determine whether a proposed question is relevant ... prior to the question being posed and must explain any decision to exclude a question as not relevant or otherwise impermissible.


... must not permit questions that are unclear or harassing



... must give a party an opportunity to clarify or revise a question that ... is unclear or harassing

...may also adopt and apply other reasonable rules regarding decorum, provided they apply equally to the parties.

§ 106.46(f)(3)


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 § 106.46(g) – LIVE HEARING PROCEDURES

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 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.

§ 106.46(f)(4)

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 § 106.46(g) – LIVE HEARING PROCEDURES

Audio Video Transcript

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SANCTIONS AND REMEDIES



Disciplinary Sanctions
"consequences ... following a determination"




Remedies
"Restore or preserve access"

§ 106.2

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§ 106.46(h) – DETERMINATION REGARDING RESPONSIBILITY

- ____ Description of alleged sex-based harassment
- ____ Policies and procedures used to evaluate allegations
- ____ Evaluation of evidence and determination
- ____ Disciplinary sanctions or remedies if sex-based harassment occurred
- ____ Appeal procedures

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§ 106.46(i) – APPEALS

Must offer the parties an appeal from a determination whether sex-based harassment occurred and from a ... dismissal of a complaint or any allegation therein, on the following bases:

Procedural irregularity that would change the determination of whether sex-based harassment occurred

New evidence that would change the outcome of the matter and that was not reasonably available at the time the determination of whether sex-based harassment occurred or dismissal was made

Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that would change the outcome

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§ 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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SUBPART E: EMPLOYMENT




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§106.51-61 – EMPLOYMENT

§ 106.7 Effect of employment opportunities	§ 106.51 Employment	§ 106.52 Employment criteria	§ 106.53 Recruitment	§ 106.54 Compensation
§ 106.55 Job classification and structure	§ 106.56 Fringe benefits	§ 106.57 Marital or parental status	§ 106.58 Effect of other laws	§ 106.59 Advertising
§ 106.60 Pre-employment inquiries		§ 106.61 Sex as a bona-fide occupational qualification		

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**§ 106.57 – PARENTAL, FAMILY, OR MARITAL STATUS;
PREGNANCY OR RELATED CONDITIONS (EMPLOYMENT)**

No policies, practices, procedures, or take any employment action concerning parental, family or marital status	No policies, practices, procedures, or take any employment action based on head of household or principal wage earner	Must not discriminate on the basis of current, potential, or past pregnancy or related conditions
Comparable treatment to other temporary medical conditions	Voluntary leaves of absence	Lactation time and space

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§ 106.60 – PRE-EMPLOYMENT INQUIRIES

- Must not make a pre-employment inquiry as to marital status, including whether an applicant is “Miss or Mrs.”
- May ask an applicant to self-identify their sex, but only if this is asked of all applicants and if the response is not used as a basis for discrimination

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**SUBPART F:
RETALIATION**



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§ 106.2 – RETALIATION DEFINITION

Retaliation means intimidation, threats, coercion, or discrimination against any person for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part...

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WHO CAN RETALIATE?



Recipient



Student



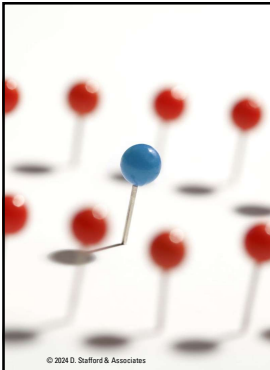
Employee



Other

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§ 106.2 – PEER RETALIATION



Peer retaliation means retaliation by a student against another student.

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§ 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 ... 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, ... an informal resolution

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RETALIATION NOTES

Interference
clause

Participation
clause

Employee
participation

False
statements and
retaliation

Adverse
Action

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§106.8(f) – RECORDKEEPING (7 YEARS)



Process and Outcome for
Complaints



Actions taken for
Reports



Materials upon request
for training

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CLERY ACT (VAWA) PROCEDURAL REQUIREMENTS



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OVERLAPPING CONDUCT ALLEGATIONS

TITLE IX

Quid Pro Quo
Hostile Environment

CLERY

Sexual Assault
Dating Violence
Domestic Violence
Stalking
Gender-based Hate Crimes

Non-VAWA
Clery Offenses
(Assault etc.)

Hate Crimes
Arrests and Referrals:
Drug, Liquor, Weapons


Title VII
Other sex-based behaviors

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34 C.F.R. § 668.46(c) – VAWA OFFENSES




Rape




Fondling




Incest




Statutory Rape



Dating Violence




Domestic Violence



Stalking

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§ 668.46 – RESPONSE REQUIREMENTS FOR VAWA OFFENSES

Procedures victims of VAWA Offenses should follow

↓


Procedures an institution will follow when offense reported

↓

and make sure it is all in *WRITING*.

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§ 668.46(b)(11)vii) – WRITTEN EXPLANATION OF STUDENT OR EMPLOYEE’S RIGHTS

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

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

- 1. The importance of preserving evidence** that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order
 - Not required but recommended: Where to obtain forensic exams, contact info, does not require police report and can have exam now, decide later
- 2. How and to whom the alleged offense should be reported**
 - List any person or organization that can assist the victim
 - Recommended: Also include community organizations

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

3. Notification of the victim’s option to


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

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

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

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

5. To students AND employees about existing


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

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

- Academic, living, transportation, working

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

7. Confidentiality


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

8. Disciplinary Procedures

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

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RESPONSE TO "KNOWLEDGE"








<p>Title IX</p> <ul style="list-style-type: none"> Respond "promptly and effectively" <ul style="list-style-type: none"> Offer and/or implement supportive measures Notify of grievance procedures and informal process if applicable Take other appropriate steps 	<p>Clery Act</p> <ul style="list-style-type: none"> Written explanation of victim's rights and options Assess for Timely Warning Notice or Emergency Notification
--	--

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CLERY ACT REQUIREMENTS FOR DISCIPLINARY PROCEEDINGS

 Anticipated timelines ("reasonably prompt")	 Decision-making process	 How to and options for filing a school complaint (with contact info)
 How school determines which process to use	 Who makes decisions	 Include employee procedures
 Use procedures regardless of Clery geography		

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§ 668.46(k)(2)(iii-iv) – ADVISORS

- Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice
- Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties

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INFORMAL RESOLUTIONS

Title IX

- Can offer, but may not require
- Can decline even if the parties request
- Party may withdraw up to a point

Clery Act

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

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GRIEVANCE PROCEDURES FOR COMPLAINTS

Title IX

- Prompt and equitable
 - Laundry list of items...

Clery Act

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

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WRITTEN DETERMINATION


Title IX

- 106.45 Procedures
 - Result (include any sanctions and rationale for results and sanction)
 - Appeals procedures
 - Any change to the result
 - When such results become final
- 106.46 Procedures
 - Information about policies and procedures used
 - Evaluation of relevant evidence

Clery Act

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

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§ 668.46(k)(2)(iii-iv) – BIAS FREE AND TRAINING FOR “OFFICIALS”

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

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APPEALS

<p>Title IX</p> <ul style="list-style-type: none">• Must offer both parties an appeal• Based on specific grounds	<p>Clery Act</p> <ul style="list-style-type: none">• Not required (but must provide notice if allowed along with appeal procedures)• Simultaneous written decision describing result, sanction, any changes to the result, when it becomes final
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POLICY CONSIDERATIONS

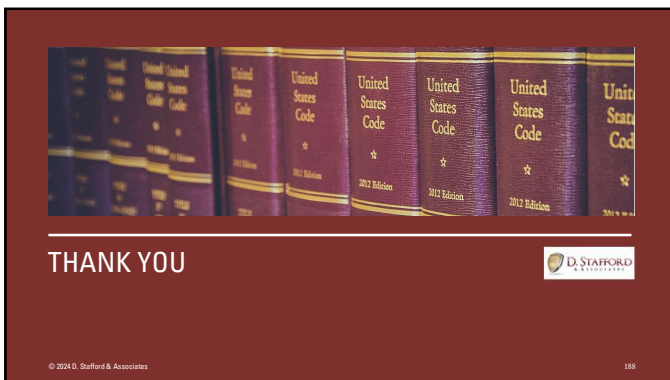
- Student conduct codes
- Employee handbooks
- Non-discrimination policies and procedures
- Incidents occurring before August 1, 2024

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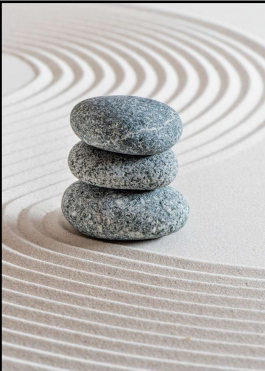
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**TITLE IX:
PREGNANCY OR RELATED CONDITIONS**



1



AGENDA

- Key Takeaways
- Title IX Regulations
- Title IX Guidance
- Related Laws



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2



**Key Takeaways From the 2024
Title IX Regulations**

- Refers to “any policy, practice, or procedure” rather than “any rule”
- Added “family” to “parental, family, or marital status”
- Provide definitions for “parental status” and “pregnancy or related conditions”
- Requirements for providing information by and to the Title IX Coordinator
- Comparable treatment to temporary medical conditions
- Must have grievance procedures
- Ensure the availability of lactation spaces
- Must provide reasonable modifications



3

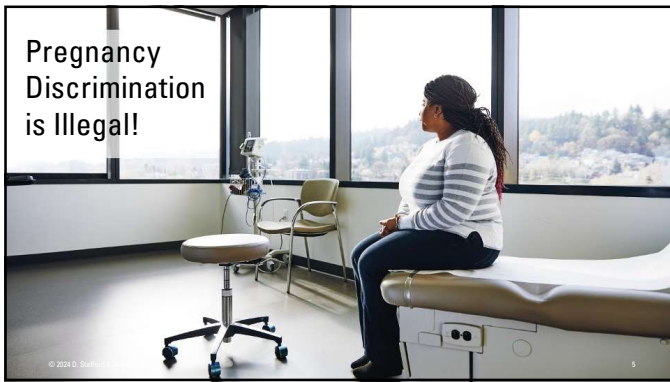


TITLE IX REGULATIONS

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4

4



Pregnancy Discrimination is Illegal!

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5

5



Sex Discrimination

Sex-Based Harassment

- Sexual Assault
- Dating/Domestic Violence
- Stalking
- Hostile Environment
- Quid Pro Quo

Sex Discrimination

- Sex stereotypes
- Sex characteristics
- Pregnancy or related conditions
- Sexual orientation
- Gender identity

Applies in . . .

Admission, Employment, Educational Programs and Activities

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6

6

§ 106.40 - PARENTAL, FAMILY, OR MARITAL STATUS; PREGNANCY OR RELATED CONDITIONS

(a) Status generally. A recipient must not adopt or implement any policy, practice, or procedure concerning a student's current, potential, or past parental, family, or marital status that treats students differently on the basis of sex.

(b) (1) A recipient must not discriminate in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions. A recipient does not engage in prohibited discrimination when it allows a student, based on pregnancy or related conditions, to voluntarily participate in a separate portion of its education program or activity provided the recipient ensures that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions.

7



Date for
Implementation

August 1, 2024

8



DEFINITIONS

§ 106.2 - Student: A person who has gained admission.

FR 33784 - "Title IX's coverage is not limited to enrolled students and includes members of the public "either taking part or trying to take part of a funding recipient institution's educational program or activity" when they attend events such as campus tours, sporting events, and lectures, as long as the alleged discrimination relates to the individual's participation or attempted participation in such programs."

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**SUBPART C -
DISCRIMINATION
ON THE BASIS OF
SEX IN
ADMISSION AND
RECRUITMENT
PROHIBITED**



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**§ 106.21(c) - PARENTAL, FAMILY, OR MARITAL
STATUS; PREGNANCY OR RELATED CONDITIONS**



Must treat pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions; and...

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**§ 106.21(c) - PARENTAL, FAMILY, OR MARITAL
STATUS; PREGNANCY OR RELATED CONDITIONS**

MUST NOT...

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.

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.


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.

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**SUBPART D -
DISCRIMINATION
ON THE BASIS OF
SEX IN EDUCATION
PROGRAMS OR
ACTIVITIES
PROHIBITED**



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**§ 106.37(a) - PROHIBITIONS RELATING TO
MARITAL OR PARENTAL STATUS**

Financial Assistance		
<p>On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate</p>	<p>Cannot assist other services, foundation, trust, agency, organization, or person which provides assistance to students in a manner which discriminates on the basis of sex</p>	<p>Cannot apply any rule or assist with any rule concerning eligibility for assistance which treats persons of one sex differently because of marital or parental status</p>

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**§ 106.40(a)
STATUS
GENERALLY.**

A recipient shall not apply any rule concerning a student's current, potential, or past parental, family, or marital status that treats students differently on the basis of sex.



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POTENTIAL PREGNANCY

The Department interprets the word “potential” to cover pregnancy or related conditions that are expected, likely, or have the capacity to occur. In response to one commenter’s question, protection based on potential pregnancy or related conditions would apply to, for example, individuals about whom rumors circulate related to pregnancy (e.g., regarding an individual’s fertility care, planning for pregnancy, circumstances of pregnancy, or the cause or reason for termination of pregnancy) or in the context of individuals seeking fertility care or otherwise planning a possible pregnancy.

89 FR 33756

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§ 106.40(b) - PREGNANCY OR RELATED CONDITIONS



Voluntary Participation

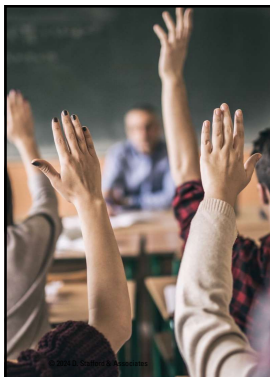


Title IX Coordinator contact and other information



Actions to Prevent Discrimination

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VOLUNTARY PARTICIPATION

- Must not discriminate based on the student’s current, potential, or past pregnancy or related conditions
- A student may voluntarily participate in a separate portion of its education program or activity provided the recipient ensures that the separate portion is comparable to that offered are not pregnant and does not have related conditions.

§ 106.40(b)(1)

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TITLE IX COORDINATOR CONTACT AND OTHER INFORMATION

Contact us

- Share the Title IX Coordinator's contact information
- Inform the student that the Title IX Coordinator can coordinate specific actions

§ 106.40(b)(2) 19

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ACTIONS TO PREVENT DISCRIMINATION


The Title IX Coordinator must coordinate actions to promptly and effectively prevent sex discrimination and ensure equal access

§ 106.40(b)(3) 20


20



RESPONSIBILITY TO PROVIDE INFORMATION




Institution's obligations



Notice of discrimination

§ 106.40(b)(3)(i) 21

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REASONABLE MODIFICATIONS

Reasonable Modifications	Student Acceptance	Examples
<ul style="list-style-type: none"> Based on the student's individualized needs Student must be consulted Cannot fundamentally alter the nature of the program or activity 	<ul style="list-style-type: none"> Student may accept or decline each reasonable modification Institution must implement any accepted modification 	<ul style="list-style-type: none"> Breaks during class Intermittent absences Access to online or homebound education Changes in schedule or course sequence Extensions of time Allowing sit/stand/water Counseling Changes in space or supplies Elevator access

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VOLUNTARY ACCESS


Must allow voluntary access to separate and comparable portion of program or activity



§ 106.40(b)(3)(iii)

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VOLUNTARY LEAVES OF ABSENCE


Must allow a voluntarily leave of absence to cover, at minimum, the period of time deemed medically necessary

Must allow a student to use another leave policy if it allows for more time than medically necessary

Must be reinstated to the academic status and, as practicable, to the extracurricular status the student held before the leave

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LACTATION SPACE

Must ensure access to a lactation space

May be used for expressing breast milk or breastfeeding as needed

Can't be a bathroom


Clean

Shielded from view

May be used for expressing breast milk or breastfeeding as needed

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LIMITATION ON SUPPORTING DOCUMENTATION

Limitation


Must not require supporting documentation unless it is necessary and reasonable to determine the reasonable modifications or whether to take additional actions

Examples - Not Necessary


- Needs a bigger uniform
- Supporting documentation has previously been submitted
- Carrying or keeping water nearby
- Using a bigger desk
- Sit or stand
- Take breaks to eat, drink, or use the restroom
- Lactation needs

© 2024 D. Stafford & Associates § 106.40(b)(3)(vi) 26

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COMPARABLE TREATMENT

Use the same manner and under the same policies as any other temporary medical conditions

§ 106.40(b)(4) 27

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CERTIFICATION TO PARTICIPATE

- Must not require a certification that the student is physically able to participate in the program or activity unless:
 - Level of physical ability or health is necessary for participation
 - Requires such certification for all students participating in the activity
 - Information obtained is not used as a basis for discrimination

§ 106.40(b)(5)

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SUBPART E - DISCRIMINATION ON THE BASIS OF SEX IN EMPLOYMENT IN EDUCATION PROGRAMS OR ACTIVITIES PROHIBITED

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“EMPLOYEE” (NOT) DEFINED UNDER TITLE IX

Comments: Some commenters asked the Department to include a definition for “employee” to make clear who has reporting requirements under § 106.44(c) and who needs to be trained under § 106.8(d).

Discussion: Given the wide variety of arrangements and circumstances across recipients and variations in applicable State employment laws, the Department has determined that recipients are best positioned to determine who is an “employee.” For additional discussion on who is subject to the employee reporting obligations in § 106.44(c) and the employee training requirements under § 106.8(d), see those sections of this preamble.

89 FR 33526

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§ 106.57 (a) - STATUS GENERALLY

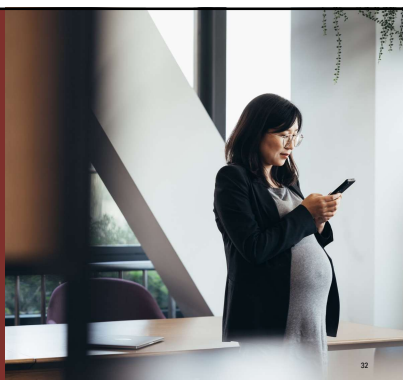
A recipient must not adopt or implement any policy, practice, or procedure, or take any employment action, on the basis of sex:

- (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.*

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§ 106.57 (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.



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COMPARABLE TREATMENT

Must treat pregnancy or related conditions as any other temporary medical conditions for all job-related purposes



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VOLUNTARY LEAVES OF ABSENCE

If no leave policy for its employees, or an employee has insufficient leave or accrued employment time to qualify for leave under such a policy

→

The pregnancy or related conditions is a justification for a leave of absence without pay for a reasonable period of time

→

Employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

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LACTATION TIME AND SPACE



Reasonable Break Time



Appropriate lactation space

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§ 106.60 - PRE-EMPLOYMENT INQUIRIES

Marital status



Sex

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RELATED LAWS

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EMPLOYEE PREGNANCY DISCRIMINATION

- Title VII of the Civil Rights Act of 1964
- Fair Labor Standards Act
- Pregnant Workers Fairness Act
- PUMP Act
- Americans with Disabilities Act

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TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED BY THE PREGNANCY DISCRIMINATION ACT

Current pregnancy	Past pregnancy	Potential pregnancy
Medical condition related to pregnancy or childbirth including breastfeeding/lactation	Having or choosing not to have an abortion	Birth control (Contraception)

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PREGNANCY DISCRIMINATION UNDER TITLE VII

Pregnancy discrimination occurs when an employer refuses to hire, fires, or takes any other adverse action against a woman because she is pregnant, without regard to her ability to perform the duties of the job.

Karen informs her supervisor that she is pregnant. When performance evaluations are completed the following month, Karen receives a negative rating although throughout the year she has received nothing but stellar reviews. When she confronts her supervisor regarding the negative feedback on the document, the supervisor tells Karen that Karen received the negative feedback because she has been more tired at work and not "pulling her weight." Karen's supervisor can cite no example of incomplete work or other projects that Karen is responsible for. As a result of the negative mark on Karen's performance evaluation, she does not receive a score of "5", which she needs to be eligible for promotion. Karen believes the negative mark is a direct result of her pregnancy disclosure and not her actual work product.

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WHAT IS THE PREGNANT WORKERS FAIRNESS ACT?

Generally, the Pregnant Workers Fairness Act (PWFA) requires a covered employer to provide a "reasonable accommodation" to a qualified employee's or applicant's known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship."

The PWFA also prohibits an employer from forcing a worker to take an accommodation, absent certain steps, and prohibits an employer from requiring a worker to take leave if there is another accommodation that does not cause an undue hardship that will allow the worker to stay on the job.

The PWFA applies only to accommodations

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WHAT DOES THE PWFA PROHIBIT?

Covered employers must not:

- Fail to make a reasonable accommodation for the known limitations of an employee or applicant, unless the accommodation would cause an undue hardship;
- Require an employee to accept an accommodation other than a reasonable accommodation arrived at through the interactive process;
- Deny a job or other employment opportunities to a qualified employee or applicant based on the person's need for a reasonable accommodation;
- Require an employee to take leave if another reasonable accommodation can be provided that would let the employee keep working;
- Punish or retaliate against an employee or applicant for requesting or using a reasonable accommodation for a known limitation under the PWFA, reporting or opposing unlawful discrimination under the PWFA, or participating in a PWFA proceeding (such as an investigation);
- Coerce individuals who are exercising their rights or helping others exercise their rights under the PWFA.



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PROVIDING URGENT MATERNAL PROTECTIONS FOR NURSING MOTHERS ACT (PUMP FOR NURSING MOTHERS ACT OR PUMP ACT)

- Nearly all employees covered by the FLSA are eligible to pump at work.
- Employees are eligible to pump at work for one year after their child's birth.
- Narrow exemptions may apply for certain employees of small companies and certain transportation employees.



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THE FAIR LABOR STANDARDS ACT

The Fair Labor Standards Act (FLSA) requires employers to provide reasonable break time for an employee to express breast milk for their nursing child for one year after the child's birth each time such employee has need to express the milk. Employees are entitled to a place to pump at work, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public.

The PUMP Act expands the protections of the Fair Labor Standards Act (FLSA) for lactating and nursing employees. The FLSA establishes minimum wage, overtime pay, regular rate of pay, bonuses, recordkeeping, and other wage and hour standards that affect employees. (See 29 U.S.C. § 201, *et seq.*)

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COMPENSATION FOR BREAK TIME

- As with other breaks under the FLSA, the nursing employee must be completely relieved from duty or the time spent pumping must be counted as hours worked for the purposes of minimum wage and overtime requirements.
- If an employer already provides paid break time and if an employee chooses to use that time to pump, they must be compensated in the same way that other employees are compensated for break time.
- An employer must also pay for pump breaks if required by Federal or State law or municipal ordinance.

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TO PAY OR NOT TO PAY?



Carlotta is an administrative assistant in the Business Office and takes time at work to pump breast milk but continues to answer emails or take a work phone call during this time. **Must she be compensated for this time?**

Linda pumps during her unpaid meal break. **Must she be compensated for this time?**

Suzanne works in Facilities at the College and pumps during one of her required 15-minute breaks. On her break, she is required to listen to the dispatch radio in case she is needed. **Must she be compensated for this time?**

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TITLE IX GUIDANCE



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2022



U.S. Department of Education
Office for Civil Rights

October 2022

Discrimination Based on Pregnancy and Related Conditions
A Resource for Students and Schools

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2013 (FIRST PUBLISHED IN JULY 1991)

U.S. DEPARTMENT OF EDUCATION

Supporting the Academic Success of Pregnant and Parenting Students

Under *Title IX* of the Education Amendments of 1972

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MAY A SCHOOL REQUIRE A PREGNANT STUDENT TO PARTICIPATE IN A SEPARATE PROGRAM FOR PREGNANT STUDENTS?

No. Any such requirement would violate Title IX. A school may offer separate programs or schools for a pregnant student, but participation in those programs or schools must be completely voluntary. A school may provide information to its students about the availability of an alternative program, but it may not pressure a pregnant student to attend that program. A pregnant student must be allowed to remain in her regular classes and school if she so chooses.

(OCR, 2013)

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MAY A SCHOOL REQUIRE A PREGNANT STUDENT TO OBTAIN A DOCTOR'S PERMISSION BEFORE ALLOWING HER TO ATTEND SCHOOL LATE IN HER PREGNANCY IF THE SCHOOL IS WORRIED ABOUT THE STUDENT'S HEALTH OR SAFETY?

Schools cannot require a pregnant student to produce a doctor's note...unless the same requirement to obtain a doctor's note applies to all students being treated by a doctor. That is, schools cannot treat a pregnant student differently from other students being cared for by a doctor...

(OCR, 2013)

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CAN HARASSING A STUDENT BECAUSE OF PREGNANCY VIOLATE *TITLE IX*?


Yes. Harassing conduct can take many forms, including verbal acts and name-calling, graphic and written statements, and other conduct that may be humiliating or physically threatening or harmful.

Schools must take prompt and effective steps reasonably calculated to end pregnancy-related harassment, prevent its recurrence, and eliminate any hostile environment created by the harassment.

The school violates Title IX if sexual harassment or other pregnancy-related harassment by employees, students, or third parties is sufficiently serious that it interferes with a student's ability to benefit from or participate in the school's program, and the harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees. (OCR, 2013)

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WHAT TYPES OF ASSISTANCE MUST A SCHOOL PROVIDE TO A PREGNANT STUDENT AT SCHOOL?

To ensure a pregnant student's access to its educational program, when necessary, a school must make adjustments to the regular program that are reasonable and responsive to the student's temporary pregnancy status. For example, a school might be required to provide a larger desk, allow frequent trips to the bathroom, or permit temporary access to elevators. (OCR, 2013)

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IN ADDITION TO ALLOWING A PREGNANT STUDENT TO ATTEND CLASSES, DOES A SCHOOL NEED TO ALLOW HER TO PARTICIPATE IN SCHOOL CLUBS, CLASS ACTIVITIES, INTERSCHOLASTIC SPORTS, AND OTHER SCHOOL-SPONSORED ORGANIZATIONS?

Yes. A pregnant student must also be eligible to hold leadership positions in these activities.

In addition, a pregnant student may not be excluded from an activity that is part of the school's educational program even if the activity is not operated directly by the school. For example, an after-school program run by a local nonprofit agency that rents the school's facilities at a reduced rate and is advertised and promoted by the school may not exclude a pregnant student from enrolling. (OCR, 2013)

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DOES A SCHOOL HAVE TO EXCUSE A STUDENT'S ABSENCES DUE TO PREGNANCY OR CHILDBIRTH?

Yes. Title IX requires a school to excuse a student's absences due to pregnancy or related conditions, including recovery from childbirth, for as long as the student's doctor deems the absences to be medically necessary.

(OCR, 2013)

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DOES A SCHOOL NEED TO PROVIDE SPECIAL SERVICES TO A PREGNANT STUDENT?

Title IX requires a school to provide the same special services to a pregnant student that it provides to students with temporary medical conditions. For example, if a school provides at-home instruction or tutoring to students who miss school because of temporary medical conditions, it must do the same for a student who misses school because of pregnancy or childbirth.

(OCR, 2013)

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WHAT IF SOME TEACHERS AT A SCHOOL HAVE THEIR OWN POLICIES ABOUT CLASS ATTENDANCE AND MAKE-UP WORK?

Must ensure that the policies and practices of individual teachers do not discriminate against pregnant students. For example, a teacher may not refuse to allow a student to submit work after a deadline that she missed because of absences due to pregnancy or childbirth. Additionally, if a teacher's grading is based in part on class attendance or participation, the student should be allowed to earn the credits she missed so that she can be reinstated to the status she had before the leave. Schools should ensure that their teachers and staff are aware of and follow *Title IX* requirements.

(OCR, 2013)

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WHAT PROCEDURES MUST A SCHOOL DISTRICT HAVE IN PLACE RELATED TO DISCRIMINATION ON THE BASIS OF SEX, INCLUDING DISCRIMINATION RELATED TO PREGNANCY AND PARENTAL STATUS?

The grievance process should provide a mechanism for school districts to investigate and evaluate complaints and must provide for prompt and equitable resolution of complaints. School districts should make sure that their grievance procedures are widely distributed and understandable by students, parents, and employees.


A school district must also designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the law.

In addition, a school district must publish a notice that it does not discriminate on the basis of sex in its educational programs or activities. The notice must also state that inquiries concerning the application of *Title IX* and its implementing regulations may be referred to the *Title IX* coordinator or to OCR.

(OCR, 2013)

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HOW DO I ENFORCE MY RIGHTS UNDER *TITLE IX*?

If you wish to file a complaint of discrimination with OCR...

Alternatively, you may send a letter to the OCR enforcement office responsible for the state in which the school is located.

The complaint must be filed with OCR within 180 days from the date of the incident that is the basis of your complaint, although there may be limited exceptions that would allow additional time. ...

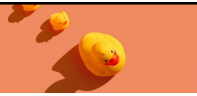
You also may have the right to file suit in court claiming that a school violated Title IX...

(OCR, 2013)

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SARAH'S STORY



Sarah is a student at ABC College. She purchased a breast pump to wear under her shirt so that she could pump while in class. Sarah tells her faculty member that she is wearing the pump and that if it gets too full, she may have to leave class for a few minutes to empty it. The pump is nearly silent and not observable through Sarah's clothing.

Sarah's faculty member tells her that wearing the pump in class is "not hygienic" and that she must use the lactation space to express her breastmilk. She also tells Sarah that she should "be quick" because she is missing class time, which will not be excused.

If you were the Title IX Coordinator, what would you say to the faculty member? To Sarah?

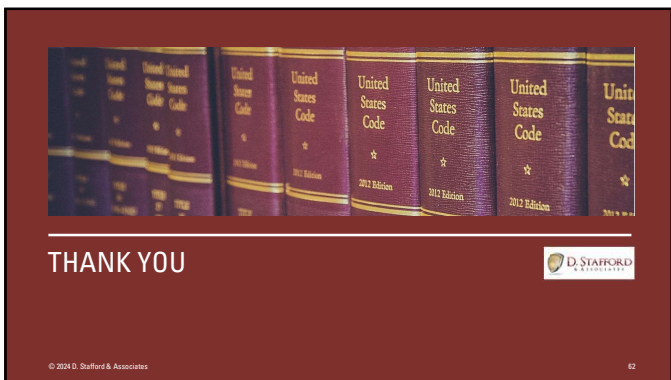
What if you observed this as a responsible employee? Would you report? What are your obligations under the 2024 regulations?

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DATING VIOLENCE, DOMESTIC VIOLENCE, & STALKING



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INTIMATE PARTNER VIOLENCE



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WHAT IS DOMESTIC VIOLENCE?

Domestic violence meaning felony or misdemeanor crimes committed by a person who:

- (A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;*
- (B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;*
- (C) Shares a child in common with the victim; or*
- (D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.*

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DATING VIOLENCE

Dating violence meaning violence committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and


(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

- (1) The length of the relationship;
- (2) The type of relationship; and
- (3) The frequency of interaction between the persons involved in the relationship

§ 106.2

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UNDERSTANDING THE ELEMENTS IN DV CASES

Relationship

➔

Behavior

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SO, WHAT IS "DATING?"

- Seeing each other
- Hooking up
- Talking
- It's Complicated
- Friends with Benefits
- Roaching
- Situationship
- Wifey/Hubby Status
- Chillin'
- Netflix and Chill
- "DM Slides and Thirsty Texts" (DTF)
- F*** Buddy

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IMPACT

Domestic and dating violence are prevalent in every community, and affect all people regardless of age, socioeconomic status, sexual orientation, gender, race, religion, or nationality.

Physical violence is often accompanied by emotionally abusive and controlling behavior as part of a much larger, systematic pattern of dominance and control.

Domestic violence can result in physical injury, psychological trauma, and even death. The devastating consequences of domestic violence can cross generations and last a lifetime.

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WHAT IS "INTIMATE PARTNER VIOLENCE"?

- **Physical violence** is when a person hurts or tries to hurt a partner by hitting, kicking, or using another type of physical force.
- **Sexual violence** is forcing or attempting to force a partner to take part in a sex act, sexual touching, or a non-physical sexual event (e.g., sexting) when the partner does not or cannot consent.
- **Stalking** is a pattern of repeated, unwanted attention and contact by a partner that causes fear or concern for one's own safety or the safety of someone close to the victim.
- **Psychological aggression** is the use of verbal and non-verbal communication with the intent to harm a partner mentally or emotionally and/or to exert control over a partner.

Credit: National Domestic Violence Hotline

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COMMON SIGNS OF ABUSIVE BEHAVIOR

- Telling you that you never do anything right.
- Showing extreme jealousy of your friends or time spent away from them.
- Preventing or discouraging you from spending time with others, particularly friends, family members, or peers.
- Insulting, demeaning, or shaming you, especially in front of other people.
- Preventing you from making your own decisions, including about working or attending school.
- Controlling finances in the household without discussion, such as taking your money or refusing to provide money for necessary expenses.
- Pressuring you to have sex or perform sexual acts you're not comfortable with.

Credit: National Domestic Violence Hotline

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The Power and Control Wheel diagram assumes she/her pronouns for survivors and he/him pronouns for partners. However, the abusive behavior it details can happen to people of any gender or sexuality.

The diagram is a circular wheel with 'POWER AND CONTROL' in the center. It is divided into eight segments, each representing a different tactic of abuse. The segments are: USING COERCION AND THREATS, USING INTIMIDATION, USING EMOTIONAL ABUSE, USING ISOLATION, MINIMIZING, DENYING AND BLAMING, USING CHILDREN, USING MALE PRIVILEGE, and USING ECONOMIC ABUSE. Each segment contains a list of specific behaviors. The wheel is also labeled with 'PHYSICAL VIOLENCE' and 'SEXUAL' at the top and bottom.

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THE CYCLE OF VIOLENCE

The diagram shows three red circles arranged in a triangle, connected by arrows in a clockwise cycle. The top circle is labeled 'Tension Building', the bottom right circle is 'Abusive Incident', and the bottom left circle is 'Honeymoon Stage'. Arrows point from Tension Building to Abusive Incident, from Abusive Incident to Honeymoon Stage, and from Honeymoon Stage back to Tension Building.

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Why doesn't she just leave?

Because leaving is a process, not an event.

What are common barriers facing college students who are victims of domestic or dating violence? What about employees?

A silhouette of a person stands in a dark hallway, looking towards a bright light at the end of the corridor. The scene is dramatic, with strong contrast between light and shadow.

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UNDERSTANDING STRANGULATION

Abusers strangle to show their victims they can kill them anytime they choose to.

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STRANGULATION VS. SUFFOCATION

Strangulation is a form of asphyxia characterized by closure of the blood vessels and air passages of the neck as a result of external pressure on the neck.

Suffocation occurs from covering the mouth and/or nose with an object preventing the person from being able to breathe.

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STRANGULATION

Strangulation is the compression of anatomic neck structures leading to a reduction of blood flow to or from the brain that results in injury or death. Using the average handshake at 80 to 100 pounds of pressure as comparison:

- a victim's jugular veins will occlude when a perpetrator applies only 4 pounds of pressure
- occlusion of the carotid arteries occurs with 5 to 11 pounds of pressure
- a perpetrator applying 33 pounds of pressure to the victim's trachea will cause it to collapse.

Strangulation signs and symptoms may not be visible during the initial victim assessment. Approximately 50% of strangulation victims will have no visible injuries, and some survivors may not even recall the strangulation incident because of cerebral hypoxia during the assault.


CREDIT: <https://www.myamericannurse.com/strangulation-a-silent-but-deadly-form-of-intimate-partner-violence/>

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FORMS OF STRANGULATION



Manual

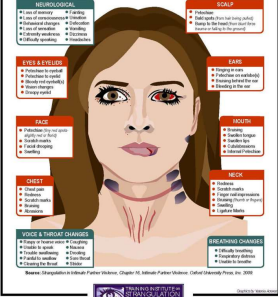


Ligature

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SIGNS AND SYMPTOMS OF STRANGULATION



If your partner has ever put their hands around your neck, put you in a “sleeper hold,” or wrapped anything like a scarf, necklace, belt, or rope around your neck, you have experienced strangulation.

Source: Strangulation in Intimate Partner Violence, Chapter 10, Intimate Partner Violence, Oxford University Press, Inc. 2008

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STRANGULATION ASSESSMENT CARD

SIGNS	SYMPTOMS	CHECKLIST	TRANSPORT
<ul style="list-style-type: none"> • Red eyes or spots (Petechiae) • Neck swelling • Nausea or vomiting • Unsteady • Loss or lapse of memory • Unrelaxed • Defecated • Possible loss of consciousness • Pilois – droopy eyelid • Drifty face • Dacrye • Tongue Injury • Lip injury • Mental status changes • Voice changes 	<ul style="list-style-type: none"> • Neck pain • Jaw pain • Scalp pain (from hair pulling) • Sore throat • Difficulty breathing • Vision changes (spots, tunnel vision, flashing lights) • Hearing changes • Light headedness • Headache • Weakness or numbness to arms or legs • Voice changes 	<p>S Scene & Safety Take in the scene. Make sure you and the victim are safe.</p> <p>T Trauma The victim is traumatized. Be kind. Ask, what do you remember? See? Feel? Hear? Think?</p> <p>R Reassure & Resources Reassure the victim that help is available and provide resources.</p> <p>A Assess Assess the victim for signs and symptoms of strangulation and TBI.</p> <p>N Notes Document your observations. Put victim statements in quotes.</p> <p>G Give Give the victim an advise about delayed consequences.</p> <p>L Loss of Consciousness Victims may not remember. Lapse of memory? Change in location? Unrelaxed? Defecated?</p> <p>E Encourage Encourage medical attention or transport if life threatening injuries exist.</p>	<p>If the victim is Pregnant or has the strangling device which include:</p> <ul style="list-style-type: none"> • Difficulty breathing • Difficulty swallowing • Petechial hemorrhage • Vision changes • Unrelaxed • Defecated <p>DELAYED CONSEQUENCES</p> <p>Victims may look fine and say they are fine, but just underneath the skin there would be internal injury and/or delayed consequences. Internal injury may take a few hours to be appreciated. The victim may develop delayed swelling, hematomas, vocal cord immobility, displaced laryngeal fractures, fractured hyoid bone, airway obstruction, stroke or even delayed death from a carotid dissection, blood clot, respiratory complications, or direct brain damage.</p> <p><small>Bellevue, E., Hawley, D., McCann, G.E. & Brink, S. (2008). Strangulation in Intimate Partner Violence. Intimate Partner Violence: A Health-Related Perspective. Oxford University Press, Inc.</small></p> <p><small>This page is a derivative of a report by the author, which is a copyrighted work of the author. It is not to be used for any other purpose without the express written permission of the author. All rights reserved. © 2014 D. Stafford & Associates.</small></p>

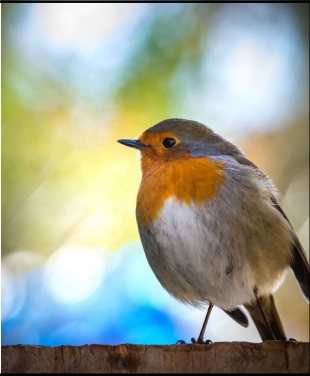
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THE POWER OF HOPE

*Hope is the thing with feathers
that perches in the soul and sings
the tune without the words and
never stops at all.*

- Emily Dickinson, circa 1861



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STALKING



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WHAT IS STALKING?

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

- (A) Fear for the person's safety or the safety of others; or*
- (B) Suffer substantial emotional distress.*

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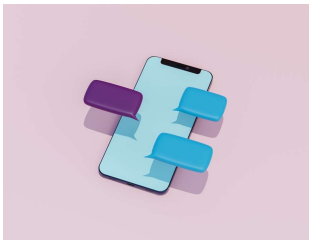
STALKING (CONTINUED)

For the purposes of this definition -

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

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

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



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SUBSTANTIAL EMOTIONAL DISTRESS

Difficulty eating or sleeping	Anxiety or nervousness	Nightmares	Drug or alcohol use
Headaches/illness	School/work impacted	Irritability, anger, shock, or confusion	Fear response/hypervigilance
Changing routines		Depression	

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COMMON STALKING TACTICS

- Unwanted phone calls
- Unwanted emails, instant messages, text messages, voice messages, or social media messages
- Approaching a victim or showing up unwanted, such as at the victim's home, workplace, or school
- Leaving strange or potentially threatening items for the victim to find
- Watching, following, or tracking a victim
- Sneaking into the victim's home or car and doing things to scare the victim or let them know the perpetrator had been there

<https://www.cdc.gov/violenceprevention/nisvs/index.html>

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STALKING - SPECIAL CONSIDERATIONS

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VIOLENCE AGAINST MEN

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UNDERSTANDING VIOLENCE AGAINST MEN

- Male victimization is a significant public health problem, according to estimates in the National Intimate Partner and Sexual Violence Survey (NISVS).
- Across U.S. states, nearly a quarter of men reported some form of contact sexual violence in their lifetime. Approximately 1 in 10 men in the U.S. experienced contact sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime and reported some form of IPV-related impact. Commonly reported IPV-related impacts among male victims were fear, concern for safety, and symptoms of post-traumatic stress disorder, among others.

Credit: US Centers for Disease Control and Prevention

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TYPE AND SEX OF PERPETRATORS OF IPV, SV, AND STALKING OF MALE VICTIMS

- Perpetrators are usually known to their victims.
- Among male victims of stalking and sexual violence, perpetrators were most often a current or former intimate partner or an acquaintance.
- The sex of the perpetrator depends on the type of violence. According to NISVS, perpetrators of rape and unwanted sexual contact against male victims were mostly other men, while perpetrators of other forms of SV such as MTP and sexual coercion against men were most often women.
- Both women and men perpetrate stalking of men.
- Women were mostly the perpetrators of intimate partner violence against men.

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TYPE AND SEX OF PERPETRATORS OF IPV, SV, AND STALKING OF MALE VICTIMS (CONTINUED)

Sexual Violence:

- 87% of male victims of (completed or attempted) rape reported only male perpetrators.
- 79% of male victims of being MTP reported only female perpetrators.
- 82% of male victims of sexual coercion reported only female perpetrators.
- 53% of male victims of unwanted sexual contact reported only female perpetrators.
- 48% of male victims of lifetime non-contact unwanted sexual experiences reported only male perpetrators.

Stalking:

- 46% of male victims reported being stalked by only female perpetrators.
- 43% of male victims reported being stalked by only male perpetrators.
- 8% of male victims reported being stalked by both male and female perpetrators.

Intimate Partner Violence:


- 97% of men who experienced rape, physical violence, or stalking by an intimate partner had only female perpetrators.

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CASE STUDY: DATING VIOLENCE

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DATING VIOLENCE-YEARDLEY LOVE

- **Summer 2007:** George Huguely V, the son of a wealthy Washington socialite, begins dating Yeardley Love. Both are part of the University of Virginia men's and women's lacrosse culture; the two teams are close and romantic relationships often occur.
- **November 14, 2008:** Huguely is convicted of public drunkenness after he is pulled over on a road trip with friends, heading to Lexington, Va. He threatens the female officer and is subdued by a taser. He later pays a \$100 fine and serves 50 hours of community service.
- **February 21, 2009:** Hearing rumors that a teammate kissed Love, Huguely attacks him in his sleep, bruising his eye. The incident reaches the team coach but is quashed. No charges are filed against him.



Credit: The Murder of Yeardley Love and Trial of George Huguely V. A Timeline | TIME.com

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DATING VIOLENCE-YEARDLEY LOVE



- **Feb. 27, 2010:** Mike Burns, a lacrosse player at the University of North Carolina who was attending a party in Huguely's apartment, enters a bedroom to find Love in a choke hold at Huguely's hands. He releases her and leaves. Burns and Love later begin a romantic relationship that causes friction between Huguely and Love.
- **April 27, 2010:** Love, having found out that Huguely is seeing her sorority sister, confronts him in his apartment, where she also encounters two other girls. She throws her purse at him. Three days later, she receives an e-mail saying, "I should have killed you." She shows it to several friends.

Credit: The Murder of Yeardley Love and Trial of George Huguely V. A Timeline | TIME.com

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DATING VIOLENCE - YEARDLEY LOVE

May 2, 2010: Apparently drunk at the lacrosse team's father-son golf tournament at Wintergreen Resort, Huguely is barely coherent, slurring his words. Just before midnight, saying he "just wants to talk" Huguely breaks through the door of Love's apartment bedroom. He later lies to his roommate about where he's been.

May 3, 2010: Police arrive at 2:24 a.m. to find the bloodied, battered body of Yeardley Love. Huguely is arrested.

May 4, 2010: Questioned about Love, Huguely admits they had been in an altercation, that he kicked her door in, and that he had shaken her with her head hitting the wall. His attorneys maintain he did not intentionally kill her. He is charged with first degree murder.

May 6, 2010: The Charlottesville Circuit Court seals the case records with no explanation. Information about Huguely's violent record begins to surface. UVA officials are questioned about the school's policy on student criminal behavior. The school later confirms that he attacked another lacrosse player. Police admit that there is no system to notify school officials when a student is arrested in Charlottesville or Albemarle County.

Credit: The Murder of Yeardley Love and Trial of George Huguely V. A Timeline | TIME.com

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DOMESTIC VIOLENCE - "ANGELA"

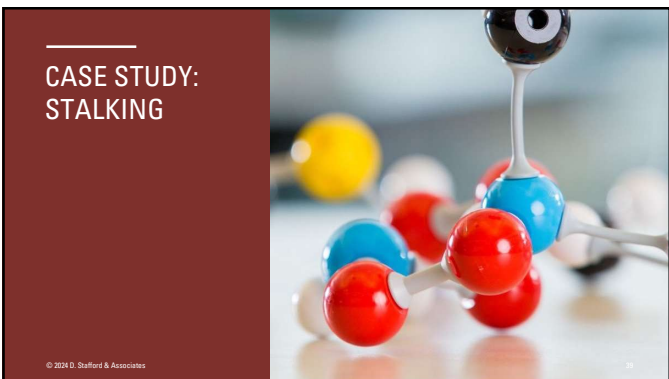
"Angela" is a college employee who works in food service reports to work for her shift. Angela sees a campus police officer, who is grabbing a late, lunch and asks to speak with her. Angela complains of just being in a situation where she feels unsafe. She reports being 7 ½ months pregnant.

She stated she was taking a nap in her trailer when she heard her boyfriend come in. She said that he poured something on the bed and then before she knew it, the bed was on fire.

She struggled to get out of bed, but when she did, she saw that the bed was engulfed. As she fled the trailer, she saw her boyfriend's truck leaving the property. Given that her cell phone did not have coverage at the trailer, and she didn't have a car of her own, she grabbed her work things and walked the mile to the main road. She was able to call a coworker to come get her and bring her to work. She reports being frightened for her baby and unsure of what to do.

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STALKING-“JP”

JP is a second-year student at ABC University. He is majoring in Biology and in one of his classes, is assigned to a lab group consisting of him and four other students.

The lab group meets 1-2 times per week to discuss that week's lab, to discuss the reading, and to plan for the end of the year project the group must complete.

Each time the group meets, they hug. JP thinks this is fabulous and enjoys the hugs very much. He likes the people in his group and welcomes the time they spend together each week.

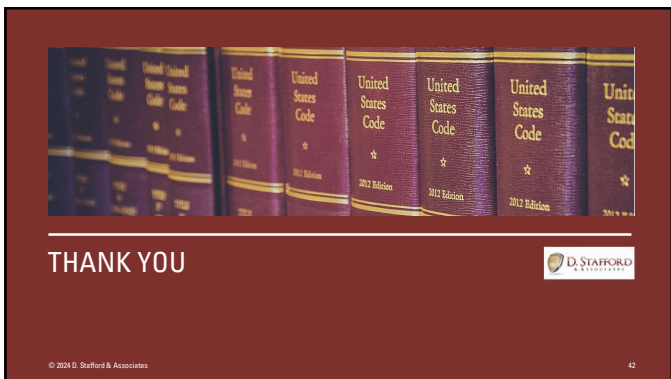
When JP is around campus, he often sees the people from his group. He has grown very fond of one of the group members in particular-Tyler. JP begins showing up where Tyler is and often interrupts Tyler when he is studying or working out. Tyler opened his dorm room door the other day to see JP sitting on the floor and when he asked him what he was doing, he said he was just dropping something off to him.

Tyler has become increasingly uncomfortable with JP and has gone so far as to change his routine but still keeps running into JP. Tyler tells the other group members, and they say it's "sweet" and that JP must have a crush on Tyler. Tyler does not like the contact and hopes it will stop soon.

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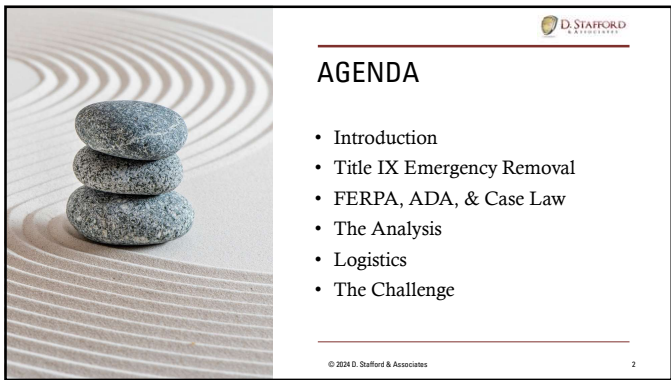


THANK YOU

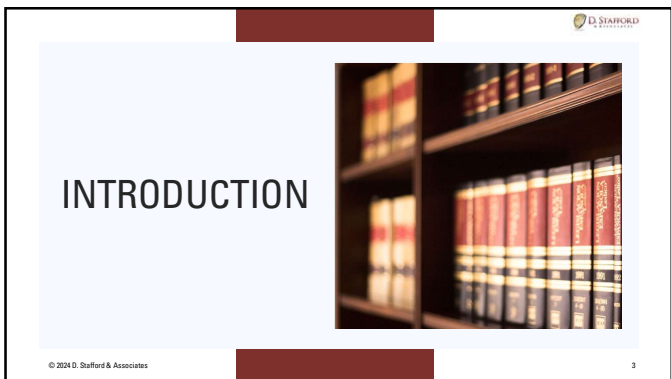
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Is a safety & risk analysis the same as a violence risk assessment?



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VIOLENCE RISK ASSESSMENT

“Conducted by appropriately trained mental health professionals, for determining the probability of violence being perpetrated by a particular individual, in a particular environment, often in a correctional institution, locked mental health facility, or to determine the level of risk related to violence if the individual was to be released from these environments into the community.”

Cawood & Corcoran, 2020

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5



Is a safety & risk analysis the same as a threat assessment?

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6

THREAT ASSESSMENT

“A systematic, fact-based method of investigation and examination that blends the collection and analysis of multiple sources of information with published research and practitioner experience, focusing on an individual’s patterns of thinking and behavior to determine whether, and to what extent, a Subject is moving toward an attack. A threat assessment is not a final product, but the beginning of the management process. It guides a course of action to mitigate a threat of potential violence; merely identifying that someone is of moderate or higher concern, without developing a management strategy, does not complete this process and is not recommended.”

FBI, 2017

7

THREAT ASSESSMENT TEAMS

What they are:

- Multidisciplinary teams
- Non-adversarial community engagement
- Holistic approach
- Proactive and integrated case management
- Consult with Title IX

What they should not be:

- Discipline processes
- Conduct/hearing officers (Title IX or otherwise)
- Determiners of emergency removals

8

OCR TO ST. JOSEPH’S COLLEGE (NY) - JANUARY 21, 2011

“Specifically, OCR determined that the College utilized the BAC process to suspend the Student because College staff perceived her behavior as symptomatic of a mental health condition. OCR further determined that the College has only used the BAC process, in situations where it perceives that a student’s behavior are the result of a mental health condition (even if undiagnosed). OCR determined that the College has used the ‘emergency suspension’ process, which includes an SJC hearing, only when a student’s behaviors do not appear to be the result of a mental health condition.”

9



10

SAFETY & RISK ANALYSIS

- This is a case-specific approach examining the current situation to determine if an imminent and serious threat to the health or safety.
- The threat arises from the allegations of sex discrimination and justifies removals.
- The respondent has the right to notice and an opportunity to challenge the decision immediately following the removal.

There may be situations where a threat assessment is also appropriate.
The safety and risk analysis concerns a possible emergency removal.

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TITLE IX EMERGENCY REMOVAL



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§ 106.44(h) - EMERGENCY REMOVAL

“Nothing in this part precludes a recipient from removing a respondent from the recipient’s education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

This provision must not be construed to modify any rights under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, or the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq.”

13

§ 106.44(e) - PUBLIC AWARENESS EVENTS

“When a postsecondary institution’s Title IX Coordinator is notified of information about conduct that reasonably may constitute sex-based harassment under Title IX or this part that was provided by a person during a public event to raise awareness about sex-based harassment that was held on the postsecondary institution’s campus or through an online platform sponsored by a postsecondary institution, the postsecondary institution is not obligated to act in response to the information, unless it indicates an imminent and serious threat to the health or safety of a complainant, any students, employees, or other persons...”

14

§ 106.44(f)(1) - TITLE IX COORDINATOR INITIATING A COMPLAINT

“If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other person, or that the conduct as alleged prevents the recipient from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a complaint.”


15

KEY TAKEAWAYS FROM THE 2024 PREAMBLE



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INITIATION OF A COMPLAINT AND SAFETY & RISK ANALYSIS

“The Department notes that the standard a recipient will use to assess whether conduct as alleged presents an imminent and serious risk to health and safety will not differ from the assessment a recipient will make of these same considerations prior to removing a respondent under the emergency removal provision.”

89 FR 33595

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SUPPORTIVE MEASURES ARE DISTINCT FROM EMERGENCY REMOVALS

“Unlike emergency removal, supportive measures can be provided to restore or preserve a party’s access to the recipient’s education program or activity and protect the safety of the parties or the recipient’s educational environment.”

89 FR 33609

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THREATS CAN BE NON-PHYSICAL

“A serious non-physical threat to student safety may warrant the emergency removal of a respondent following an individualized assessment... The Department concludes that serious, non-physical threats can be assessed as objectively as physical threats... The Department further concludes that it is appropriate to address such serious, non-physical threats on the same basis as physical threats.”

19



NOT A BACKDOOR

“The Department appreciates the opportunity to clarify that final § 106.44(h) does not permit a recipient to permanently remove someone from its education program or activity... emergency removal is not intended to serve as a substitute for grievance procedures that would resolve underlying allegations of sex discrimination.”

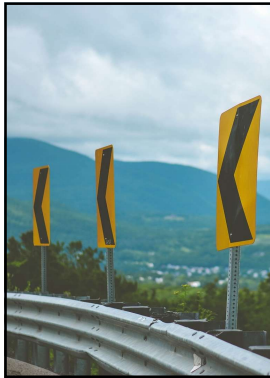
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YOU DO YOU

“...the Department continues to believe it unnecessary to define what constitutes an emergency or to specify the level of process a recipient must provide through its procedures to challenge an emergency removal, beyond providing the respondent with notice and an opportunity to challenge the decision immediately following the removal. Instead, the Department continues to leave the decision about which specific procedures to employ to a recipient’s discretion.”

21



GUARDRAILS

*“(1) undertake an individualized safety and risk analysis;
(2) determine that an imminent and serious threat to the health or safety of a complainant, or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal; and
(3) provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.”*

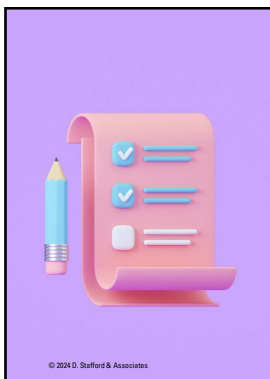
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IMMINENT NOT IMMEDIATE

“The Department agrees that there is a need to distinguish emergency situations involving ‘immediate’ threats from those in which a threat is ‘imminent.’ The Department agrees with commenters that ‘immediate’ threats involve emergency situations in which there is not time for recipients to assess risks and in which an immediate law enforcement response is necessary. In contrast, ‘imminent’ threats are those that while not active, are likely to occur soon but not immediately, and thus are appropriate for an individualized risk assessment.”

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APPLIES FOR ALL FORMS OF SEX DISCRIMINATION

“While the Department recognizes that conduct that rises to the level of an ‘imminent and serious threat to the health or safety’ of members of a recipient’s communities may often take the form of sex-based harassment, the Department declines to limit the scope of § 106.44(h) to sex-based harassment in order to give recipients flexibility to address circumstances in which conduct falls short of the definition of sex-based harassment but still poses an imminent and serious threat to the health or safety of members of a recipient’s communities.”

24



FREE SPEECH PROTECTIONS

“The Department does not anticipate that speech that simply and even strongly articulates a point of view on ethical, social, political, or religious topics would meet this standard even though others may find that speech offensive or objectionable.”

25



PARTIAL REMOVAL OPTION

“...a recipient retains discretion to remove a respondent on an emergency basis from one or more parts of its education program or activity, as long as the recipient meets the other requirements of final § 106.44(h).”

26



DIFFERENT BUT NOT IN CONFLICT

“...these final regulations may impose different requirements than Title VI or Title VII, but they do not present an inherent conflict with those statutes... Therefore, while a recipient may be able to take immediate action to address other discrimination under other laws following procedures that would not satisfy the requirements of § 106.44(h), the Department continues to believe that the emergency removal requirements in these final regulations are appropriate for addressing sex discrimination, even if that means that a recipient is required to handle different types of discrimination under different procedures.”

27



DON'T FORGET ABOUT THE ADA

“The Department acknowledges commenters’ views on § 106.44(h), including its continued recognition of a respondent’s right to an assessment and other disability-related rights under the IDEA, Section 504, and the ADA. Emergency removal under § 106.44(h) provides flexibility to address imminent and serious threats to individual safety in a recipient’s education program or activity, including threats to non-physical health, while safeguarding the rights of a respondent under applicable law.”

89 FR 33618

28



EMERGENCY REMOVAL IS NOT “RELEVANT EVIDENCE”

“...the Department appreciates the opportunity to clarify that emergency removal is not ‘relevant evidence’ that can be considered in reaching a determination under § 106.45(b)(6) and (h)(1).”

89 FR 33618

29



MAY BE APPLICABLE TO EMPLOYEES

“First, if administrative leave is used as a supportive measure under §106.44(g), the recipient must comply with the procedural protections in that provision. Because §106.44(g)(2) requires recipients to ensure that supportive measures do not unreasonably burden a party, administrative leave as a supportive measure would generally be paid. Second, if a recipient seeks an emergency removal under §106.44(h), then those procedural protections apply.”

89 FR 33619

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FERPA



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FERPA HEALTH & SAFETY EXCEPTION

“In making a determination under paragraph (a) of this section, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an **articulable and significant threat to the health or safety of a student or other individuals**, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.”

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FERPA - ARTICULABLE & SIGNIFICANT THREAT

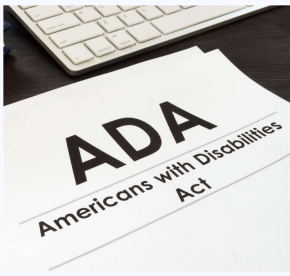
“The phrase ‘articulable and significant threat’ means that a school official is able to explain, based on all the information available at the time, what the significant threat is under § 99.36 when he or she makes and records the disclosure.”

© 2024 D. Stafford & Associates 36 FERPA FAQs - Exceptions - Health and Safety Emergency

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ADA



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OCR TO SPRING ARBOR - DECEMBER 16, 2010

“Under Section 504, the ‘direct threat’ standard applies to situations where a university proposes to take adverse action against a student, whose disability poses a significant risk to the health or safety of others. A significant risk constitutes a high probability of substantial harm and not just a slightly increased, speculative, or remote risk. In determining whether a student poses a direct threat, the university must make an individualized assessment, based on a reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will sufficiently mitigate the risk. The student must not be subject to adverse action on the basis of unfounded fear, prejudice, and stereotypes.”

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SPRING ARBOR, CONTINUED

“Under OCR policy, nothing in Section 504 prevents educational institutions from addressing the dangers posed by an individual who represents a ‘direct threat’ to the health and safety of others, even if such an individual is a person with a disability, as that individual may no longer be qualified for a particular educational program or activity under 34 C.F.R. § 104.3(k)(3). Following a proper determination that a student poses a direct threat, an educational institution may require as a precondition to a student’s return that the student provide documentation that the student has taken steps to reduce the previous threat (e.g., followed a treatment plan, submitted periodic reports, granted permission for the institution to talk to the treating professional). However, educational institutions cannot require that a student’s disability-related behavior no longer occur, unless that behavior creates a direct threat that cannot be eliminated through reasonable modifications.”

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ADA REGULATIONS - 2011

“Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services...”

42 U.S.C. § 35.104

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CASE LAW



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GOSS V. LOPEZ

“Generally, notice and hearing should precede the student’s removal from school, since the hearing may almost immediately follow the misconduct, but if prior notice and hearing are not feasible, as where the student’s presence endangers persons or property or threatens disruption of the academic process, thus justifying immediate removal from school, the necessary notice and hearing should follow as soon as practicable.”

Goss v. Lopez, 419 U.S. 565, 566 (1975)

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PICOZZI V. SANDALOW

“In this case, the deprivation was similarly limited. Sandalow neither imposed nor sought formal disciplinary sanctions. Neither did he permanently and finally bar plaintiff’s access to legal education. He simply placed a temporary and preliminary hurdle in Picozzi’s path, pending the outcome of an administrative hearing. He made it clear to Picozzi that the University was ready to move ahead with a hearing at his convenience.”

Picozzi v. Sandalow, 623 F. Supp. 1571, 1577 (E.D. Mich. 1986)

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HILL V. MICHIGAN STATE UNIVERSITY

“A riot of several thousand students was a threat to the physical facility, the faculty, and students of MSU. Although the riot was over by the time June suspended Hill on April 16 (as the fire was over before Picozzi sought to re-enroll), June perceived Hill to be a student who, despite being given warnings and being placed on probation, continued his threatening and destructive behavior. Thus, Hill presented himself as a law to himself — a destructive person. Furthermore, the risk of an unwarranted suspension was low given the police evidence of Hill’s participation and his disciplinary record at the school. The Court concludes the school’s interest in the safety of persons and property and its goal of educating students each hour and each day that school is in session outweigh Hill’s interest in being able to live on campus and attend class between April 16 and April 21.”

Hill v. Board of Trustees of Michigan State University, 182 F. Supp. 2d 621, (W.D. Mich. 2001)

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HAIKAK V. UMASS AMHERST

“The seven-month delay is a matter of concern. It is true that a university tends, to some extent, to go into ‘sleep mode’ over the summer. But due process is a twelve-month obligation. If the University wishes to avoid a risk of a due process violation, not to mention a violation of its own CSC, it obviously needs to establish a mechanism that allows a prompt response to complaints of this sort over the summer months.”

Haidak v. Univ. of Mass. At Amherst, 299 F. Supp. 3d 242, 267 (D. Mass. 2018)

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THE ANALYSIS



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WHAT IS A THREAT?

“A threat is an expression of intent to do harm or act out violently against someone or something. A threat can be spoken, written, or symbolic - for example, motioning with one’s hands as though shooting at another person.”

O’Toole, 2000

“Perceived possibility of harm (i.e., potential danger)”

Meloy & Hoffman, 2021

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THREE THREAT CATEGORIES

Direct Threat	Veiled Threat	Conditional Threat
Clear statement of an intent to commit harm without any conditions or recourse for the intended target	Indirect, vague, or subtle statements suggesting potential harm without conditions stated to avoid the danger	Threatening statements that portend harm with conditions that can avoid a violent outcome

Meloy & Hoffman, 2021

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FOUR AREAS TO EXAMINE



COMPLAINT



THREAT-RELATED
BEHAVIORS




THREAT
ENHANCERS




THREAT
MITIGATORS

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THE COMPLAINT



What is the substance and status of the complaint?



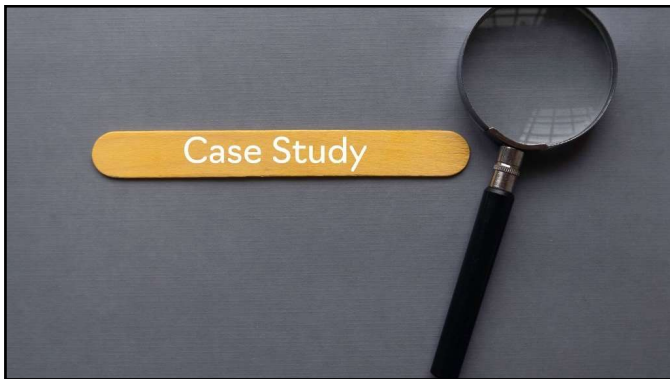
What are the initial threat-related concerns?



Is there an active threat that requires immediate action?

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Case Study

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THREAT-RELATED BEHAVIORS

- What are the threat-related behaviors that you learned when examining the complaint?
- What other information exists to cause concern for the health and safety of others?
 - Remember: You are not investigating the allegations. You are collecting information specific to any immediate threat.

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THREAT ENHANCERS

- What are the existing realities about the person of concern and the case that may increase the risk of violence?
- What are the behaviors arising from the allegations that are accelerating and causing an elevated concern?
- What are the possible triggers that could precipitate impulsive/reactive violence?
- What are the possible stressors that are causing tension or anxiety?

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THREAT MITIGATORS

- What are the protective factors that may prevent the person of concern from committing an act of violence?
- What does their support network look like?
- What circumstances exist to reduce the likelihood of violence?

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DOCUMENTATION - FILE CONTENTS

- Document that identifies:
 - Presenting issue
 - Threat-related concerns
 - Threat enhancers
 - Threat mitigators
 - Rationale
- Complaint
- Supporting documentation

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EXAMPLES & CONSIDERATIONS

- What is the action you can take that will mitigate the threat with the least harm to all involved?
- What conditions may be imposed?

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LOGISTICS









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PROCESS FLOWCHART

 Is there a concern about an imminent threat?	No - Do not conduct an analysis Yes - Conduct the analysis
 Analysis - Is there an imminent threat?	No - No further action with this process Yes - Proceed to emergency removal
 Determine the emergency removal	Conditions
 Challenge	Review of the challenge and determination
 Monitoring	Who is responsible for ensuring the action is imposed and monitored?
 Review - adjust as needed	As the case proceeds, review to determine if the emergency removal is still needed to address the threat

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Who should manage Safety & Risk Analyses?



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CHARACTERISTICS OF EFFECTIVE EMERGENCY REMOVAL PERSONNEL

Empathetic	Direct, firm, and kind	Calm and discreet
Objective	Organized with good follow through	Able to adjust and adapt

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PLAN

- Timing
- Attendees
- Location
- Letter and resource documents
- Contingency plans

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THE LETTER

{date} Case Number: {case number}

{respondent's name}
 {respondent's address}

Dear {respondent}:

I have received information regarding your alleged involvement in a {incident date} at {incident location} involving {parties}. The incident is described as {description}.

As a result of this information, and in accordance with {institution}'s {policy name}, I am imposing an {Interim Suspension, Interim Removal from Housing, etc.}. Effective {date and time}, {identify the restriction}.

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THE LETTER, CONTINUED

An interim action is not a sanction. This action is preliminary in nature and is utilized when information indicates that your presence on campus poses an imminent and serious threat to the health and safety of others. It is in effect until the matter is resolved through the institution's resolution process.

You will face additional policy allegations if you do not comply with this administrative action.

You may challenge this decision in writing by {provide direction as to how to submit it} no later than {time} on {date}. Your challenge will be reviewed, and you will be notified of the decision.

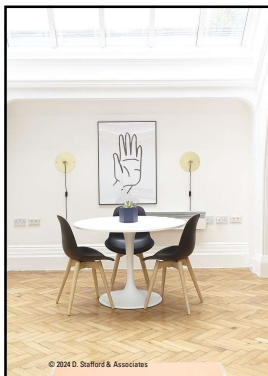
Please do not hesitate to contact me at {contact information} if you have any questions.

Sincerely,

{signature, name, and position}

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PHYSICAL ENVIRONMENT



- Other attendees
- Furniture
- Lighting
- Displayed items
- Coping tools
- Clothing
- Safety measures

65

VIRTUAL ENVIRONMENT



- Not ideal
- Other attendees
- Background
- Camera on
- Privacy
- Safety measures

66



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THE MEETING

- Explain but not debate
- Treat the person with dignity
- Be patient
- Help to problem solve
- Know where they are going

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COMPLICATIONS AHEAD

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THE CHALLENGE


Appeal

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POST-REVIEW CHALLENGE




Emergency removal is still in effect



Notice and opportunity to challenge



Not a new analysis nor a substitute of judgment



It is a review of the analysis and any new information from the respondent

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THANK YOU



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SEX DISCRIMINATION RESPONSE





1

What are the characteristics of a great Title IX team and process?



2

INTAKE

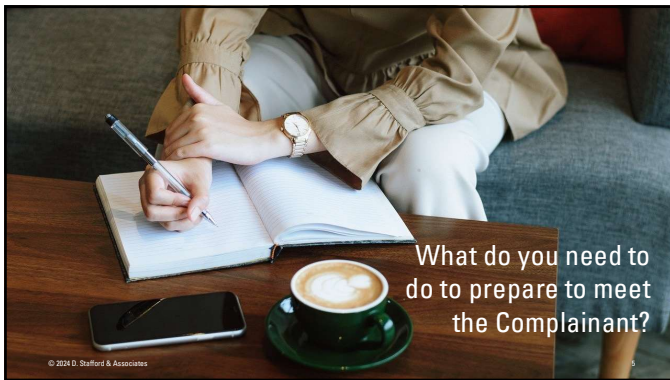


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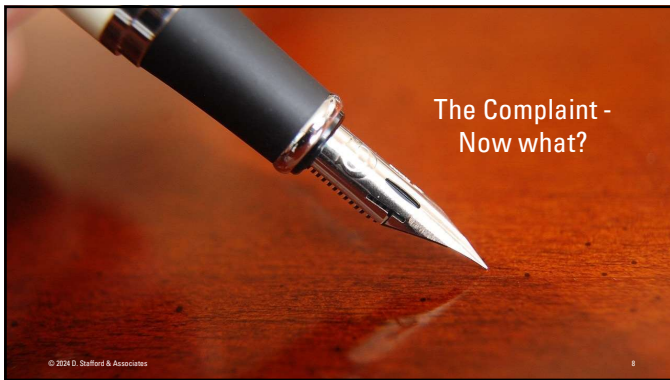
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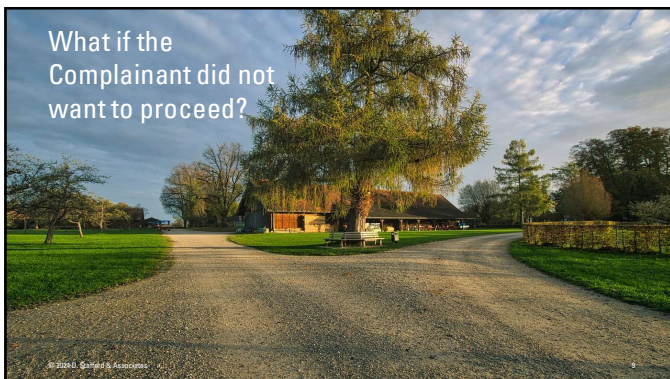
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EIGHT FACTORS TO CONSIDER


Complainant's request	Safety concerns	Risk of additional acts	Severity of allegation
Age and relationship	Scope and pattern	Evidence	Alternatives to resolve

§ 106.44(f)(1)(v)(A)

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10



Temperature Check



- Are there grounds for dismissal?
- What are the alleged violations?
- Should there be an emergency removal/administrative leave?

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§ 106.45(d)(1)(i-iv) – DISMISSAL OF A COMPLAINT





Unable to identify respondent	Respondent is not participating or employed
May dismiss if..	
Complainant voluntarily withdraws complaint	Conduct, if proven, would not constitute sex discrimination

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§ 106.44(h) – EMERGENCY REMOVAL







-  Imminent and serious threat to the health or safety of any persons
-  Arises from the allegations
-  Provide notice and opportunity to challenge immediately following the removal
-  Cannot modify any rights under IDEA, Section 504, or the ADA

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§ 106.44(k) – INFORMAL RESOLUTION

-  Allowed for employee/student in postsecondary
-  Discretion to offer or decline
-  Voluntary for parties
-  Provide notice
-  Facilitator must not be investigator or decisionmaker
-  Can include restrictions

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There's nothing "informal" about "informal resolution."

Think "Alternative Dispute Resolution" or "Restorative Practices"

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NOTICE




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TWO GRIEVANCE PROCEDURES

Procedure A (106.45)

- Sex discrimination
- Employee on employee sex-based harassment
- K-12 complaints
- Retaliation

Procedure B (106.46)

- Sex-based harassment involving student complainants or student respondents at postsecondary institutions

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What does your first outreach to the Respondent look like?



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18

Slide 17

C20 I keep moving this around

Cathy Cocks, 2024-05-02T18:28:03.404

  **COMPARING NOTICE**

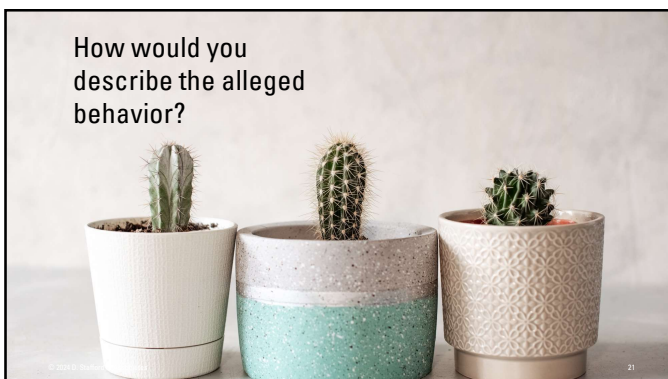
	§106.45(c) not required to be in writing	§106.46 (c) required to be in writing
Grievance Procedures	YES	YES
"Sufficient information" (parties, conduct, date, location)	YES	YES
Statement that retaliation prohibited	YES	YES
Access to relevant evidence	YES	YES
Respondent is presumed not responsible		YES
Right to advisor of choice		YES
Prohibition on false statements		YES

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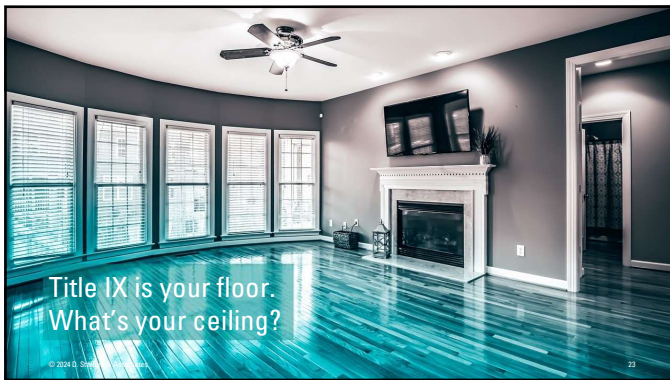
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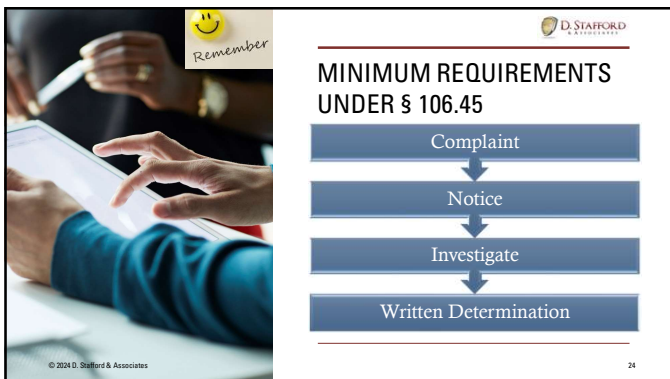
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§ 106.45(f) – COMPLAINT INVESTIGATION

Investigator gathers evidence

Parties present fact witnesses and evidence

Investigator reviews evidence for relevancy

Investigator provides access to relevant evidence

Parties have a reasonable opportunity to respond

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§ 106.45(b)(7) – RELEVANT AND NOT OTHERWISE IMPERMISSIBLE EVIDENCE

Privileged information

Physician/psychologist records

Complainant's sexual interest or prior sexual conduct

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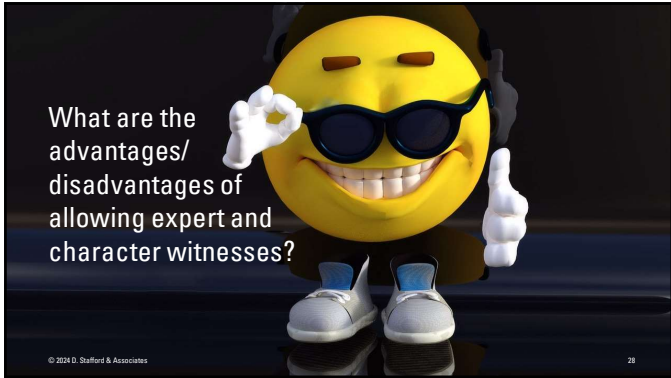
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ADMISSIBILITY OF WITNESSES

Always admissible	Discretionary admissibility	
Fact Witness § 106.45(f)(2)	Expert § 106.46(e)(4)	Character Preamble

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Procedure A:
What is a reasonable
opportunity to respond
to the evidence?

§ 106.45(f)(4)(ii)

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Procedure B:
What is a reasonable opportunity to review
and respond to the evidence?

§ 106.46(e)(6)(ii)

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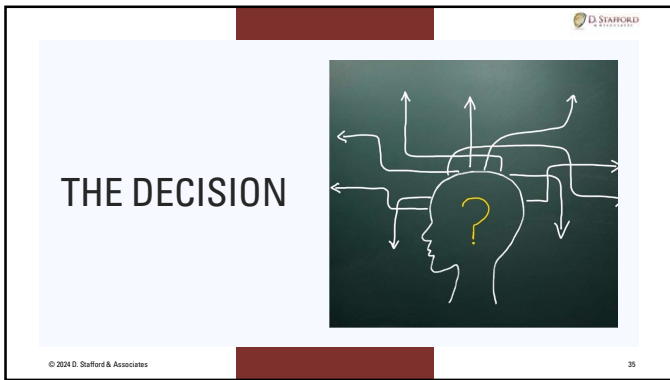
**PROCEDURE B:
ASSESSING
CREDIBILITY**

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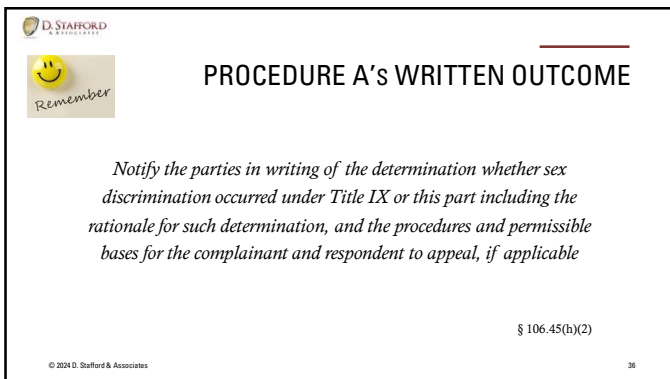
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36

PROCEDURE B'S WRITTEN OUTCOME

Description of alleged sex-based harassment

Policies and procedures used to evaluate allegations

Evaluation of evidence and determination

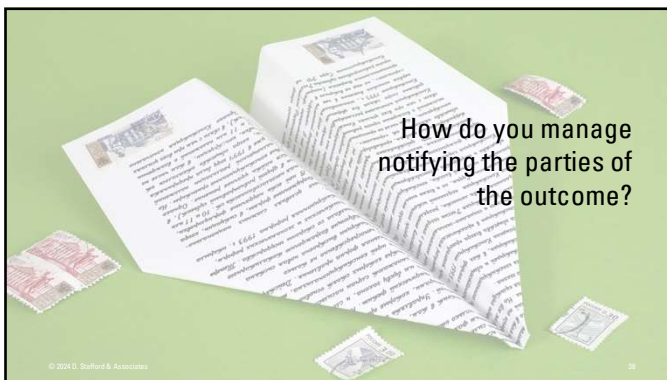
Disciplinary sanctions or remedies if sex-based harassment occurred

Appeal procedures

§ 106.46(h)

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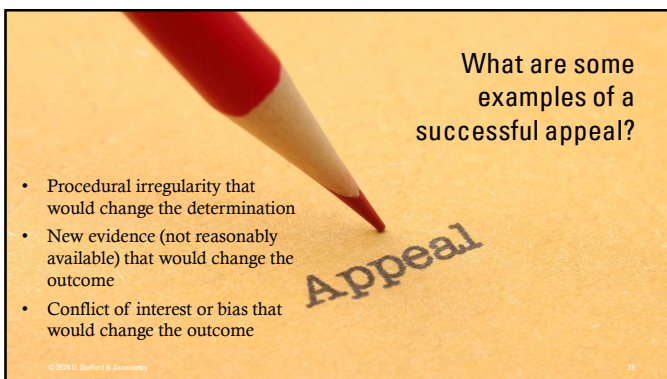
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How do you manage notifying the parties of the outcome?

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What are some examples of a successful appeal?

- Procedural irregularity that would change the determination
- New evidence (not reasonably available) that would change the outcome
- Conflict of interest or bias that would change the outcome

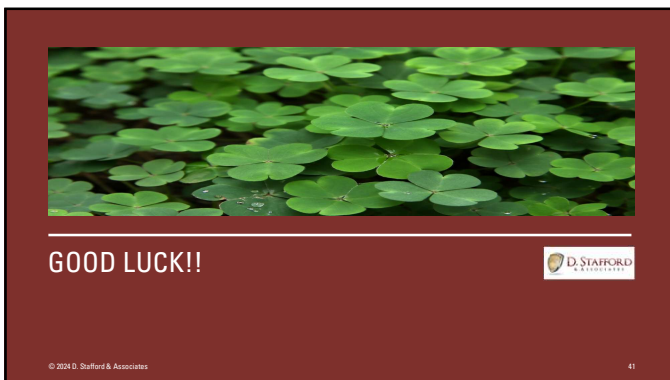
Appeal

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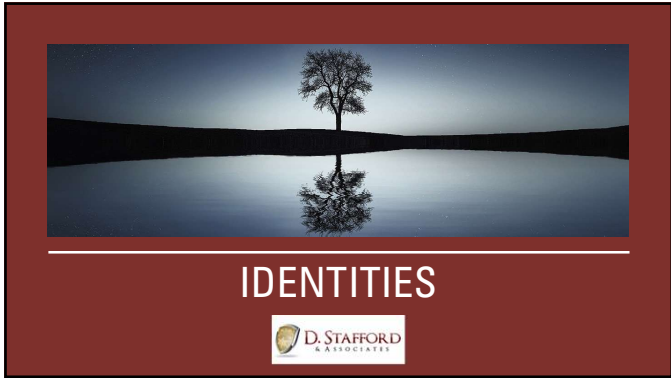
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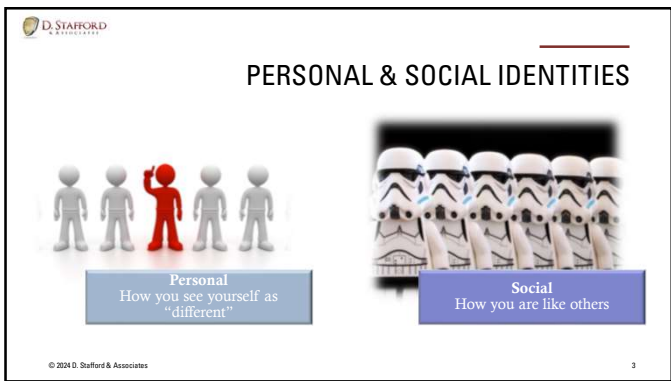
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1



2



3

THE BIG 8 SOCIAL IDENTITIES

Age	Race	Gender	Ability
Religion	Class	Immigration Status	Sexual Orientation

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4

In-Group

- A group that you identify as being a member
- Have positive views of each other
- Give preferential treatment

Out-Group

- Anyone that doesn't belong to your group
- Viewed more negatively
- Seen as inferior to your group

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5

THE ROLE OF SOCIAL IDENTITIES IN THE PERCEPTION OF OTHERS

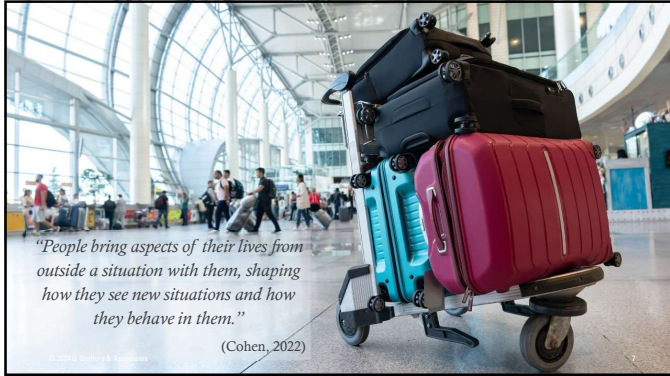
Award power or deny access to power

Justify differences in outcomes and abilities

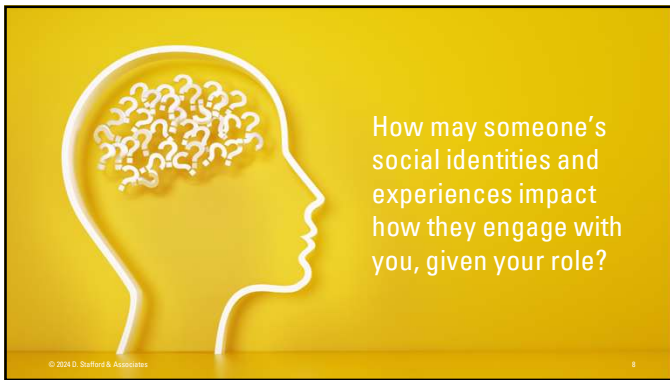
Once categorized into a particular group, it is nearly impossible to move

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6



7



8



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FUNDAMENTAL ATTRIBUTION ERROR

“an impulsive cognitive bias that leads us to see the behavior of others as emanating from some underlying essences — who the person is—rather than from the situation they are in.”

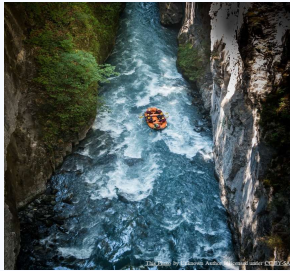
(Cohen, 2022)

- Overemphasize personal characteristics regardless of actual knowledge of the person's character
- Ignore situational factors
- People do bad things because they are bad people
- We often rationalize our own unethical behavior by blaming the situation

(University of Texas, 2022)

10

STRATEGIES




11

CULTURAL HUMILITY



12



CULTURAL HUMILITY

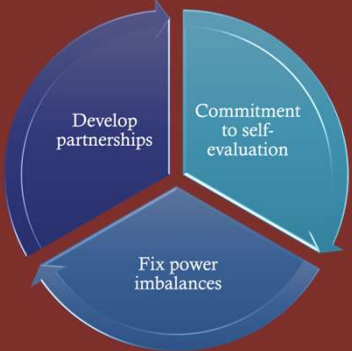
“the ability to maintain an interpersonal stance that is other-oriented (or open to the other) in relation to aspects of cultural identity that are most important to the [person]”

(Hook et al., 2013)

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THREE ASPECTS OF CULTURAL HUMILITY



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COMMITMENT TO SELF-EVALUATION

“Willingness to act on the acknowledgment that we have not and will not arrive at a finish line is integral to this aspect of cultural humility as well. Understanding is only as powerful as the action that follows.”

(Waters, 2013)

- Never stop learning
- Be humble and flexible
- Look at yourself critically
- If you don't know, acknowledge it

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FIX POWER IMBALANCES

"Both people must collaborate and learn from each other for the best outcomes. One holds power in scientific knowledge, the other holds power in personal history and preferences."

(Waters, 2013)

- Fix power imbalances where none ought to exist
- Recognizing that each person brings something different to the situation helps us see the value of each person
- The party is the expert on their life
- You bring a body of knowledge; the party has an understanding outside of your scope of knowledge

16

DEVELOP PARTNERSHIPS

"Cultural humility, by definition, is larger than our individual selves — we must advocate for it systemically."

(Waters, 2013)

- Develop partnerships with people and groups who support and advocate for others
- Break down silos

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PSYCHOLOGICALLY ATTUNED COMMUNICATIONS



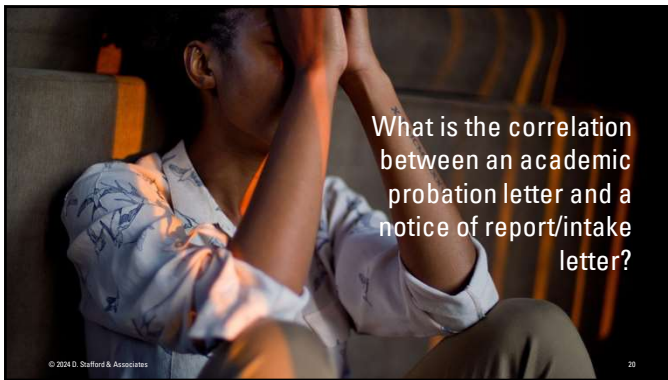
18

BRADY'S RESEARCH ON ACADEMIC PROBATION LETTERS

"Surveying student affairs officers at various colleges, she found that most of them want students to feel they belong on campus. But when [Shannon] Brady looked at the actual impact of the letters they sent to inform students that they were underperforming, she found that the students' overwhelming reaction was shame. Shame is the bane of belonging. It makes people want to 'sink into the floor and disappear,' according to clinical psychologist June Tangney, and discourages people from seeking the help they need and from discovering that many others have 'been there' too."

(Cohen, 2022)

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WEBSITE - LEADING WITH LEGALESE (NOT PAC)


[Institution] complies with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, and is an equal opportunity institution that does not discriminate on the basis of race, color, sex (including pregnancy), national origin, age (40 or older), disability, veteran status or genetic information.

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WEBSITE - LEADING WITH COMMITMENT (PAC)

Title IX and Violence Prevention

 Rollins College is committed to creating and maintaining a safe, healthy, and respectful community in which students, faculty, and staff can work together in an atmosphere free from discrimination on the basis of sex, gender, gender identity, gender expression, sexual orientation, and pregnancy/pregnancy-related conditions.

Sexual harassment (which includes sexual assault, dating violence, domestic violence, and stalking) is a form of sex discrimination. Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex in any federally funded education program or activity. Sexual harassment is also prohibited under Title VII of the Civil Rights Act of 1964, other applicable statutes, and College policy.


Title IX states that "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." Rollins does not discriminate on the basis of sex in its educational program or activity or in the context of employment.

The Office of Title IX leads Rollins' efforts to prevent and respond to discrimination on the basis of sex, including sexual harassment.

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INTAKE - TRANSACTIONAL (NOT PAC)

Dear Betty:

This letter is to inform you that a Title IX report has been submitted identifying you as a victim. In compliance with Title IX, please call 999-999-9999 to schedule a meeting with the Title IX Coordinator to discuss the grievance procedures, supportive measures, and your rights and options.

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INTAKE - HELPING (PAC)

Dear Betty:

I am the Title IX Coordinator. I have received a report of an incident that may be a violation of [institution]'s [policy name]. The report indicated that you were the individual harmed. Therefore, I would like to meet with you to discuss supportive measures I can provide, the process for addressing such reports and your options for participating in the process.

I looked at your schedule to find a time that we may talk that does not interfere with your class schedule. Please come to my office, located at ..., at 9:00 am on Tuesday, May 4, 2023.

I am including a link to our resources and policy so you can review it before our meeting.

You are welcome to bring a support person or advisor to the meeting. Please contact me if you need any accommodations or assistance during this meeting. This meeting is not an investigative interview. Instead, it is an opportunity for us to discuss your options and resources.

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What other ways can you use Psychologically Attuned Communications with Title IX and the Clery Act?



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Closing Thoughts




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THANK YOU



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