

## **Resource for Drafting Nondiscrimination Policies, Notices of Nondiscrimination, and Grievance Procedures under 2024 Amendments to the U.S. Department of Education’s Title IX Regulations**

The U.S. Department of Education’s (Department) Office for Civil Rights (OCR) prepared this resource to help recipients of Department funds (recipients)<sup>1</sup> comply with the 2024 amendments to the Department’s regulations implementing Title IX of the Education Amendments of 1972 (2024 amendments).<sup>2</sup> The 2024 amendments take effect on August 1, 2024, and obligate recipients to apply the requirements set forth therein to complaints of sex discrimination regarding alleged conduct that occurs on or after that date. This Resource creates no legal rights or responsibilities. It is intended only to help recipients draft Title IX policies that comply with some provisions of the 2024 amendments. Recipients are not obliged to consult this Resource in drafting their policies. The Department remains committed to supporting schools in implementing these regulations, including through additional technical assistance.

Title IX prohibits sex discrimination in education programs and activities that receive Federal financial assistance. Title IX obligates all recipients to comply with Title IX and the Department’s Title IX regulations, with some limited exceptions set out in the statute and regulations. When “Title IX” is referenced in this Resource, the term refers to Title IX and the regulations.

The 2024 amendments require recipients to adopt and publish grievance procedures for the prompt and equitable resolution of complaints of sex-based harassment involving a student complainant or student respondent at a postsecondary institution. This Resource addresses only the applicable regulatory requirements in §§ 106.8(b)–(c), 106.45 and 106.46. As described in more detail below:

- Sections 106.8(b) and (c) require all recipients to adopt, publish, and implement a nondiscrimination policy and publish a notice of nondiscrimination.
- Section 106.45 requires all recipients to adopt, publish, and implement grievance procedures for complaints of sex discrimination.
- Section 106.46 requires all postsecondary institutions that are recipients to adopt, publish, and implement grievance procedures for complaints of sex-based harassment involving student complainants or student respondents at postsecondary institutions.

Under Title IX and its implementing regulations, recipients are not obligated to describe all applicable portions of the Title IX regulations in the policies, notices, and procedures required by §§ 106.8(b)–(c), 106.45 and 106.46, but recipients must satisfy all Title IX regulatory requirements, including the 2024 amendments starting August 1, 2024.

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<sup>1</sup> Recipients largely include state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive Department funds.

<sup>2</sup> The Department has issued Title IX regulations, which can be found at 34 C.F.R. part 106, to implement Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681, 1682, 1683, 1685, 1686, 1687, 1688, 1689.

In drafting their Title IX policies and procedures, recipients have discretion to meet the needs of their educational community, as long as the policies and procedures comply with Title IX. This Resource addresses the minimum requirements contained in the 2024 amendments for a recipient’s nondiscrimination policy, notice of nondiscrimination, and grievance procedures. Sample text is provided, but recipients are not required to use the text provided herein. The Resource also includes some sample introductory language and footnotes to further assist drafters in implementing the above-referenced sections of the 2024 amendments. As long as the regulatory requirements are satisfied, recipients have discretion regarding level of detail in their Title IX policies and procedures.

Recipients have discretion to create a single document that addresses all the regulatory requirements, or to create multiple documents. Recipients also have discretion to incorporate the requirements of the 2024 amendments in policies or procedures that also address discrimination under other laws.

This resource does not bind the public or impose new legal requirements, nor does it bind the Department in the exercise of its discretionary enforcement authority under Title IX. This resource does not have the force and effect of law.

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## **Nondiscrimination Policy & Notice of Nondiscrimination (§ 106.8(b)–(c))**

Section 106.8(b) of the 2024 amendments requires each recipient to adopt, publish, and implement a **nondiscrimination policy**. A recipient has discretion over the content of its nondiscrimination policy. The following sample nondiscrimination policy meets the minimum requirements of the 2024 amendments:

[ABC School] does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX, including in admission<sup>3</sup> and employment.

Section 106.8(c) of the 2024 amendments also requires each recipient to provide a **notice of nondiscrimination** to students; parents, guardians, or other authorized legal representatives of elementary school and secondary school students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the recipient. Nothing prevents a recipient from including in its notice of nondiscrimination information about any exceptions or exemptions applicable to the recipient under Title IX.

The following sample notice of nondiscrimination meets the minimum requirements of the 2024 amendments:

[ABC School] does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its regulations, including in admission<sup>4</sup> and employment.

Inquiries about Title IX may be referred to [ABC School's] Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights,<sup>5</sup> or both. [ABC School's] Title IX Coordinator is [name or title, office address, email address, and telephone number].

[ABC School's] nondiscrimination policy and grievance procedures can be located at [include link to location(s) on website or otherwise describe location(s)].

To report information about conduct that may constitute sex discrimination or make a complaint of sex discrimination under Title IX, please refer to [include link to location(s) on website or otherwise describe location(s)].

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<sup>3</sup> Title IX's prohibition on discrimination in admission applies to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education. § 106.15(d). Title IX does not require any other recipients to state in their nondiscrimination policy that they do not discriminate on the basis of sex in admission.

<sup>4</sup> As noted above, Title IX only prohibits institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education from discriminating based on sex in admission, *see* § 106.15(d), and thus only such institutions must state in their notice of nondiscrimination that they do not discriminate on the basis of sex in admission.

<sup>5</sup> Contact information for OCR is available here: <https://ocrcas.ed.gov/contact-ocr>.

The 2024 amendments require each recipient to prominently include all elements of its notice of nondiscrimination on its website and in each handbook, catalog, announcement, bulletin, and application form that it makes available to people entitled to notice, or which are otherwise used in connection with the recruitment of students or employees.

If necessary, due to the format or size of any publication, the 2024 amendments provide that a recipient may instead include in those publications the information covered in the following statement:

[ABC School] prohibits sex discrimination in any education program or activity that it operates. Individuals may report concerns or questions to the Title IX Coordinator. The notice of nondiscrimination is located at [insert website address].

## **Grievance Procedures for Complaints of Sex Discrimination (§ 106.45)**

The 2024 amendments require each recipient to adopt, publish, and implement grievance procedures for the prompt and equitable resolution of complaints of sex discrimination, consistent with the requirements of § 106.45.

The following statement published in a recipient's grievance procedures would accurately summarize this general requirement:

[ABC School] has adopted grievance procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

Note that under § 106.46 of the 2024 amendments, there are additional requirements for a postsecondary institution's written grievance procedures for the prompt and equitable resolution of complaints of sex-based harassment involving a student party. Those requirements are described in the last part of this Resource. The 2024 amendments do not require elementary schools and secondary schools to comply with § 106.46.

The 2024 amendments give recipients discretion to choose to use certain procedures (e.g., single investigator, live hearings) for some, but not all, complaints of sex discrimination. If a recipient adopts certain procedures that apply to the resolution of some, but not all, complaints of sex discrimination, the 2024 amendments require the recipient to articulate consistent principles for how the recipient will determine which procedures apply. Accordingly, a recipient must provide information in its grievance procedures regarding what factors, if any, the recipient will consider when determining under what circumstances or to which types of sex discrimination complaints certain procedures apply (e.g., complaints involving certain forms of sex-based harassment, student-to-student sex-based harassment complaints, complaints involving students of certain ages or education levels).

The 2024 amendments permit a recipient's grievance procedures to also include additional provisions beyond those required by the 2024 amendments, as long as they apply equally to the parties.

Under the 2024 amendments, a recipient's grievance procedures must be in writing and must include the required components set forth in § 106.45. The information in the following statements incorporates the requirements of the Title IX grievance procedures:

### **Complaints:**

The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that [ABC School] investigate and make a determination about alleged discrimination under Title IX:

- A “complainant,” which includes:
  - a student or employee of [ABC School] who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
  - a person other than a student or employee of [ABC School] who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in [ABC School’s] education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- [ABC School’s] Title IX Coordinator.<sup>6</sup>

Note that a person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 C.F.R. § 106.44(f)(1)(v).

With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint:

- Any student or employee [of ABC School]; or
- Any person other than a student or employee who was participating or attempting to participate in [ABC School’s] education program or activity at the time of the alleged sex discrimination.

[ABC School] may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances.<sup>7</sup> When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

### **Basic Requirements of Title IX Grievance Procedures:**

[ABC School] will treat complainants and respondents equitably.

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<sup>6</sup> *Note to Drafter:* When a Title IX Coordinator is notified of conduct that reasonably may constitute sex discrimination under Title IX (and 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 must determine whether to initiate a complaint of sex discrimination as required under Title IX. The requirements for such a fact-specific determination are set forth in § 106.44(f)(1)(v).

<sup>7</sup> *Note to Drafter:* The Department notes that a recipient is not permitted to consolidate complaints if consolidation would violate the Family Educational Rights and Privacy Act (FERPA). Consolidation would not violate FERPA when a recipient obtains prior written consent from the parents or eligible students to the disclosure of their education records. *See* 34 CFR 99.30; 34 CFR 99.3 (defining an “eligible student” as “a student who has reached 18 years of age or is attending an institution of postsecondary education”).

[ABC School] requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A decisionmaker may be the same person as the Title IX Coordinator or investigator.

[ABC School] presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

[ABC School] has established the following timeframes for the major stages of the grievance procedures: [DESCRIBE REASONABLY PROMPT TIMEFRAMES, for major stages, including for example, evaluation (*i.e.*, the decision whether to dismiss or investigate a complaint); investigation; determination; and appeal, if any].

[ABC School] has also established the following process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay: [DESCRIBE PROCESS].

[ABC School] will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not 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; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses.

[ABC School] will objectively evaluate all evidence that is relevant and not otherwise impermissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by [ABC School] to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless [ABC School] obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual

conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

### **Notice of Allegations:**

Upon initiation of [ABC School]'s Title IX grievance procedures, [ABC School] will notify the parties of the following:

- [ABC School's] Title IX grievance procedures and any informal resolution process;<sup>8</sup>
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited; and
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. [If [ABC School] provides a description of the evidence: The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.]

If, in the course of an investigation, [ABC School] decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided or that are included in a complaint that is consolidated, [ABC School] will notify the parties of the additional allegations.

### **Dismissal of a Complaint:**

[ABC School] may dismiss a complaint of sex discrimination if:

- [ABC School] is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in [ABC School's] education program or activity and is not employed by [ABC School];
- The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and [ABC School] determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- [ABC School] determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, [ABC School] will make reasonable efforts to clarify the allegations with the complainant.

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<sup>8</sup> *Note to Drafter:* Title IX does not require a recipient to offer an informal resolution process. However, a recipient is free to provide such a process in some circumstances, as long as it complies with certain regulatory requirements. Requirements related to informal resolution are set forth in § 106.44(k).

Upon dismissal, [ABC School] will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then [ABC School] will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

[ABC School] will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then [ABC School] will also notify the respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

If the dismissal is appealed, [ABC School] will:

- Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Implement appeal procedures equally for the parties;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;<sup>9</sup>
- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, [ABC School] will, at a minimum:

- Offer supportive measures to the complainant as appropriate;<sup>10</sup>
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within [ABC School's] education program or activity.<sup>11</sup>

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<sup>9</sup> *Note to Drafter:* Training requirements are set forth in § 106.8(d).

<sup>10</sup> *Note to Drafter:* Requirements related to supportive measures are set forth in § 106.44(g).

<sup>11</sup> *Note to Drafter:* The Title IX Coordinator requirements are set forth in § 106.44(f).

### **Investigation:**

[ABC School] will provide for adequate, reliable, and impartial investigation of complaints.

The burden is on [ABC School]—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

[ABC School] will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.

[ABC School] will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

[ABC School] will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

- [ABC School] will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence. [If [ABC School] provides a description of the evidence: [ABC School] will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.];
- [ABC School] will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
- [ABC School] will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

### **Questioning the Parties and Witnesses:**

[ABC School] will provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination. [DESCRIBE PROCESS]

### **Determination Whether Sex Discrimination Occurred:**

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, [ABC School] will:

- Use the [preponderance of the evidence or, if applicable,<sup>12</sup> clear and convincing] standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
- Notify the parties in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable;
- Not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
  - Coordinate the provision and implementation of remedies to a complainant and other people [ABC School] identifies as having had equal access to [ABC School's] education program or activity limited or denied by sex discrimination;
  - Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
  - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within [ABC School's] education program or activity.
- Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent; and
- Not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.<sup>13</sup>

### **Appeal of Determinations, if offered<sup>14</sup>:**

[ABC School] offers the following process for appeals from a determination whether sex discrimination occurred: [DESCRIBE APPEAL PROCESS]. This appeal process will be, at a

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<sup>12</sup> *Note to Drafter:* If a recipient uses the clear and convincing evidence standard of proof in all other comparable proceedings, including proceedings relating to other discrimination complaints, the 2024 amendments permit the recipient to elect to use that standard of proof in determining whether sex discrimination occurred.

<sup>13</sup> *Note to Drafter:* A recipient is still permitted to address false statements by initiating a disciplinary process under its code of conduct as long as there is evidence independent of the determination whether sex discrimination occurred.

<sup>14</sup> *Note to Drafter:* The 2024 amendments require a recipient to offer an opportunity to appeal a dismissal of a complaint on the bases outlined in the *Dismissal of a Complaint* section. Regarding an appeal of a determination, however, the 2024 amendments require a recipient to offer an appeal process that, at a minimum, is the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints. This section provides sample text a recipient may elect to include in its grievance procedures, but recipients are not required to use the text provided. If a recipient does not offer an appeal process for determinations, it may opt to omit a section on appeals of determinations from its published grievance procedures. Requirements related to appeals are set forth in § 106.45(i).

minimum, the same as [ABC School] offers in all other comparable proceedings, including proceedings relating to other discrimination complaints.

**Informal Resolution, if offered<sup>15</sup>:**

In lieu of resolving a complaint through [ABC School]’s Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. [ABC School] does not offer informal resolution to resolve a complaint that includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or when such a process would conflict with Federal, State, or local law.

**Supportive Measures:**

[ABC School] will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person’s access to [ABC School’s] education program or activity or provide support during [ABC School’s] Title IX grievance procedures or during the informal resolution process.<sup>16</sup> For complaints of sex-based harassment, these supportive measures may include [DESCRIBE RANGE that complies with § 106.44(g)].

**Disciplinary Sanctions and Remedies:**

Following a determination that sex-based harassment occurred, [ABC School] may impose disciplinary sanctions, which may include [LIST OR DESCRIBE RANGE]. [ABC School] may also provide remedies, which may include [LIST OR DESCRIBE RANGE].

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<sup>15</sup> *Note to Drafter:* The 2024 amendments do not require a recipient to offer an informal resolution process. However, a recipient is free to provide such a process, as long as it complies with certain regulatory requirements. This section provides sample text a recipient may elect to include in its grievance procedures, but recipients are not required to use the exact text provided. Further, if a recipient does not offer informal resolution for sex discrimination complaints, it may opt to omit a section on informal resolution from its published grievance procedures. Requirements related to informal resolution are set forth in § 106.44(k).

<sup>16</sup> *Note to Drafter:* The requirements for offering and coordinating supportive measures are set forth in § 106.44(g).

## **Grievance Procedures for Complaints of Sex-Based Harassment Involving Student Complainants or Student Respondents at Postsecondary Institutions (§ 106.46)**

The 2024 amendments require each postsecondary institution<sup>17</sup> to adopt, publish, and implement grievance procedures consistent with the requirements of §§ 106.45 and 106.46 for the prompt and equitable resolution of complaints of sex-based harassment involving a student complainant or student respondent at a postsecondary institution.

The following statement would accurately summarize this general requirement:

[ABC College] has adopted Title IX grievance procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator. These grievance procedures address complaints of sex-based harassment that involve a student party.

When a party is both a student and an employee of a postsecondary institution, the 2024 amendments require an institution to make a fact-specific inquiry to determine whether the requirements of § 106.46 apply. In making this determination, a postsecondary institution must, at a minimum, consider whether the party's primary relationship with the postsecondary institution is to receive an education and whether the alleged sex-based harassment occurred while the party was performing employment-related work.

The 2024 amendments give postsecondary institutions discretion to choose to use certain procedures (e.g., single investigator, live hearings) for some, but not all, complaints. If a postsecondary institution adopts certain procedures that apply to the resolution of some, but not all, complaints of sex-based harassment, the 2024 amendments require the postsecondary institution to articulate consistent principles for how the institution will determine which procedures apply. Accordingly, a postsecondary institution must provide information in its grievance procedures regarding what factors, if any, it will consider when determining under what circumstances or to which types of sex-based harassment complaints certain procedures apply.

The 2024 amendments permit a postsecondary institution's grievance procedures to also include additional provisions beyond those required by the 2024 amendments, as long as they apply equally to the parties.

Under the 2024 amendments, a postsecondary institution's grievance procedures for complaints of sex-based harassment involving a student party must be in writing and must include the

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<sup>17</sup> *Note to Drafter:* The definition of the term "postsecondary institution," is in § 106.2. Consistent with the definition, the term "postsecondary institution," as used in this section of the Resource, means an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education that serves postsecondary school students and receives Federal financial assistance from the Department.

required components set forth in §§ 106.45 and 106.46. The information in the following statements incorporates the requirements of the Title IX grievance procedures:

### **Complaints:**

The following people have a right to make a complaint of sex-based harassment, requesting that [ABC College] investigate and make a determination about alleged sex-based harassment under Title IX:

- A “complainant,” which includes:
  - a student or employee of [ABC College] who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
  - a person other than a student or employee of [ABC College] who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in [ABC College’s] education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- [ABC College’s] Title IX Coordinator.<sup>18</sup>

Note that a person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 C.F.R. § 106.44(f)(1)(v).

[ABC College] may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances.<sup>19</sup> When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

### **Basic Requirements of Title IX Grievance Procedures:**

[ABC College] will treat complainants and respondents equitably.

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<sup>18</sup> *Note to Drafter:* When a Title IX Coordinator is notified of conduct that reasonably may constitute sex discrimination under Title IX (and 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 must determine whether to initiate a complaint of sex discrimination as required under Title IX.

<sup>19</sup> *Note to Drafter:* The Department notes that a recipient is not permitted to consolidate complaints if consolidation would violate the Family Educational Rights and Privacy Act (FERPA). Consolidation would not violate FERPA when a postsecondary institution obtains prior written consent from eligible students to the disclosure of their education records. *See* 34 CFR 99.30; 34 CFR 99.3 (defining an “eligible student” as “a student who has reached 18 years of age or is attending an institution of postsecondary education”).

[ABC College] requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. As long as there is no conflict of interest or bias, a decisionmaker may be the same person as the Title IX Coordinator or investigator.

[ABC College] presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

[ABC College] has established the following timeframes for the major stages of the grievance procedures: [DESCRIBE REASONABLY PROMPT TIMEFRAMES for major stages, including for example, evaluation (*i.e.*, the decision whether to dismiss or investigate a complaint); investigation; determination; and appeal, if any].

[ABC College] has also established the following process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with written notice of any extension to the parties that includes the reason for the delay: [DESCRIBE PROCESS].

[ABC College] will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not 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; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses.

[ABC College] will objectively evaluate all evidence that is relevant and not otherwise impermissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by [ABC College] to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless [ABC College] obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual

conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

### **Written Notice of Allegations:**

Upon initiation of these Title IX grievance procedures, [ABC College] will notify the parties in writing of the following with sufficient time for the parties to prepare a response before any initial interview:

- [ABC College's] Title IX grievance procedures and any informal resolution process;
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex-based harassment, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited;
- The respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the grievance procedures. Prior to such a determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker;
- The parties may have an advisor of their choice who may be, but is not required to be, an attorney;
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigative report that accurately summarizes this evidence. [If [ABC College] provides access to an investigative report: The parties are entitled to an equal opportunity to access the relevant and not impermissible evidence upon the request of any party]; and
- [if [ABC College's] Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during grievance procedures, include the following:] Section [XX] of [ABC College's] Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance procedures.

If, in the course of an investigation, [ABC College] decides to investigate additional allegations of sex-based harassment by the respondent toward the complainant that are not included in the written notice or that are included in a consolidated complaint, it will provide written notice of the additional allegations to the parties.

### **Dismissal of a Complaint:**

[ABC College] may dismiss a complaint if:

- [ABC College] is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in [ABC College's] education program or activity and is not employed by [ABC College];

- [ABC College] obtains the complainant’s voluntary withdrawal in writing of any or all of the allegations, the Title IX Coordinator declines to initiate a complaint, and [ABC College] determines that, without the complainant’s withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- [ABC College] determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, [ABC College] will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, [ABC College] will promptly notify the complainant in writing of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then [ABC College] will notify the parties simultaneously in writing.

[ABC College] will notify the complainant that a dismissal may be appealed on the bases outlined in the *Appeals* section. If dismissal occurs after the respondent has been notified of the allegations, then [ABC College] will also notify the respondent that the dismissal may be appealed on the same bases. If a dismissal is appealed, [ABC College] will follow the procedures outlined in the *Appeals* section.

When a complaint is dismissed, [ABC College] will, at a minimum:

- Offer supportive measures to the complainant as appropriate;<sup>20</sup>
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within [ABC College’s] education program or activity.<sup>21</sup>

### **Investigation:**

[ABC College] will provide for adequate, reliable, and impartial investigation of complaints.

The burden is on [ABC College]—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

[ABC College] will provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare to participate.

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<sup>20</sup> *Note to Drafter:* Requirements related to supportive measures are set forth in § 106.44(g).

<sup>21</sup> *Note to Drafter:* The Title IX Coordinator requirements are set forth in § 106.44(f).

[ABC College] will provide the parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.

- [ABC College] will not limit the choice or presence of the advisor for the complainant or respondent in any meeting or proceeding.
- [ABC College] may establish restrictions regarding the extent to which the advisor may participate in these grievance procedures, as long as the restrictions apply equally to the parties.

[ABC College] will provide the parties with the same opportunities, if any, to have people other than the advisor of the parties' choice present during any meeting or proceeding.

[ABC College] will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.<sup>22</sup>

[ABC College] will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

[ABC College] will provide each party and the party's advisor, if any, with an equal opportunity to access the evidence that is relevant to the allegations of sex-based harassment and not otherwise impermissible, in the following manner:

- [ABC College] will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or the same written investigative report that accurately summarizes this evidence. [If [ABC College] provides access to an investigative report: [ABC College] will further provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.];
- [ABC College] will provide a reasonable opportunity to review and respond to the evidence or the investigative report. If [ABC College] conducts a live hearing as part of its grievance procedures, it will provide this opportunity to review the evidence in advance of the live hearing. [[ABC College] may decide whether to provide this opportunity to respond prior to the live hearing, during the live hearing, or both prior to and during the live hearing.]; and
- [ABC College] will take 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.

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<sup>22</sup> *Note to Drafter:* Under § 106.46(e)(4), a postsecondary institution has discretion to determine whether the parties may present expert witnesses as long as the determination applies equally to the parties.

## **Questioning the Parties and Witnesses:**

[ABC College] will provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment.

[When [ABC College] chooses not to conduct a live hearing: [ABC College's] process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses, including questions challenging credibility, will:

- Allow the investigator or decisionmaker to ask such questions during individual meetings with a party or witness;
- Allow each party to propose such questions that the party wants asked of any party or witness and have those questions asked by the investigator or decisionmaker during one or more individual meetings, including follow-up meetings, with a party or witness, subject to the procedures for evaluating and limiting questions discussed below; and
- Provide 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.]

[When [ABC College] chooses to conduct a live hearing: [ABC College's] process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses, including questions challenging credibility, will allow the decisionmaker to ask such questions, and either:

- Allow each party to propose such questions that the party wants asked of any party or witness and have those questions asked by the decisionmaker, subject to the procedures for evaluating and limiting questions discussed below; or
- Allow each party's advisor to ask any party or witness such questions, subject to the procedures for evaluating and limiting questions discussed below. Such questioning will never be conducted by a party personally. [If [ABC College] permits advisor-conducted questioning and a party does not have an advisor to ask questions on their behalf, [ABC College] will provide the party with an advisor of [ABC College's] choice, without charge to the party, for the purpose of advisor-conducted questioning. In those instances, [ABC College] will not appoint a confidential employee and may appoint, but is not required to appoint, an attorney to serve as an advisor.]

*Procedures for the decisionmaker to evaluate the questions and limitations on questions:*

The decisionmaker will determine whether a proposed question is relevant and not otherwise impermissible before the question is posed and will explain any decision to exclude a question as not relevant or otherwise impermissible. Questions that are unclear or harassing of the party or witness being questioned will not be permitted. The decisionmaker will give a party an

opportunity to clarify or revise a question that the decisionmaker determines is unclear or harassing. If the party sufficiently clarifies or revises the question, the question will be asked.<sup>23</sup>

*Refusal to respond to questions and inferences based on refusal to respond to questions:* The 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 will 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.

#### **Procedures for a Live Hearing, if offered<sup>24</sup>:**

[ABC College] will conduct the live hearing with the parties physically present in the same geographic location or, at [ABC College's] discretion or upon the request of either party, will conduct the live hearing with the parties physically present in separate locations with technology enabling the decisionmaker and parties to simultaneously see and hear the party or witness while that person is speaking.

[ABC College] will create an audio or audiovisual recording or transcript of any live hearing and make it available to the parties for inspection and review.

#### **Determination Whether Sex-Based Harassment Occurred:**

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, [ABC College] will:

- Use the [preponderance of the evidence or, if applicable,<sup>25</sup> clear and convincing] standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
- Notify the parties simultaneously in writing of the determination whether sex-based harassment occurred under Title IX including:
  - A description of the alleged sex-based harassment;

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<sup>23</sup> *Note to Drafter:* The 2024 amendments permit a postsecondary institution to also adopt and apply other reasonable rules regarding decorum, provided they apply equally to the parties.

<sup>24</sup> *Note to Drafter:* The 2024 amendments do not require a postsecondary institution to conduct live hearings. However, a postsecondary institution is free to conduct live hearings, as long as it complies with certain regulatory requirements. This section provides sample text a postsecondary institution may elect to include in its grievance procedures, but postsecondary institutions are not required to use the exact text provided. Further, if a postsecondary institution does not conduct live hearings, it may opt to omit a section on live hearings from its published grievance procedures. Requirements related to live hearings are set forth in § 106.46(g).

<sup>25</sup> *Note to Drafter:* If a postsecondary institution uses the clear and convincing evidence standard of proof in all other comparable proceedings, including proceedings relating to other discrimination complaints, the 2024 amendments permit the institution to elect to use that standard of proof in determining whether sex-based harassment occurred.

- Information about the policies and procedures that [ABC College] used to evaluate the allegations;
- The decisionmaker's evaluation of the relevant and not otherwise impermissible evidence and determination whether sex-based harassment occurred;
- When the decisionmaker finds that sex-based harassment occurred, any disciplinary sanctions [ABC College] will impose on the respondent, whether remedies other than the imposition of disciplinary sanctions will be provided by [ABC College] to the complainant, and, to the extent appropriate, other students identified by [ABC College] to be experiencing the effects of the sex-based harassment; and
- [ABC College's] procedures and permissible bases for the complainant and respondent to appeal.
- [ABC College] will not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the Title IX grievance procedures that the respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, as appropriate, the Title IX Coordinator will:
  - Coordinate the provision and implementation of remedies to a complainant and other people [ABC College] identifies as having had equal access to [ABC College's] education program or activity limited or denied by sex discrimination;
  - Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
  - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within [ABC College's] education program or activity.
- Comply with the Title IX grievance procedures before the imposition of any disciplinary sanctions against a respondent; and
- Not discipline a party, witness, or others participating in the Title IX grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.<sup>26</sup>

The determination regarding responsibility becomes final either on the date that [ABC College] provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.

### **Appeals:**

[ABC College] will offer an appeal from a dismissal or determination whether sex-based harassment occurred on the following bases:

- Procedural irregularity that would change the outcome;

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<sup>26</sup> *Note to Drafter:* A recipient is still permitted to address false statements by initiating a disciplinary process under its code of conduct as long as there is evidence independent of the determination whether sex discrimination occurred.

- New evidence that would change the outcome and that was not reasonably available when the determination or dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

If a party appeals a dismissal or determination whether sex-based harassment occurred, [ABC College] will:

- Notify the parties in writing of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Implement appeal procedures equally for the parties;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;<sup>27</sup>
- Communicate to the parties in writing that [ABC College] will provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties in writing of the result of the appeal and the rationale for the result.

Any additional procedures or bases for appeal [ABC College] offers will be equally available to all parties.

**Informal Resolution, if offered<sup>28</sup>:**

In lieu of resolving a complaint through [ABC College’s] Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. [ABC College] will inform the parties in writing of any informal resolution process it offers and determines is appropriate, if any. [ABC College] will not offer informal resolution to resolve a complaint when such a process would conflict with Federal, State, or local law. Before the initiation of an informal resolution process, [ABC College] will explain in writing to the parties:

- The allegations;
- The requirements of the informal resolution process;

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<sup>27</sup> *Note to Drafter:* Training requirements are set forth in § 106.8(d).

<sup>28</sup> *Note to Drafter:* Title IX does not require a recipient to offer an informal resolution process. However, a recipient is free to provide such a process, as long as it complies with certain regulatory requirements. This section provides sample text a postsecondary institution may elect to include in its § 106.46 grievance procedures, but a postsecondary institution is not required to use the exact text provided. Further, if a postsecondary institution does not offer informal resolution for sex-based harassment complaints that involve a student party, it may opt to omit a section on informal resolution from its § 106.46 grievance procedures. The requirements related to informal resolution are set forth in § 106.44(k).

- That any party has the right to withdraw from the informal resolution process and initiate or resume grievance procedures at any time before agreeing to a resolution;
- That if the parties agree to a resolution at the end of the informal resolution process, they cannot initiate or resume grievance procedures arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- What information [ABC College] will maintain and whether and how [ABC College] could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed.

**Supportive Measures:**

[ABC College] will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person’s access to the [ABC College’s] education program or activity or provide support during [ABC College’s] Title IX grievance procedures or during the informal resolution process. For complaints of sex-based harassment, these supportive measures may include [DESCRIBE RANGE that complies with 106.44(g)].

**Disciplinary Sanctions and Remedies:**

Following a determination that sex-based harassment occurred, [ABC College] may impose disciplinary sanctions, which may include [LIST OR DESCRIBE RANGE]. [ABC College] may also provide remedies, which may include [LIST OR DESCRIBE RANGE].

## **Appendix: Definitions (106.2)**

Section 106.2 of the 2024 amendments includes a number of definitions. When those defined terms are used in this Resource, they have the meaning set forth in § 106.2. The 2024 amendments do not require a recipient to incorporate these definitions into their policies or grievance procedures, but we include key definitions below that may inform a recipient's development of grievance procedures:

*Complainant* means:

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

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

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

*Party* means a complainant or respondent.

*Relevant* means related to the allegations of sex discrimination under investigation as part of these grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

*Remedies* means measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the recipient's education program or activity after a recipient determines that sex discrimination occurred.

*Respondent* means a person who is alleged to have violated the recipient's prohibition on sex discrimination.

*Retaliation* means 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 its regulations, 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 the Title IX regulations.

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

(1) *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;

(2) *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:

(i) The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;

(ii) The type, frequency, and duration of the conduct;

(iii) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(iv) The location of the conduct and the context in which the conduct occurred; and

(v) Other sex-based harassment in the recipient's education program or activity; or

(3) *Specific offenses*.

(i) 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;

(ii) 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;

(iii) 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; or
- (iv) 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.

*Supportive measures* means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

- (1) Restore or preserve that party's access to the recipient's education program or activity, including measures that are designed to protect the safety of the parties or the recipient's educational environment; or
- (2) Provide support during the recipient's grievance procedures or during an informal resolution process.