

## Brief Overview of Key Provisions of the Department of Education’s 2024 Title IX Final Rule\*

Provision	2024 Final Rule
<b><i>Definitions</i></b> <b>(§ 106.2)</b>	Adds and revises definitions, including complaint, complainant, respondent, and party; confidential employee; disciplinary sanctions; pregnancy or related conditions; relevant; remedies; retaliation and peer retaliation; sex-based harassment; and supportive measures.
<b><i>Effect of other requirements</i></b> <b>(§ 106.6)</b>	Clarifies that a recipient must comply with Title IX and the final regulations in the event of a conflict with State law or FERPA, and that Title IX and the final regulations do not override any legal right of a parent, guardian, or other authorized legal representative to act on behalf of a complainant, respondent, or other person.
<b><i>Administrative requirements</i></b> <b>(§ 106.8)</b>	Clarifies requirements for designating a Title IX Coordinator, adopting and publishing nondiscrimination policies and grievance procedures, and providing a notice of nondiscrimination. (§ 106.8(a)–(c)). Clarifies which individuals a recipient must train on Title IX and provides requirements for such training, which vary based on an individual’s role. (§ 106.8(d)). Requires a recipient to protect the rights of parties who are students with disabilities. (§ 106.8(e)). Clarifies which records a recipient must maintain for at least seven years. (§ 106.8(f)).
<b><i>Scope of sex discrimination</i></b> <b>(§§ 106.2, 106.10)</b>	Clarifies that sex discrimination includes discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. (§ 106.10). Also clarifies that sex-based harassment includes harassment on these bases and further clarifies when sex-based harassment creates a hostile environment. (§ 106.2).
<b><i>Application of Title IX</i></b> <b>(§ 106.11)</b>	Clarifies that Title IX applies to all sex discrimination occurring under a recipient’s education program or activity in the United States and provides additional detail about what conduct is covered. Also clarifies that a recipient has an obligation to address a sex-based hostile environment under its education program or activity even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient’s education program or activity or outside the United States.
<b><i>Sex separation and different treatment</i></b> <b>(§ 106.31(a)(2))</b>	Clarifies that a recipient must not separate or treat any person differently based on sex in a manner that subjects them to more than de minimis harm, except in the limited specified circumstances permitted by Title IX. Recognizes that preventing a person from participating in a recipient’s education program or activity consistent with their gender identity subjects that person to more than de minimis harm.
<b><i>Parental, family, or marital status; pregnancy or related conditions</i></b> <b>(§§ 106.21(c), 106.40, 106.57)</b>	Prohibits a recipient from treating students, employees, or applicants differently based on sex in connection with parental, family, or marital status. (§§ 106.21(c), 106.40, 106.57). Prohibits discrimination against students, employees, or applicants, based on pregnancy or related conditions, and requires recipients to take actions to prevent sex discrimination and ensure equal access to the recipient’s education program or activity, such as by providing reasonable modifications for students, reasonable break time for lactation for employees, and lactation space for students and employees. (§§ 106.40(b)(3) and 106.57(e)). Prohibits schools from requiring documentation from students to obtain reasonable modifications or other actions unless such documentation is necessary and reasonable.

\* The final regulations make amendments to 34 C.F.R. 106.1 et seq. For a more complete explanation of the final regulations, please see the Department’s 2024 Notice of Final Rule on Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, which is available [here](#).

	(§ 106.40(b)(3)(vi)). Clarifies a recipient’s obligations to inform students of rights related to pregnancy or related conditions. (§ 106.40(b)(2) and (b)(3)(i)).
<b>(§ 106.44)</b>	Sets out the steps a recipient must require its Title IX Coordinator to take when the recipient has knowledge of conduct that reasonably may constitute sex discrimination, including offering and coordinating supportive measures, when to initiate a complaint, and taking prompt and effective action to end sex discrimination and prevent its recurrence. This provision also permits a recipient to offer an informal resolution process except where a complaint includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student or if such a process would conflict with Federal, State, or local law. In addition, this provision prohibits a recipient from disclosing personally identifiable information obtained while complying with this part, except in limited circumstances.
<b><i>Grievance procedures for all sex discrimination complaints</i></b> <b>(§ 106.45)</b>	Requires grievance procedures for all sex discrimination complaints that include the following requirements: <ul style="list-style-type: none"> <li>• Equitable treatment of complainants and respondents. (§ 106.45(b)(1)).</li> <li>• Conflict-of-interest and bias-free Title IX Coordinators, investigators, and decisionmakers. (§ 106.45(b)(2)).</li> <li>• Presumption that the respondent is not responsible until a determination is made. (§ 106.45(b)(3)).</li> <li>• Reasonably prompt timeframes for all major stages. (§ 106.45(b)(4)).</li> <li>• Reasonable steps to protect privacy of parties and witnesses during the grievance procedures. (§ 106.45(b)(5)).</li> <li>• Objective evaluation of relevant evidence and the exclusion of impermissible evidence. (§ 106.45(b)(6)–(7)).</li> <li>• If a recipient adopts procedures that apply to the resolution of only some complaints, articulate principles for how the recipient will determine which procedures apply. (§ 106.45(b)(8)).</li> <li>• Notice of allegations to the parties. (§ 106.45(c)).</li> <li>• Permitted dismissals in certain circumstances so long as the recipient offers an appeal and, as appropriate, supportive measures, and takes other steps to ensure sex discrimination does not continue or recur. (§ 106.45(d)).</li> <li>• Permitted consolidation of complaints in certain circumstances. (§ 106.45(e)).</li> <li>• Burden on the recipient to gather evidence and decide what is relevant or impermissible. (§ 106.45(f)(1), (3)).</li> <li>• Equal opportunity for the parties to present fact witnesses and other evidence. (§ 106.45(f)(2)).</li> <li>• Equal opportunity for the parties to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence (and if the recipient provides access to a description, it must provide access to the underlying evidence upon the request of any party); a reasonable opportunity to respond; and a requirement that the recipient take reasonable steps to prevent and address unauthorized disclosures. (§ 106.45(f)(4)).</li> <li>• A process for assessing credibility when credibility is in dispute and relevant. (§ 106.45(g)).</li> <li>• Use of a preponderance of the evidence standard of proof to determine whether sex discrimination occurred, unless the clear and convincing evidence standard is used in all other comparable proceedings, in which case that standard may be used. (§ 106.45(h)).</li> <li>• If it is determined that sex discrimination occurred, remedies for the complainant or others; disciplinary sanctions for those found responsible; and other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur. (§ 106.45(h)(3)).</li> </ul>

	<ul style="list-style-type: none"> <li>• An appeal process that is at least the same as that offered in comparable proceedings. (§ 106.45(i)).</li> <li>• Equal application of any additional provisions to the parties. (§ 106.45(j)).</li> <li>• The option for parties to participate in informal resolution processes, if available. (§ 106.45(k)).</li> </ul>
<p><b><i>Additional requirements for grievance procedures for sex-based harassment complaints involving a postsecondary student (§ 106.46)</i></b></p>	<p>Requires a postsecondary institution’s grievance procedures to include the § 106.45 requirements, as well as additional requirements for sex-based harassment complaints involving a student party that include the following:</p> <ul style="list-style-type: none"> <li>• Written notice to the parties of allegations, dismissal, delays, meetings, and proceedings. (§ 106.46(c)–(e)).</li> <li>• Equal opportunity for each party to have an advisor of the party’s choice. (§ 106.46(e)(2)).</li> <li>• Equal opportunity to access the relevant and not otherwise impermissible evidence or an investigative written report (and if the institution provides access to an investigative report, it must provide access to the underlying evidence upon the request of any party); a reasonable opportunity to respond; and a requirement that the recipient take reasonable steps to prevent and address unauthorized disclosures. (§ 106.46(e)(6)).</li> <li>• A process for assessing credibility when credibility is in dispute and relevant, including questioning a party or witness during individual meetings or in a live hearing. (§ 106.46(f)).</li> <li>• Where a recipient opts to provide a live hearing, procedures for such a hearing. (§ 106.46(g)).</li> <li>• Written determination provided simultaneously to the parties. (§ 106.46(h)).</li> <li>• An opportunity to appeal a determination. (§ 106.46(i)).</li> </ul>
<p><b><i>Retaliation (§ 106.71)</i></b></p>	<p>Clarifies that a recipient must prohibit retaliation, including peer retaliation, and must respond to conduct that reasonably may constitute retaliation using the same procedures it uses for other forms of sex discrimination. (§ 106.71).</p>

## Summary of Key Provisions of the Department of Education’s 2024 Title IX Final Rule\*

**This chart summarizes the major provisions of the 2024 amendments and also summarizes how these provisions differ from the 2020 amendments. The 2020 amendments remain operative and binding until the new regulations go into effect on August 1, 2024.**

Issue	2024 Final Rule
<b><i>Clarifying Scope of Sex Discrimination</i></b> <b><i>(§ 106.10)</i></b>	The final regulations clarify that sex discrimination includes discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
<b><i>Defining Sex-Based Harassment</i></b> <b><i>(§ 106.2)</i></b>	<p>Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in § 106.10, when it takes the form of:</p> <ul style="list-style-type: none"> <li>• quid pro quo harassment (e.g., when an employee conditions a benefit on a person’s participation in unwelcome sexual conduct);</li> <li>• specific offenses (e.g., sexual assault, dating violence, domestic violence, and stalking); and/or</li> <li>• hostile environment harassment.</li> </ul> <p>The final regulations define hostile environment harassment as 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<sup>†</sup> education program or activity.</p> <p><i>The 2020 amendments,<sup>‡</sup> at § 106.30(a), cover sexual harassment, but do not address other forms of sex-based harassment and prohibit unwelcome sex-based conduct only if it is “so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.”</i></p>
<b><i>Addressing All Sex Discrimination Occurring Under the Recipient’s Program or Activity in the United States</i></b> <b><i>(§ 106.11)</i></b>	<p>Title IX requires a recipient to address all sex discrimination occurring under its education program or activity in the United States. Under the final regulations, conduct that occurs under a recipient’s education program or activity includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>• Conduct that occurs in any building owned or controlled by a student organization that is officially recognized by a postsecondary institution; and</li> <li>• Conduct that is subject to the recipient’s disciplinary authority.</li> </ul>

\* The final regulations make amendments to 34 C.F.R. 106.1 et seq. For a more complete explanation of the final regulations, please see the Department’s 2024 Notice of Final Rule on Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, which is available [here](#).

<sup>†</sup> A recipient is an elementary school, secondary school, postsecondary institution, or other entity that operates an education program or activity and receives Federal funds from the Department.

<sup>‡</sup> “2020 amendments” refers to provisions in the Title IX regulations that were amended in 2020.

	<p>Under the final regulations, a recipient is required to address a sex-based hostile environment in its education program or activity in the United States, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient’s education program or activity or outside the United States.</p> <p><i>The 2020 amendments, at § 106.44(a) do not address a recipient’s obligation to address a sex-based hostile environment in its education program or activity in the United States, even where some conduct contributing to the hostile environment may have occurred outside of the recipient’s education program or activity, or outside of the United States.</i></p>
<p><b>Responding to Sex Discrimination (§ 106.44(a))</b></p>	<p>A recipient with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must respond promptly and effectively. (§ 106.44(a)(1)).</p> <p>A recipient must also take the actions outlined in § 106.44(b)–(k) to address sex discrimination in its education program or activity. (§ 106.44(a)(2)).</p> <p><i>The 2020 amendments, at §§ 106.30(a) and 106.44(a), require a recipient to respond only when it has “actual knowledge” of allegations of “sexual harassment,” and only in a manner that is not deliberately indifferent. The 2020 amendments provide that postsecondary institutions have “actual knowledge” when the Title IX Coordinator and employees with authority to institute corrective measures have notice of allegations of sexual harassment, while elementary schools and secondary schools have “actual knowledge” when any employee has notice of such allegations.</i></p>
<p><b>Ensuring Recipients Learn of Possible Sex Discrimination (§ 106.44(c))</b></p>	<p>The final regulations obligate a recipient to require certain employees to notify the Title IX Coordinator when the employees have information about conduct that reasonably may constitute sex discrimination. This ensures that a recipient learns of possible sex discrimination so it can operate its education program or activity free from prohibited sex discrimination as Title IX requires.</p> <ul style="list-style-type: none"> <li>• Any non-confidential employee at an elementary school or secondary school is obligated to notify the Title IX Coordinator. (§ 106.44(c)(1)). (Please note that elementary school and secondary school employees may have additional obligations under Federal, State, or local law to report sex-based misconduct.)</li> <li>• Any non-confidential employee at a postsecondary institution or other recipient who either has authority to take corrective action on behalf of the recipient or has responsibility for administrative leadership, teaching, or advising in the recipient’s education program or activity is obligated to notify the Title IX Coordinator. (§ 106.44(c)(2)(i)).</li> <li>• All other non-confidential employees at a postsecondary institution or other recipient are obligated to either notify the Title IX Coordinator or provide the contact information of the Title IX Coordinator and</li> </ul>

	<p>information about how to make a complaint of sex discrimination to any person who provides the employee with information about conduct that reasonably may constitute sex discrimination. (§ 106.44(c)(2)(ii)).</p> <p>Under the final regulations, a recipient must also require its Title IX Coordinator to monitor the recipient’s education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination and take steps reasonably calculated to address such barriers. (§ 106.44(b)).</p> <p><i>The 2020 amendments, at §§ 106.30(a) and 106.44(a), require a recipient to respond only when it has “actual knowledge” of allegations of “sexual harassment,” and only in a manner that is not deliberately indifferent. The 2020 amendments provide that postsecondary institutions have “actual knowledge” when the Title IX Coordinator and employees with authority to institute corrective measures have notice of allegations of sexual harassment, while elementary schools and secondary schools have “actual knowledge” when any employee has notice of such allegations.</i></p>
<p><b><i>Respecting Complainant Autonomy (§§ 106.2, 106.8(d), 106.44(c), (d), (f), 106.45(a)(2))</i></b></p>	<p>To ensure that a recipient’s education program or activity is free from sex discrimination while also respecting complainant autonomy, the final regulations require a recipient to provide clear information and training (§ 106.8(d)) on when their employees must notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination (§ 106.44(c)) and how students can seek confidential assistance (§ 106.44(d)) or make a complaint of sex discrimination requiring the recipient to initiate its grievance procedures. (§ 106.45(a)(2)).</p> <p>The final regulations identify three categories of confidential employees who are not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination. Instead, these employees must provide information to anyone who informs the confidential employee of conduct that reasonably may constitute sex discrimination about their status as confidential for purposes of Title IX, how to contact the Title IX Coordinator, how to make a complaint, and how the Title IX Coordinator can help. (§§ 106.2 and 106.44(d)).</p> <p>A complainant is also protected in their right to make a complaint about sex discrimination they experienced even if they have chosen to leave the recipient’s education program or activity as a result of that discrimination or for other reasons. (§§ 106.2 and 106.45(a)(2)).</p> <p>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, the Title IX Coordinator may initiate a complaint only if the conduct presents an imminent and serious threat to someone’s health or safety or prevents the recipient from ensuring equal access based on sex to its education program or activity. (§ 106.44(f)(1)(v)–(vi)).</p> <p>Together, these requirements in the final regulations ensure that:</p>



	<ul style="list-style-type: none"> <li>• Employees and students have information about the role of a recipient’s confidential employees and how to contact them.</li> <li>• Employees and students at elementary schools and secondary schools know that all non-confidential employees must notify the Title IX Coordinator of conduct that reasonably may constitute sex discrimination.</li> <li>• Employees and students at postsecondary institutions know that certain non-confidential employees have a duty to notify the Title IX Coordinator of conduct that reasonably may constitute sex discrimination and other employees, including confidential employees and certain non-confidential employees, must, at a minimum, explain to anyone who reports conduct that may reasonably constitute sex discrimination how to contact the recipient’s Title IX Coordinator and make a complaint.</li> <li>• Students (and parents, guardians, and other authorized legal representatives of elementary and secondary school students) know how to make a complaint to initiate a recipient’s grievance procedures, and also how to seek information about supportive measures and other resources without making a complaint.</li> <li>• A recipient knows to honor a complainant’s request not to proceed with a complaint investigation unless the Title IX Coordinator makes a fact-specific determination that the conduct as alleged presents an imminent and serious threat to the health or safety of a complainant or other person or prevents the recipient from ensuring equal access based on sex to its education program or activity.</li> </ul> <p><i>The 2020 amendments, at § 106.30(a), provide that the decision to file a complaint of sexual harassment is for the complainant or Title IX Coordinator to make, depending on the circumstances. The 2020 amendments do not permit former students or employees who are not participating or attempting to participate in the recipient’s education program or activity to file complaints of sexual harassment. The 2020 amendments do not address confidential employees.</i></p>
<p><b><i>Title IX Coordinator Response to Sex Discrimination (§ 106.44(f)–(g))</i></b></p>	<p>Under the final regulations, a recipient with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must respond promptly and effectively. The final regulations provide that a recipient must require its Title IX Coordinator (or a designee) to take the following actions upon being notified of conduct that reasonably may constitute sex discrimination:</p> <ul style="list-style-type: none"> <li>• Treat the complainant and respondent equitably. (§ 106.44(f)(1)(i)).</li> <li>• Offer and coordinate supportive measures, as appropriate, for the complainant. If the recipient has initiated grievance procedures or offered an informal resolution process to the respondent, offer and coordinate supportive measures as appropriate, for the respondent. (§ 106.44(f)(1)(ii)).</li> <li>• Notify the complainant, or if the complainant is unknown, the individual who reported the conduct, of the grievance procedures and the informal resolution process, if available and appropriate. (§ 106.44(f)(1)(iii)(A)).</li> <li>• If a complaint is made, notify the respondent of the grievance procedures and the informal resolution process, if available and appropriate. (§ 106.44(f)(1)(iii)(B)).</li> </ul>

	<ul style="list-style-type: none"> <li>• In response to a complaint, initiate the recipient’s grievance procedures or informal resolution process, if available and appropriate. (§ 106.44(f)(1)(iv)).</li> <li>• 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, make a fact-specific determination by considering, at a minimum, eight listed factors, and determining whether the conduct as alleged presents an imminent and serious threat to the health or safety of a complainant or other person or prevents the recipient from ensuring equal access based on sex to its education program or activity such that the Title IX Coordinator may initiate a complaint. (§ 106.44(f)(1)(v)).</li> <li>• If the Title IX Coordinator initiates a complaint, notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant’s safety or the safety of others. (§ 106.44(f)(1)(vi))</li> <li>• Regardless of whether a complaint is initiated, take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient’s education program or activity, in addition to providing remedies to an individual complainant. (§ 106.44(f)(1)(vii)).</li> </ul> <p>The final regulations require a recipient to offer and coordinate supportive measures for the parties as appropriate to restore or preserve each person’s access to the recipient’s education program or activity or provide support during the recipient’s grievance procedures or during the informal resolution process. Supportive measures cannot be unreasonably burdensome to a party and cannot be imposed for punitive or disciplinary reasons. Supportive measures may include, for example, counseling, extension of deadlines, restrictions on contact applied to one or more parties, and changes in class, work, or housing. (§ 106.44(g)).</p> <p><i>The 2020 amendments, at § 106.44(a), require a recipient to treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a grievance process that complies with § 106.45 before imposing disciplinary sanctions or other actions that are not supportive measures against a respondent.</i></p> <p><i>The 2020 amendments, at §§ 106.30(a) and 106.44(a), only require the Title IX Coordinator to contact the complainant regarding supportive measures.</i></p> <p><i>The 2020 amendments, at § 106.30(a), permit the Title IX Coordinator to file a formal complaint.</i></p> <p><i>The 2020 amendments, at § 106.45(b)(9), permit an informal resolution process only if a formal complaint alleging sexual harassment has been filed.</i></p>
<p><b><i>Informal Resolution</i></b> <b><i>(§ 106.44(k))</i></b></p>	<p>The final regulations permit a recipient to offer an informal resolution process if appropriate whenever it receives a complaint of sex discrimination or has information about conduct that reasonably may constitute sex discrimination.</p> <ul style="list-style-type: none"> <li>• Participation in informal resolution must be voluntary.</li> </ul>



	<ul style="list-style-type: none"> <li>• Informal resolution is not permitted in situations in which an employee allegedly engaged in sex-based harassment of an elementary school or secondary school student or if such a process would conflict with Federal, State, or local law.</li> </ul> <p><i>The 2020 amendments, at § 106.45(b)(9), permit informal resolution only if a formal complaint alleging sexual harassment has been filed.</i></p>
<p><b><i>Grievance Procedures for All Sex Discrimination Complaints under Title IX (§ 106.45)</i></b></p>	<p>Since 1975, the Title IX regulations have required a recipient to adopt and publish grievance procedures that provide for the prompt and equitable resolution of sex discrimination complaints. The final regulations modify requirements for grievance procedures for complaints of sexual harassment set out in the 2020 amendments and apply them to all complaints of sex discrimination with specific changes that take into account the age, maturity, and level of independence of students in various educational settings, the particular contexts of employees and persons other than students or employees, and the need to ensure that a recipient’s grievance procedures include basic and essential requirements for fairness and reliability for all parties.</p> <p>Under the final regulations, all recipients are required to adopt grievance procedures in writing (§ 106.45(a)(1)) that incorporate the requirements of § 106.45, including the following:</p> <ul style="list-style-type: none"> <li>• General requirements: <ul style="list-style-type: none"> <li>○ Equitable treatment of complainants and respondents. (§ 106.45(b)(1)).</li> <li>○ Title IX Coordinator, investigators, and decisionmakers must not have conflicts of interest or bias. As long as a recipient ensures there is no conflict of interest or bias, a decisionmaker may be the same person as the Title IX Coordinator or investigator. (§ 106.45(b)(2)).</li> <li>○ Presumption that the respondent is not responsible for the alleged conduct until a determination whether sex discrimination occurred is made at the conclusion of the recipient’s grievance procedures. (§ 106.45(b)(3)).</li> <li>○ Reasonably prompt timeframes for all major stages. (§ 106.45(b)(4)).</li> <li>○ Reasonable steps to protect privacy of parties and witnesses. (§ 106.45(b)(5)).</li> <li>○ Objective evaluation of all relevant and not otherwise impermissible evidence. (§ 106.45(b)(6)).</li> <li>○ Exclusion of three types of evidence as impermissible. (§ 106.45(b)(7)).</li> <li>○ If a recipient adopts grievance procedures that apply to the resolution of some, but not all complaints, articulate consistent principles for how the recipient will determine which procedures apply. (§ 106.45(b)(8)).</li> </ul> </li> <li>• Notice of allegations to the parties. (§ 106.45(c)).</li> <li>• Dismissals permitted in certain circumstances, but not required, as long as the recipient offers an appeal and, as appropriate, supportive measures and takes other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur. (§ 106.45(d)).</li> <li>• Consolidation permitted for complaints arising out of the same facts or circumstances. (§ 106.45(e)).</li> </ul>

- Investigation requirements: (§ 106.45(f)).
  - Burden is on the recipient to gather sufficient evidence. (§ 106.45(f)(1)).
  - Equal opportunity for all parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible. (§ 106.45(f)(2)).
  - Determination of what evidence is relevant and what evidence is impermissible. (§ 106.45(f)(3)).
  - Equal opportunity for parties to access relevant and not otherwise impermissible evidence or an accurate description of this evidence—and if the recipient provides a description, the parties may request and then must receive access to the relevant and not otherwise impermissible evidence. (§ 106.45(f)(4)).
    - Reasonable opportunity for the parties to respond to the evidence.
    - Reasonable steps to prevent and address the parties’ unauthorized disclosure of information and evidence obtained solely through the grievance procedures.
- A process that enables the decisionmaker to question parties and witnesses to adequately assess a party’s or witness’s credibility when credibility is in dispute and relevant. (§ 106.45(g)).
- Clear processes for the determination of whether sex discrimination occurred, including:
  - Determining whether sex discrimination occurred using the preponderance of the evidence standard of proof, unless the clear and convincing evidence standard is used in all other comparable proceedings, including other discrimination complaints, in which case that standard may be used in determining whether sex discrimination occurred. (§ 106.45(h)(1)).
  - Notifying parties in writing of the determination whether sex discrimination occurred, 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)).
  - When there is a determination that sex discrimination occurred, requiring the Title IX Coordinator to coordinate the provision and implementation of remedies for the complainant or others whose access to the recipient’s education program or activity has been limited or denied by sex discrimination, coordinate the imposition of any disciplinary sanctions on a respondent, and requiring the Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient’s education program or activity. (§ 106.45(h)(3)).
  - Not imposing any disciplinary sanctions against a respondent until the grievance procedures are completed. (§ 106.45(h)(4)).
  - Not disciplining a party, witness, or other participant for making a false statement or for engaging in consensual sexual conduct based solely on the determination of whether sex discrimination occurred. (§ 106.45(h)(5)).
- An appeal process that, at a minimum, is the same as the recipient offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints. (§ 106.45(i))
- Parties are permitted to choose to participate in an informal resolution process if one is provided by the recipient. (§ 106.45(k)).

	<ul style="list-style-type: none"> <li>• For sex-based harassment complaints, the grievance procedures must describe the range of possible supportive measures and list, or describe the range of, possible disciplinary sanctions and remedies. (§ 106.45(l)).</li> </ul> <p>A recipient may adopt additional provisions in its grievance procedures as long as the provisions apply equally to the parties. (§ 106.45(j)).</p> <p><i>The 2020 amendments, at § 106.45, include specific requirements for grievance procedures for complaints of sexual harassment that apply to all recipients (except that live hearings and cross-examination by a party’s advisor are required only for postsecondary institutions).</i></p>
<p><b><i>Additional Requirements for Grievance Procedures for Sex-Based Harassment Complaints Involving a Postsecondary Student (§ 106.46)</i></b></p>	<p>A postsecondary institution’s written grievance procedures for prompt and equitable resolution of complaints of sex-based harassment involving a student party must incorporate all of the requirements of § 106.45 and the following additional requirements set forth in § 106.46:</p> <ul style="list-style-type: none"> <li>• Written notice informing the parties of allegations, dismissals, delays, meetings, and proceedings. (§ 106.46(c), (d), (e)(1), and (e)(5)).</li> <li>• Equal opportunity to have an advisor of the party’s choice at any meeting or proceeding. (§ 106.46(e)(2)).</li> <li>• Same opportunities, if any, to have persons other than the advisor present at any meeting or proceeding. (§ 106.46(e)(3)).</li> <li>• Permitting, but not requiring, an institution to allow expert witnesses, as long as the determination applies equally to the parties. (§ 106.46(e)(4)).</li> <li>• Reasonable extension of timeframes on a case-by-case basis for good cause with written notice to the parties, including the reason for the delay. (§ 106.46(e)(5)).</li> <li>• Equal opportunity to access relevant and not otherwise impermissible evidence or a written report summarizing the evidence—and if the institution provides access to an investigative report, the parties may request and then must receive access to the relevant and not otherwise impermissible evidence. (§ 106.46(e)(6)). <ul style="list-style-type: none"> <li>○ Reasonable opportunity for the parties to respond to the evidence.</li> <li>○ Reasonable steps to prevent and address the parties’ and their advisors’ unauthorized disclosure of information and evidence obtained solely through the sex-based harassment grievance procedures.</li> </ul> </li> <li>• A process enabling the decisionmaker to question parties and witnesses to adequately assess a party’s or witness’s credibility when credibility is in dispute and relevant: <ul style="list-style-type: none"> <li>○ When a postsecondary institution chooses not to conduct a live hearing that includes: (1) allowing the investigator or decisionmaker to ask relevant and not otherwise impermissible questions during individual meetings with a party or witness; (2) allowing each party to propose relevant and not otherwise impermissible questions that the party wants asked of any party or witness and have those questions asked by the decisionmaker or investigator during individual meetings, including follow-</li> </ul> </li> </ul>

	<p>up meetings; and (3) providing each party with an audio or audiovisual recording or transcript with enough time for the party to have a reasonable opportunity to propose follow-up questions. (§ 106.46(f)(1)(i)).</p> <ul style="list-style-type: none"> <li>○ When a postsecondary institution chooses to conduct a live hearing, that includes: (1) allowing the decisionmaker to ask relevant and not otherwise impermissible questions during the live hearing, and (2) allowing each party to propose relevant and not otherwise impermissible questions that the party wants asked of any party or witness and have those questions asked during the live hearing by the decisionmaker or allowing an advisor for each party to ask relevant and not otherwise impermissible questions of other parties and any witnesses during the live hearing. (§ 106.46(f)(1)(ii)).</li> <li>● Permitting, but not requiring, a live hearing. When a live hearing is provided, a recipient must allow the parties, on request, to participate from separate locations using technology and create an audio or audiovisual recording, or transcript of any live hearing and make it available to the parties for inspection and review. (§ 106.46(g)).</li> <li>● Prohibiting questions that are unclear or harassing of the party being questioned. (§ 106.46(f)(3)).</li> <li>● Permitting a decisionmaker to weigh the credibility of a party or witness, including when a party or witness refuses to respond to relevant and permissible questions. Not permitting a decisionmaker to draw an inference about whether sex-based harassment occurred based solely on a party’s or witness’s refusal to respond to relevant and permissible questions. (§ 106.46(f)(4)).</li> <li>● Simultaneously providing written notice to the parties of the determination that includes a description of the allegations, information about the policies and procedures used to evaluate the allegations, the decisionmaker’s evaluation of the relevant and not otherwise impermissible evidence and determination whether sex-based harassment occurred, disciplinary sanctions and remedies if relevant, and information about appeal procedures. (§ 106.46(h)).</li> <li>● An opportunity to appeal a dismissal or determination based on procedural irregularity that would change the outcome, new evidence that would change the outcome and that was not reasonably available when the determination or dismissal was made, and conflict of interest or bias, as well as any other bases offered equally to the parties by the recipient. (§ 106.46(i)).</li> </ul> <p><i>The 2020 amendments, at § 106.45, include many of these requirements for all recipients, but only for complaints of sexual harassment. Under the 2020 amendments, live hearings are optional for non-postsecondary institution recipients, and postsecondary institutions are required to use a live hearing with cross-examination by a party’s advisor for all sexual harassment complaints.</i></p>
<p><b>Retaliation</b> <b>(§§ 106.2, 106.71)</b></p>	<p>The final regulations require a recipient to prohibit retaliation, including peer retaliation, and respond to information and complaints involving conduct that reasonably may constitute retaliation using the same procedures it uses for other forms of sex discrimination. (§ 106.71).</p>

	<ul style="list-style-type: none"> <li>• Retaliation is defined as intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient’s education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or the regulations, or because the person has reported possible sex discrimination, made a sex-discrimination complaint, or participated or refused to participate in any way in a recipient’s Title IX process. (§ 106.2).</li> <li>• Peer retaliation, which is defined as retaliation by one student against another student, is also prohibited. (§ 106.2).</li> <li>• The final regulations clarify that nothing in the regulations precludes a recipient from requiring an employee or other person authorized by a recipient to provide aid, benefit, or service under the recipient’s education program or activity to participate as a witness in, or otherwise assist with, a Title IX investigation, proceeding, or hearing. (§ 106.2).</li> </ul> <p><i>The 2020 amendments, at § 106.71, prohibit retaliation; they do not include definitions of either “retaliation” or “peer retaliation.”</i></p>
<p><b><i>Discrimination Based on Pregnancy or Related Conditions</i></b>  <b><i>(§§ 106.2, 106.21(c), 106.40, 106.51(b)(6), 106.57)</i></b></p>	<p>Since 1975, the Title IX regulations have required that recipients not discriminate based on pregnancy or related conditions, including childbirth, termination of pregnancy, and recovery. The final regulations update these existing protections and clarify that a recipient must protect students, employees, and applicants from discrimination based on pregnancy, childbirth, termination of pregnancy, lactation, related medical conditions, or recovery (§ 106.2), including by providing reasonable modifications for students, (§ 106.40(b)(3)(ii)), reasonable break time for employees for lactation (§ 106.57(e)(1)), and a clean, private lactation space for both students and employees (§§ 106.40(b)(3)(v) and 106.57(e)(2)).</p> <p>The final regulations also update and clarify Title IX’s longstanding prohibition on treating parents differently on the basis of sex, including by defining “parental status” to include, <i>e.g.</i>, adoptive parents or stepparents, or legal guardians. (§ 106.2).</p> <p>Under the final regulations, a recipient is required to ensure that when a student (or a student’s parent or other legal representative) informs a recipient’s employee of the student’s pregnancy or related conditions, the employee provides that person with the Title IX Coordinator’s contact information and informs that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student’s equal access to the education program or activity. (§ 106.40(b)(2)).</p> <p>Once a student or the student’s representative notifies the Title IX Coordinator, the recipient must:</p>

	<ul style="list-style-type: none"> <li>• Inform the student of the recipient’s obligations to students who are pregnant or experiencing pregnancy-related conditions and restrictions on recipient disclosure of personal information, as well as provide the recipient’s notice of nondiscrimination. (§ 106.40(b)(3)(i)).</li> <li>• Provide the student with the option of individualized, reasonable modifications as needed to prevent discrimination and ensure equal access to the recipient’s education program or activity. (§ 106.40(b)(3)(ii)).</li> <li>• Allow the student a voluntary leave of absence for, at minimum, the medically necessary time period and reinstatement upon return. (§ 106.40(b)(3)(iv)).</li> <li>• Ensure the student’s access to a clean, private space for lactation. (§ 106.40(b)(3)(v)).</li> </ul> <p>A recipient must not require supporting documentation from a student unless doing so is necessary and reasonable. For example, a recipient must not require documentation when it has already been provided or relates to lactation needs; the need is obvious or one of various routine and simple modifications set forth in § 106.40(b)(3)(vi); or when modifications, leave, or other steps under § 106.40(b)(3)(ii)–(vi) are available to students for non-pregnancy related reasons without submitting supporting documentation. (§ 106.40(b)(3)(vi)).</p> <p>A recipient is required to provide its employees with reasonable break time for lactation and ensure they can access a clean and private lactation space. (§ 106.57(e)(1)–(2)).</p> <p><i>The regulations promulgated in 1975, at §§ 106.21(c)(2), 106.40(b), and 106.57(b), prohibit discrimination against students, employees, and applicants based on pregnancy, childbirth, termination of pregnancy, and recovery. The 1975 regulations, at §§ 106.21(c)(1), 106.40(a), and 106.57(a), also prohibit a recipient from adopting rules that treat parents differently on the basis of sex.</i></p>
<p><b><i>General Prohibition on More than De Minimis Harm; Application to Policies and Practices that Prevent Participation Consistent with Gender Identity</i></b>  <b><i>(§ 106.31(a)(2))</i></b></p>	<p>The final regulations prohibit a recipient from separating or treating any person differently based on sex in a manner that subjects that person to more than de minimis harm, except in the limited circumstances where the statute allows otherwise, such as in the context of sex-separate living facilities and sex-separate athletic teams.</p> <p>The final regulations clarify that policies and practices that prevent a student from participating in a recipient’s education program or activity consistent with their gender identity impose more than de minimis harm on that student on the basis of sex, and therefore generally violate Title IX’s nondiscrimination mandate.</p> <p>The Department intends to issue a separate final rule to address Title IX’s application to sex-separate athletic teams.</p>



***Prohibition on Disclosure of Personally Identifiable Information (§ 106.44(j))***

The final regulations prohibit a recipient from disclosing personally identifiable information obtained in the course of complying with Title IX, with limited exceptions, such as when the recipient has prior written consent or when the information is disclosed to the parent of a minor.

*The 2020 amendments, at § 106.71(a), included a narrower provision that prohibited a recipient from disclosing only the identity of certain individuals participating in a Title IX grievance procedure, with limited exceptions.*