



2020 TITLE IX GRIEVANCE PROCESS REFRESH FOR INVESTIGATORS
TEXAS CHRISTIAN UNIVERSITY
AUGUST 13, 2025



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**TITLE IX
GRIEVANCE
PROCEDURES**



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BEFORE WE BEGIN...

<p>Sex Discrimination § 106.8(c)</p> <ul style="list-style-type: none"> • “grievance procedures that provide for the prompt and equitable resolution of student and employee complaints.” • Any person may report sex discrimination to the Title IX Coordinator • Must publish grievance procedures to address sex discrimination • No requirement other than “prompt” and “equitable” 	<p>Sexual Harassment § 106.44 and § 106.45</p> <p>Other Behaviors Conduct codes</p>
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MORE REMINDERS

- Applies to K-12
- Incorporates the Clery Act (but don't forget about separate Clery duties!)
- Lots of guidance: 500+ pages of preamble plus more recent Q&As
- (This section is not in order of regulations)

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FREE OF BIAS AND CONFLICT OF INTEREST

Bias

Conflict of Interest

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PEOPLE DEFINITIONS



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§ 106.30(a) - DEFINITIONS

Complainant

- An individual who is alleged to be the victim of conduct that could constitute sexual harassment

Respondent

- An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

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TITLE IX PERSONNEL



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DUTIES OF THE TITLE IX COORDINATOR

- § 106.8(a) Must be referred to as the "Title IX Coordinator"
- § 106.8(a) Coordinate efforts to comply
- § 106.44(a) Receive reports and promptly contact the complainant
- § 106.30 Sign formal complaints
- § 106.30 Responsible for coordinating the effective implementation of supportive measures

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§ 106.45(b)(1)(iii) - TRAINING

All Title IX Personnel

- Definition of sexual harassment
- Scope of the recipient's education program or activity
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

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§ 106.45(b)(1)(iii) - TRAINING

Decision-makers

- Technology to be used at a live hearing
- Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant

Investigators

- Issues of relevance to create an investigative report that fairly summarizes relevant evidence

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ADVISOR OF CHOICE



May be but is not required to be an attorney



May accompany to any meeting or proceeding



Institution may restrict participation (except at hearing)



Receives the draft and final reports



Conducts cross-examination at hearing

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SEXUAL HARASSMENT DEFINITIONS



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§ 106.30(a) - SEXUAL HARASSMENT

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. 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;
2. 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;
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

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PRONG 1: QUID PRO QUO

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

(§ 106.30(a))

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QUID PRO QUO (FROM THE PREAMBLE)

- 🗨️ "This for that" harassment
- 👤 Must be an employee respondent (not volunteer, visitor, student)
- ★ "Unwelcome" is subjective element (submission vs. consent)
- 🕒 Does not need to meet pervasiveness element
- 📊 Limited need to show impact - single instance could jeopardize access

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PRONG 2: HOSTILE ENVIRONMENT+ (THE DAVIS STANDARD)

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



(§ 106.30(a))

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§ 106.30(a) - HOSTILE ENVIRONMENT+

Referred to in preamble as "The Davis Standard"

Not the same Title VII "hostile environment" or 2001 Guidance

First Amendment protections

Must show the "effectively denies" to reach the bar

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PRONG 3: THE VAWA OFFENSES

“Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30)
(§ 106.30(a))



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THE VAWA OFFENSES



Severity, pervasiveness, and offensiveness are not elements

Denial of equal access is not an element - it is assumed

Includes multiple offenses

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§ 106.30(a) - THE VAWA OFFENSES

 Sexual Assault

Rape
Fondling
Incest
Statutory Rape

 Intimate Partner Violence

Dating Violence
Domestic Violence

 Stalking

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SEXUAL ASSAULT

“Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v)

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CLERY DEFINITIONS OF SEXUAL ASSAULT

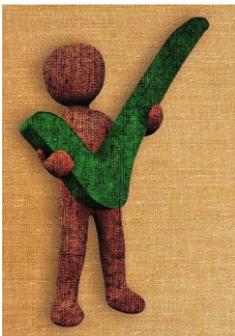
- **Rape** - The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
- **Fondling** - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental incapacity.
- **Incest** - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape** - Sexual intercourse with a person who is under the statutory age of consent.

34 CFR 668 Appendix A

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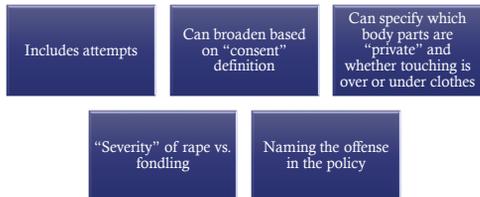
§ 106.30(a) - CONSENT

The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault.

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SEXUAL ASSAULT DEFINITION CONSIDERATIONS



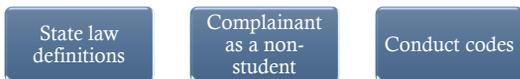
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INCEST AND STATUTORY RAPE CONSIDERATIONS



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INTIMATE PARTNER VIOLENCE

“dating violence” as defined in 34 U.S.C. 12291(a)(10),
 “domestic violence” as defined in 34 U.S.C. 12291(a)(8)

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DATING VIOLENCE - 34 U.S.C. 12291(A)(10)

The term “dating violence” means violence committed by a person— (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

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DATING VIOLENCE - CLERY REGULATION ADDITIONS

(ii) For the purposes of this definition -

(A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(B) Dating violence does not include acts covered under the definition of domestic violence.

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DOMESTIC VIOLENCE - 34 U.S.C. 12291(A)(8)

The term “domestic violence” includes felony or misdemeanor crimes of 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,
- 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 receiving grant monies, or
- 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.

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INTIMATE PARTNER VIOLENCE CONSIDERATIONS

- Consistency in assigning violations
- Severity, pervasiveness, and offensiveness not elements
- Denial of equal access is not an element

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STALKING

“stalking” as defined in 34 U.S.C. 12291(a)(30)

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STALKING - 34 U.S.C. 12291(A)(30)

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.

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STALKING - CLERY REGULATION ADDITIONS

(ii) For the purposes of this definition -

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

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

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

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TITLE IX JURISDICTION - PERSON



At the time of filing a formal complaint... the complainant must be participating in or attempting to participate in the education program or activity." (§106.30(a))



The recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

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"ATTEMPTING TO PARTICIPATE"

- Has withdrawn due to alleged harassment and has desire to re-enroll
- Has graduated but intends to apply to new program or participate in alumni programs
- Is on a leave of absence and still enrolled or intends to re-apply
- Has applied for admission

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NON-STUDENT OR NON-EMPLOYEE COMPLAINANTS (Q&A)

There are circumstances when a Title IX Coordinator may need to sign a formal complaint that obligates the school to initiate an investigation regardless of the complainant's relationship with the school or interest in participating in the Title IX grievance process.

- Examples:
 - Perpetrator in a position of authority
 - Potential for harm to other students

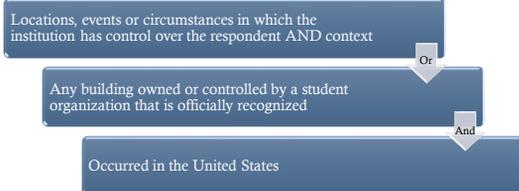
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TITLE IX JURISDICTION – CONTEXT OF EDUCATIONAL PROGRAMS OR ACTIVITIES



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OFF-CAMPUS JURISDICTION



Hotel
On field trip



Home
While tutoring



Bus
For athletic travel



Virtual
During class



Business
At internship

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RECEIVING REPORTS



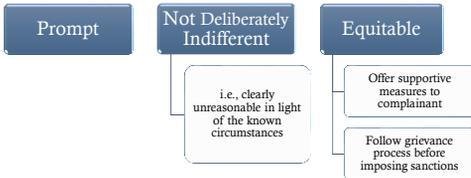
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§ 106.44(a) - GENERAL RESPONSE TO SEXUAL HARASSMENT



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§ 106.30(a) - ACTUAL KNOWLEDGE



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NO ACTUAL KNOWLEDGE § 106.30(a)



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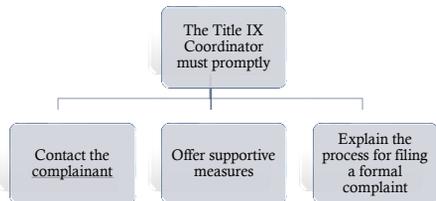
WHO MAY REPORT (FROM THE Q&A)

"A school may receive actual knowledge of sexual harassment from any person. There is no requirement that the person be participating in or attempting to participate in a school program or activity to report sexual harassment."

- Complainant
- Friend
- Parent
- Witness

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RESPONSE TO A REPORT



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§ 106.30(a) - SUPPORTIVE MEASURES

Such measures are designed 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.

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SUPPORTIVE MEASURES

Non-disciplinary and non-punitive	Individualized	Offered as appropriate	Reasonably available
Without fee or charge	Complainant or the respondent	Before or after the filing of a formal complaint or where no formal complaint has been filed	Must keep confidential

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SUPPORTIVE MEASURE EXAMPLES § 106.30(a)

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- 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
- Other similar measures

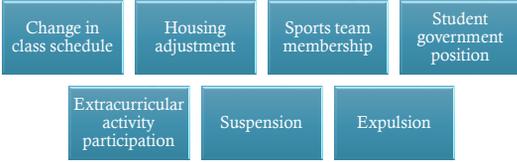
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WHAT COULD "UNREASONABLY BURDEN"?



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LEAVE OPTIONS



Emergency removal



Administrative leave

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§ 106.44(c) - EMERGENCY REMOVAL



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SUPPORTIVE MEASURES FROM GUIDANCE

- Fact-specific determinations of supportive measures
- If considered as a potential sanction, it is a burden
- Emergency removal can include removal from all or part of the educational program
- No contact orders do not have to be mutual
- Student workers straddle both removal options

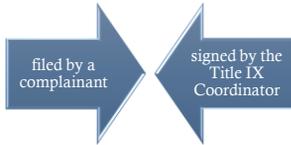
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§ 106.30(a) - FORMAL COMPLAINT



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§ 106.45 - GRIEVANCE PROCESS FOR FORMAL COMPLAINTS OF SEXUAL HARASSMENT

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§ 106.45(a) - RECIPIENT'S TREATMENT OF PARTIES

A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.

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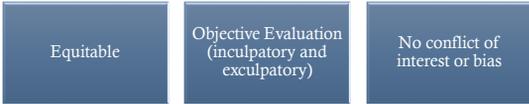
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§106.45 (b)(1)(i-iii) - GRIEVANCE PROCESS



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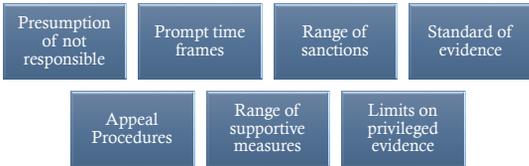
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§ 106.45 (b)(1)(iv-x) - GRIEVANCE PROCESS



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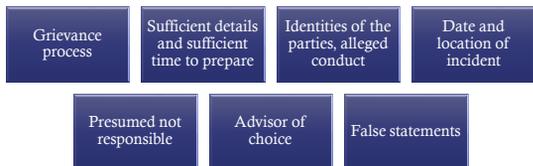
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§ 106.45(b)(2) - NOTICE OF ALLEGATIONS



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§ 106.45(b)(3) - DISMISSAL OF FORMAL COMPLAINT

Must Dismiss

- If the conduct alleged in the formal complaint would not constitute sexual harassment
- Did not occur in the educational program or activity
- Did not occur in the United States

May Dismiss

- Complainant withdraws the formal complaint
- Respondent is no longer enrolled/employed
- Insufficient evidence

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§ 106.45(b)(4) - CONSOLIDATION OF COMPLAINTS



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§ 106.45(b)(9) - INFORMAL RESOLUTION



Notice



Voluntary



Not allowed for Employee/student

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§ 106.45(b)(5)(i-iii) - INVESTIGATION

Burden of proof is on the institution

Equal opportunity to present witnesses and facts

No restriction on discussing allegations

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§ 106.45(b)(5)(iv-vii) - INVESTIGATION

Advisor of choice

Notice of meetings

Right to inspect evidence and respond

Receive investigative report and may respond

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