



R³ Resources: 2020 Title IX Regulations as a Checklist

This checklist lays out the New 2020 Title IX Regulations in an easy to digest manner.



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Introduction

Please note these sections are not taken verbatim from the regulations. They are adapted to create action items suitable to a checklist format.

- Within Title IX-related policies and procedures, do not restrict any rights guaranteed against government action by the U.S. Constitution.
 - First Amendment of the U.S. Constitution
 - Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution
 - Fourth Amendment
- Comply with these regulations irrespective of FERPA provisions to the contrary.
- Nothing in these regulations should be used to deny any individual's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. or any regulations promulgated thereunder.
- Nothing in these regulations should deny any legal right of a parent or guardian to act on behalf of a "complainant," "respondent," "party," or other individual, including the ability to file a formal complaint.
- If these regulations conflict with a State or local law applicable to your recipient, Title IX pre-empts that law to the extent of the conflict, and you should follow Title IX.
- Designate a Title IX Coordinator. Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the "Title IX Coordinator."
- Notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, including:
 - of the name or title;
 - office address;
 - electronic mail address; and
 - telephone number

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- Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.
 - Notify persons entitled to a notification as noted above that the recipient does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX and this part not to discriminate in such a manner.
 - Such notification must state that the requirement not to discriminate in the education program or activity extends to admission (unless a regulatory exception applies) and employment.
 - Inquiries about the application of Title IX and this part to such recipient may be referred to the recipient's Title IX Coordinator, to the Assistant Secretary, or both.
- Each recipient must prominently display the contact information required to be listed for the Title IX Coordinator on its website, if any, and in each handbook or catalog that it makes available to persons entitled to a notification as noted above.
- A recipient must not use or distribute a publication stating that the recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by Title IX.
- Adopt a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30.
- Provide to persons noted above who are entitled to a notification of this section notice of the recipient's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond.

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- Do not apply these rules to a person outside the United States. Dismiss a “Title IX” complaint from anyone outside the United States. Otherwise reinstate under alternative policies/ procedures if you wish.
- Seek assurance of a religious exemption by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part that conflict with a specific tenet of the religious organization.

OR

- If the recipient is under investigation for noncompliance with this part and the institution wishes to assert an exemption the institution can raise the exemption then by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization, whether or not the institution had previously sought assurance of an exemption from the Assistant Secretary.

§ 106.30 Definitions.

- Define actual knowledge to mean notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient.
 - Also define actual knowledge to mean notice of sexual harassment or allegations of sexual harassment to any employee of an elementary and secondary school, regardless of confidentiality.
 - This standard is not met when the only official of the recipient with actual knowledge is the respondent.
- Define notice as, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in § 106.8(a).
- Define complainant as an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

§ 106.30 Definitions.

- Define consent per state law or best practices.
- A formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.
- If any other way to file a formal complaint with the Title IX Coordinator in addition to doing so in person, by mail, or by electronic mail, or by using the contact information required to be listed for the Title IX Coordinator above, indicate any additional method of doing so.
 - Accept a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
 - Indicate that where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party and must otherwise comply with their regulatory duties.
- Define respondent as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- Create an umbrella sexual harassment policy and define sexual harassment as conduct on the basis of sex that satisfies one or more of the following:
 - An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.
 - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.
 - Define sexual assault as:
 - Any attempted or actual sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent.

§ 106.30 Definitions.

- Any attempted or actual sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent.
 - o Rape is the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
 - Include the crime as Rape, regardless of the age of the victim, if the victim did not consent or if the victim was incapable of giving consent. If the victim consented, the offender did not force or threaten the victim, and the victim was under the statutory age of consent, define as Statutory Rape.
 - o Fondling is 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 incapacity.
 - o Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - o Statutory Rape is sexual intercourse with a person who is under the statutory age of consent.

§ 106.30 Definitions.

- Define dating violence as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating violence does not include acts covered under the definition of domestic violence.
- Define domestic violence as violence committed—
 - By a current or former spouse or intimate partner of the victim;
 - By a person with whom the victim shares a child in common;
 - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
 - By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

*To categorize an incident as Domestic violence, the relationship between the perpetrator and the victim must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

§ 106.30 Definitions.

- Define “stalking” as engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
 - Fear for the person’s safety or the safety of others; or
 - Suffer substantial emotional distress. For the purposes of this definition—
 - o 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.
 - o Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
 - o Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.
- Define supportive measures as non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
- Design such measures to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment, or deter sexual harassment.
 - Supportive measures may include:
 - counseling;
 - extensions of deadlines or other course-related adjustments;
 - modifications of work or class schedules;
 - campus escort services;

§ 106.30 Definitions.

- mutual restrictions on contact between the parties;
 - changes in work or housing locations;
 - leaves of absence;
 - increased security and monitoring of certain areas of the campus; and
 - other similar measures (See VAWA Section 304 for additional measures that may be required)
- The recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures.
 - The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

§ 106.44 Recipient's response to sexual harassment.

- Respond promptly in a manner that is not deliberately indifferent to actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States
 - Education program or activity means locations, events, or circumstances over which the recipient exercises substantial control over both the respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.
- Treat complainants and respondents equitably by offering supportive measures as defined in § 106.30 to a complainant.

§ 106.44 Recipient's response to sexual harassment.

- The Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures as defined in § 106.30.
 - Consider the complainant's wishes with respect to supportive measures
 - Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint
 - Explain to the complainant the process for filing a formal complaint.
- Remove a student respondent from the recipient's education program or activity on an emergency basis, only after:
 - Undertaking an individualized safety and risk analysis; and
 - Determining if an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and
 - Providing the respondent with notice and an opportunity to challenge the decision immediately following the removal while respecting all rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act, as applicable.
- Place a non-student employee respondent on administrative leave during the pendency of a grievance process under existing procedures, without modifying any rights provided under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

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- Apply any provisions, rules, or practices other than those required by this section equally to all parties.
- Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent.
 - Remedies must be designed to restore or preserve equal access to the recipient's education program or activity.
 - Such post-determination remedies may include the same individualized services described in § 106.30 as "supportive measures" and can be disciplinary or punitive and need not avoid burdening the respondent.
- Objectively evaluate all relevant evidence – including both inculpatory and exculpatory evidence – and determine credibility without respect to a person's status as a complainant, respondent, or witness.
- Implement an evaluative/vetting process to ensure that the Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- Train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, as applicable, on:
 - The definition of sexual harassment in § 106.30
 - The scope of the recipient's education program or activity
 - How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
 - How to serve impartially, by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
 - Any technology to be used at a live hearing

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- Issues of relevance of questions and evidence
- Issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- Ensure that any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.
- Include in the grievance process a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process by the applicable standard of proof.
- Include reasonably prompt time frames for conclusion of the grievance process, including:
 - Reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and
 - Implement a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action.
 - Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
- Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility.
- Choose either the preponderance of the evidence standard or the clear and convincing evidence standard and apply it uniformly for all formal complaints of sexual harassment against students and employees, including faculty.

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- Implement a procedure that does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- Upon receipt of a formal complaint, provide the following written notice to the parties who are known:
 - Notice of the recipient's grievance process that complies with this section, including any informal resolution process.
 - Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview, including.
 - The identities of the parties involved in the incident, if known
 - The conduct allegedly constituting sexual harassment under § 106.30
 - The date and location of the alleged incident, if known
 - A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process
 - Informing the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section
 - Inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process
 - Provide notice of any additional allegations added after the initial notice to the parties whose identities are known.

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- Dismiss a formal complaint:
 - If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved, and/or
 - If the conduct did not occur in the recipient's education program or activity, or
 - If the conduct did not occur against a person in the United States, or
 - If at the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the recipient.
- Consider reinstating the complaint under another provision of the recipient's code of conduct or other applicable resolution procedures.
- Consider dismissing a complaint (may, not must) if at any time during the investigation or hearing:
 - A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; and/or
 - The respondent is no longer enrolled or employed by the recipient; and/or
 - Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- Upon a required or permitted dismissal, promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
- Decide whether to consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

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- Investigate the allegations in a formal complaint, and when doing so:
 - Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient and not on the parties.
 - Provide that the recipient cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for a grievance process.
 - If a party is not an "eligible student," as defined in 34 CFR 99.3, then the recipient must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3.
 - Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
 - Implement a policy that does not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
 - Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding.
 - Establish policy regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to all parties.
 - Write an investigation report appropriately summarizing the investigation and all relevant evidence obtained.

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- Prior to completion of the investigative report, send to each party and the party's advisor, if any, all evidence obtained that is directly related to the complaint, to review in an electronic format or a hard copy, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.
 - Give the parties at least 10 days to submit a meaningful written response, which the investigator will consider prior to completion of the investigative report.
 - Whether included as relevant in the investigation report or not, make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
- Finalize an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.
- Postsecondary institutions (IHEs) must provide for a live hearing:
 - At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
 - Only relevant cross- examination and other questions may be asked of a party or witness.
 - Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

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- If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
- Implement a policy that questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- If a party or witness does not submit to cross-examination at the live hearing, policy must clarify that the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility.
- Policy should clarify that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
- At the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. Hearings may be conducted with all parties physically present in the same geographic location or, at the recipient's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

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- Create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.
- Elementary and secondary schools, and other recipients that are not postsecondary institutions (e.g. scouting organizations), may, but need not, provide for a hearing (some already have to under state, board or, district rules, and will continue to do so).
 - With or without a hearing, after the recipient has sent the investigative report to the parties pursuant to paragraph (b)(5)(vii) of this section and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
 - With or without a hearing, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
 - The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.
- Determine responsibility and issue a written determination applying the standard of evidence described in paragraph (b)(1)(vii) of this section.
 - The decision-maker(s) cannot be the same person(s) as the Title IX Coordinator or the investigator(s)
 - Provide the written determination to the parties simultaneously

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- The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.
- The written determination must include—
 - Identification of the allegations potentially constituting sexual harassment as defined in § 106.30.
 - A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
 - Findings of fact supporting the determination
 - Conclusions regarding the application of the recipient’s code of conduct (policies) to the facts
 - A statement of, and rationale for, the result as to each allegation, including:
 - any disciplinary sanctions the recipient imposes on the respondent; and
 - whether remedies designed to restore or preserve equal access to the recipient’s education program or activity will be provided by the recipient to the complainant
 - The Title IX Coordinator is responsible for effective implementation of any remedies.

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- Offer all parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases:
 - Procedural irregularity that affected the outcome of the matter
 - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
 - The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter
 - Other additional bases, as long as applied to the parties, equitably.
- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for all parties.
- Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.
- Give the parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
- A recipient may use the same procedures elaborated under Title IX for resolution of allegations arising under Title VI, especially when arising from the same course of conduct.
- Informal resolution, that does not involve a full investigation and adjudication, may be offered at any time prior to reaching a determination regarding responsibility, as long as:
 - Policy may not require informal resolution participation as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section.

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- Policy may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed.
- The parties receive a written notice disclosing:
 - The allegations
 - The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations
 - At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint
 - Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
- Obtain the parties' voluntary, written consent to the informal resolution process; and
- May not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
- Recordkeeping. Must maintain for a period of seven years records of –
 - Each sexual harassment investigation including any determination regarding responsibility.
 - Any audio or audiovisual recording or transcript required under paragraph (b)(6)(i) of this section
 - Any disciplinary sanctions imposed on the respondent
 - Any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity
 - Any appeal and the result therefrom

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- Any informal resolution and the result therefrom
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process
- Records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.
 - In each instance, document the basis for the conclusion that its response was not deliberately indifferent
 - Document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity
 - If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.
- Make all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process publicly available on its website, or if the recipient does not maintain a website, the recipient must make these materials available upon request for inspection by members of the public.

§ 106.71 Retaliation.

- Implement policy that no recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX.
- Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.
- Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under § 106.8(c).
- The exercise of rights protected under the First Amendment does not constitute retaliation.
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation as long as a policy recognizes that determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Confidentiality

- Maintain the confidentiality of the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

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