Title IX Training Series · Higher Education

Navigating Title IX: Annual Compliance Refresher 2026

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About Equity Compliance Solutions

Staffing and Support

- Interim and outsourced roles
- External Title VI and Title IX
- Civil rights compliance support

Case Management

- Investigations and decision-making
- Hearing officers and advisors
- Informal resolution
- Expert witness services

Capacity Building

- Training
- Policy and procedure development
- Compliance advising

More than 20 years in civil-rights compliance across higher education and PreK–12.

Training Overview

1. Current Title IX framework and retaliation
2. Institutional response and grievance procedures
3. Supportive measures, emergency removal, and informal resolution
4. Bias, relevance, and practical scenarios

Module 1: Current Title IX Framework and Retaliation

Topics: The statute · Regulatory landscape · Definitions · Consent · Retaliation

The Statute: Title IX

> *"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." (20 U.S.C. § 1681(a))*

Why it matters: Title IX reaches beyond sexual harassment. It protects access to education programs and activities.

The Framework: Three Forms of Sex Discrimination

1. Sex discrimination

- Disparate treatment
- Unequal access or benefits
- Pregnancy or related conditions
- Parental, family, or marital status

2. Sexual harassment

- Quid pro quo
- Hostile environment
- Sexual assault, dating violence, domestic violence, stalking

3. Retaliation

Intimidation, threats, coercion, or discrimination because someone reported, participated, or declined to participate.

Regulatory Landscape: Title IX in 2026

The 2020 regulations govern OCR enforcement.

- **Jan. 9, 2025:** the 2024 regulations were vacated nationwide.
- **Sept. 28, 2026:** ED formally rescinded the 2024 rule and restored the 2020 text.

Obligations may also arise from

- The Title IX statute
- Federal case law
- Clery Act and VAWA
- State and local law
- Institutional policy
- Collective bargaining agreements

Source: U.S. Department of Education, Office for Civil Rights

Regulatory Landscape: Federal Enforcement Update

What has changed

- **Feb. 2025:** OCR confirms it enforces the 2020 regulations
- **2025:** EO 14168 and EO 14201: "sex" as biological sex; athletics priority
- **Apr. 2025:** ED and DOJ form a Title IX Special Investigations Team
- **Apr. 2026:** OCR rescinds gender-identity terms in resolution agreements
- **June 2026:** West Virginia v. B.P.J.: Title IX permits limiting girls' and women's teams to biological females
- **Sept. 2026:** ED formally rescinds the 2024 rule; 2020 text restored in the CFR

What has not changed

- 2020 rule and § 106.45 govern sexual-harassment response
- Supportive measures and equitable treatment
- Retaliation protections
- Clery/VAWA, state law, institutional policy
- 2020 regulations remain the framework, now restored in the CFR

Coverage: Two Questions for Every Report

1. Does the conduct raise a Title IX concern?

Title IX broadly prohibits sex discrimination: unequal treatment, access barriers, pregnancy discrimination, harassment, and retaliation.

2. Which process applies?

Section 106.45 applies to formal complaints of sexual harassment that meet the regulatory definition and jurisdiction requirements.

Remember: Outside § 106.45 is not outside every obligation. Another law, policy, or process may still apply.

Definitions: Sexual Harassment Under the 2020 Regulations

1. Quid pro quo

An employee conditions an aid, benefit, or service on participation in unwelcome sexual conduct.

2. Hostile environment

Unwelcome conduct so severe, pervasive, and objectively offensive that it effectively denies equal access.

3. Specified offenses

Sexual assault, dating violence, domestic violence, or stalking, as defined in federal law.

Source: 34 C.F.R. § 106.30(a) (2020)

Definitions: Hostile Environment: All Elements Required

Conduct must be severe, pervasive, and objectively offensive, so that it effectively denies equal access. All elements are required.

Consider the conduct in context

- Nature and severity
- Frequency and duration
- Ages, roles, and relationship
- Location and circumstances
- Effect on educational access

Source: 34 C.F.R. § 106.30(a) (2020)

Definitions: NIBRS Update: Criminal Sexual Contact

The FBI NIBRS User Manual (2025) replaces the offense term "Fondling" with "Criminal Sexual Contact."

The NIBRS definition is broader

- Clothed or unclothed body parts
- Degradation, gratification, or humiliation
- Forcing the victim to touch the actor
- Incapacity includes physical impairment and intoxication

But the regulations have not changed

- Clery regulations still say "Fondling"
- The Clery appendix keeps the older definition
- Not a formal amendment to Title IX or Clery
- Coordinate with Clery officials and counsel

Definitions: Consent Under Institutional Policy

No single federal definition. Apply your published policy and applicable law.

1. **Capacity:** able to understand the nature and consequences
2. **Communication:** words or conduct show willingness
3. **Voluntary:** no force, coercion, threats, or intimidation
4. **Specific:** yes to one act is not yes to another
5. **Ongoing:** may be withdrawn at any time

Definitions: Capacity to Consent: Incapacitation

Incapacitation: A functional inability to understand the nature or consequences of sexual activity, or to make or communicate a decision.

- **Intoxication is not the same as incapacitation.**
- **Memory loss alone does not resolve the question.**

- Did the respondent know or reasonably should have known? (if policy requires)

Evidence to gather

- Words and conduct at the time
- Witness observations
- Messages and video
- Evidence of consumption

Retaliation: Retaliation Under Title IX

Interference

Intimidating, threatening, coercing, or discriminating to interfere with a Title IX right.

Because of protected activity

Reporting, complaining, testifying, assisting, participating, or refusing to participate.

Causation: what connects the action to the protected activity?

- Timing
- Statements
- Inconsistent treatment
- Procedural departures
- Documented reason

Source: 34 C.F.R. § 106.71

Scenario 1 (Retaliation): Retaliation or Legitimate Action?

Two weeks after serving as a witness, a graduate assistant is removed from a research project.

The supervisor says the assistant is “not a team player.” The assistant’s file contains no documented performance concerns.

Question: Can you determine that retaliation occurred? What would you need to know?

Scenario 1 Debrief: Not Yet: Investigate Causation

1. **Knowledge:** Did the supervisor know about the Title IX participation?
2. **Timing:** When did the supervisor learn of it, and when was the decision made?
3. **Consistency:** How were similarly situated assistants treated?
4. **Other evidence:** Statements, messages, procedural departures, intervening events

Takeaway: Close timing is not proof, and a vague reason is not a defense. Test both against the evidence.

Module 2: Institutional Response and Grievance Procedures

Topics: Notice · Outreach · Jurisdiction · Investigation · Hearing · Determination · Appeal · Records

Institutional Response: Report, Actual Knowledge, Formal Complaint

1. **Report:** Anyone may report, by any method, at any time.
2. **Actual knowledge:** Notice to the Coordinator or an official with authority. Requires a prompt response.
3. **Formal complaint:** Filed by the complainant or signed by the Coordinator. Starts the grievance process.

Throughout: Treat complainants and respondents equitably. Equitable does not always mean identical.

Institutional Response: The Title IX Response Process

1. Report or actual knowledge
2. Outreach and support
3. Formal complaint and jurisdiction
4. Investigation
5. Live hearing
6. Written determination
7. Appeal
8. Remedies and records

Not every matter passes through every stage. Dismissal or informal resolution can change the path.

Step 1: Reports and Actual Knowledge

Who may report

- Any person, whether or not they experienced the conduct
- In person, by mail, phone, or email
- Including outside business hours

Actual knowledge exists when notice reaches

- The Title IX Coordinator, or
- An official with authority to institute corrective measures

Policy reminder: A duty to report under policy does not, by itself, make an employee an official with authority.

Source: 34 C.F.R. § 106.30

Step 2: Initial Outreach and Supportive Measures

1. **Contact** the complainant promptly
2. **Discuss** available supportive measures
3. **Consider** the complainant's wishes

4. **Clarify** no formal complaint is required for support
5. **Explain** how to file a formal complaint

Practice point: Document the outreach, the complainant's wishes, the measures offered, and any follow-up.

Step 3: Formal Complaints and Jurisdiction

A formal complaint

- Filed by the complainant or signed by the Coordinator
- Alleges sexual harassment and requests an investigation
- Complainant is participating or trying to participate in the program

Jurisdiction check

- Meets the definition, if proved
- Occurred in the education program or activity
- Against a person in the United States

Fails a check? Dismiss from the Title IX process with written notice. Another policy may still apply.

Source: 34 C.F.R. §§ 106.30, 106.45(b)(3)

Step 4: Investigation Requirements

The institution must

- Carry the burden of gathering evidence
- Evaluate evidence objectively
- Never base credibility on status
- Give written notice before the first interview

Two separate 10-day review periods

1. Share directly related evidence with the parties, who have at least 10 days to respond.
2. Issue the final investigative report at least 10 days before the hearing.
3. Hold the live hearing.

Source: 34 C.F.R. § 106.45(b)(1), (2), (5)

Step 5: Live Hearing Requirements

- **Decision-maker:** is not the Title IX Coordinator or investigator
- **Advisors:** cross-examine live; parties never question each other
- **No advisor?** The institution provides one at no cost
- **Relevance:** ruled on before each answer; exclusions explained
- **Format:** separate rooms on request; recording or transcript required

Current law: The statement-exclusion rule was vacated. Statements may be considered even without cross-examination.

Source: 34 C.F.R. § 106.45(b)(6)–(7)

Step 6: Written Determination

Standard of evidence

Preponderance or clear and convincing. Apply the same standard to all formal complaints: students, employees, and faculty.

Required elements

1. Allegations
2. Procedural history
3. Findings of fact
4. Policy conclusions
5. Result and rationale for each allegation, with sanctions and remedies
6. Appeal procedures and grounds

Provide to both parties simultaneously.

Source: 34 C.F.R. § 106.45(b)(7)

Step 7: Appeals: Three Required Grounds

1. **Procedural irregularity** that affected the outcome
2. **New evidence** not reasonably available earlier that could affect the outcome
3. **Conflict or bias** of the Coordinator, investigator, or decision-maker that affected the outcome

Procedures

- Both parties may appeal determinations and dismissals
- Notify the other party
- Equal chance to submit statements
- New, trained decision-maker
- Written decision to both parties

Source: 34 C.F.R. § 106.45(b)(8)

Step 8: Remedies and Recordkeeping

After a finding of responsibility

- Implement sanctions
- Provide remedies that restore access
- Continue or adjust supportive measures
- Coordinator oversees implementation

Seven years of records

Investigations, recordings, sanctions, remedies, appeals, informal resolutions, and training materials.

Post training materials

Materials used to train Title IX personnel must be publicly available on the institution's website.

Source: 34 C.F.R. § 106.45(b)(1)(i), (7)(iv), (10)

Module 3: Supportive Measures, Emergency Removal, and Informal Resolution

Topics: Supportive measures · Scenario · Emergency removal · Administrative leave · Informal resolution

Supportive Measures

Supportive measures must be

- Individualized
- Available to either party
- Available without a formal complaint
- Free of charge
- Non-disciplinary and non-punitive
- Confidential where possible

Examples

- Counseling or EAP resources
- Extensions and course adjustments
- Schedule, housing, or work changes
- Campus escort
- Mutual contact restrictions (e.g., no-contact directives)
- Leaves of absence
- Increased security or monitoring

Scenario 2 (Supportive Measures): Supportive Measure or Disciplinary Action?

A student reports sexual assault by another student. They share a residence hall, two classes, and a student organization. Before any investigation, the institution:

- Moves the respondent to another residence hall
- Removes the respondent from both shared classes
- Bars the respondent from the organization's meetings

Question: Do these measures remain supportive, or are they disciplinary in effect?

Scenario 2 Debrief: Likely Punitive in Cumulative Effect

- What purpose does each measure serve?
- How much does each burden the respondent?
- What is the cumulative effect?
- Would less burdensome alternatives work?
- Does the emergency-removal standard apply?
- When will the measures be reassessed?

Takeaway: Measures that seem reasonable alone can become punitive together. Assess and document.

Source: 34 C.F.R. §§ 106.30(a), 106.44(c)

Protective Actions: Emergency Removal and Administrative Leave

Emergency removal

- Individualized safety and risk analysis
- Immediate threat to physical health or safety
- Threat justifies the removal
- Notice and immediate chance to challenge

Administrative leave

- Non-student employee respondents only
- Permitted while the process is pending
- No emergency analysis required by Title IX
- Employment policy, CBAs, and disability law still apply
- Document the terms and review

Key distinctions

- **Supportive measures** preserve access.
- **Emergency removal** addresses an immediate threat.
- **Administrative leave** is an employment action.

Source: 34 C.F.R. § 106.44(c)–(d)

Informal Resolution

Requirements

- A formal complaint has been filed
- Before a determination of responsibility
- Voluntary, written consent from both parties
- Written notice of allegations and consequences
- Either party may withdraw before agreement
- Trained, impartial facilitator

Possible methods

- Mediation
- Facilitated agreement
- Restorative process
- Shuttle negotiation

Not permitted: informal resolution of allegations that an employee sexually harassed a student.

Source: 34 C.F.R. § 106.45(b)(9)

Module 4: Bias, Relevance, and Practical Scenarios

Topics: Conflicts and bias · Relevance and cross-examination · Two scenarios · Key takeaways

Impartiality: Conflicts of Interest, Bias, and Prejudgment

1. Conflict of interest

A personal, professional, supervisory, or financial interest.

Example: The investigator supervises the respondent.

2. Bias

A predisposition for or against a party or group of parties.

Example: "Complainants usually tell the truth."

3. Prejudgment

Reaching conclusions before evaluating the evidence.

Example: Deciding based on the initial report or demeanor.

Practice: Identify concerns early, disclose them, and reassign when impartiality could reasonably be questioned.

Source: 34 C.F.R. § 106.45(b)(1)(iii)

Hearings: Relevance and Cross-Examination

Before each answer, the decision-maker

- Permits relevant questions
- Excludes irrelevant ones and explains why
- Applies the same standard to both parties
- Enforces neutral rules of decorum

Complainant's sexual history is irrelevant unless offered to prove

1. Someone other than the respondent committed the conduct, or
2. Consent, through specific incidents between the complainant and respondent

Source: 34 C.F.R. § 106.45(b)(6)(i)

Scenario 3 (Jurisdiction): Does the Grievance Process Apply?

A student reports a sexual assault at an off-campus fraternity house. The university officially recognizes the fraternity, which owns the house. The enrolled complainant files a signed formal complaint.

Question: Must the university use the Title IX regulatory grievance process?

A. No, because it occurred off campus
B. Yes, because a recognized student organization owns the house
C. Only if the university sponsored the party
D. Only if the respondent admits attending

Scenario 3 Debrief: Answer: B. Yes

An education program or activity includes buildings owned or controlled by a student organization the institution officially recognizes.

Confirm the other requirements

- Meets the definition
- Against a person in the U.S.
- Complainant participating
- Complaint requests investigation

Takeaway: Off campus does not automatically mean outside Title IX.

Source: 34 C.F.R. §§ 106.30(a), 106.44(a), 106.45(b)(3)(i)

Scenario 4 (Evidence and Relevance): Sorting the Evidence

The complainant alleges sexual activity continued after consent was withdrawn. The respondent says it remained consensual. Offered at the hearing:

1. Next-morning text: "I told you to stop"
2. Friend saw the complainant crying shortly after
3. Complainant's prior relationship with another student
4. Prior consensual interactions between the parties
5. Respondent's excellent grades and clean record

Question: Which evidence is relevant to responsibility? Which must be excluded?

Scenario 4 Debrief: Relevance Is Not the Same as Weight

Evidence	Relevance	Why
Next-morning text	Relevant	Contemporaneous account; weight is a separate question
Friend's observation	Potentially relevant	Circumstantial; limited to personal observation
Relationship with another student	Excluded	Sexual-history restriction applies
Prior interactions between parties	Potentially relevant	Permitted to prove consent; not conclusive
Grades and clean record	Generally irrelevant	May matter at the sanction stage

Takeaway: Relevant evidence may inform a disputed fact without proving it or deserving much weight.

Source: 34 C.F.R. § 106.45(b)(6)(i)

Key Takeaways: Five Things to Remember

1. **Start with the governing framework.** Which regulations, policies, and laws apply?
2. **Analyze jurisdiction carefully.** "Off campus" is not automatically "outside Title IX."
3. **Individualize the response.** Circumstances, access needs, safety, and support.
4. **Protect the integrity of the process.** Impartiality, objectivity, no prejudgment.
5. **Document the reasoning.** What you knew, what you did, why, and when you revisited it.

Questions and Resources

Contact

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Key resources

- U.S. Department of Education: Title IX and Sex Discrimination
- 2020 Title IX Final Rule (Federal Register)
- February 4, 2025 Title IX Enforcement Directive
- August 2021: Vacatur of the Statement-Exclusion Provision
- June 30, 2026: West Virginia v. B.P.J.
- Sept. 28, 2026: ED rescinds 2024 rule, restores 2020 regulation
- Your institution's current Title IX policy and grievance procedures

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