



# FEMINIST MAJORITY FOUNDATION

## Title IX Coordinator Roles and Responsibilities: A Guide to 2020 OCR Regulations

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Title IX of the Education Amendments Act of 1972 prohibits sex-discrimination in education. In May 2020, President Trump and U.S Secretary of Education Betsy DeVos’ Department of Education’s Office for Civil Rights (OCR) released their final Title IX [rule](#) on sex-based harassment. The regulations went into effect on August 14, 2020. This report compiles all information on Title IX Coordinators’ responsibilities, provided by the OCR in their final rule. Please note that this information was compiled as of August 1, 2020.

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### Important terminology:

Please note that **recipient** refers to the educational institution (e.g: school or university).  
**Complainant** refers to the person who has allegedly experienced sex-based harassment.  
**Respondent** refers to the person who has allegedly perpetrated sex-based harassment.

## Summary of Title IX Coordinator

This section explores the basics of Title IX of Education Amendments Act of 1972 and the principles of the Title IX Coordinator position under U.S Secretary of Education Betsy DeVos, as specified in the May 2020 regulations.

Title IX of Education Amendments Act of 1972 prohibits sex-based harassment in education. This policy also created the position of the Title IX Coordinator. Title IX Coordinators are responsible for receiving notices of sex-based harassment, contacting the complainant about supportive measures and reporting options, and overseeing (however not serving as decision makers of) formal grievance processes. A formal grievance process begins after a complainant (the person who has allegedly experienced sex-based harassment) chooses to file a formal complaint. In some instances, when the respondent (the person who has allegedly perpetrated sex-based harassment) is in a position of authority and/or has exhibited a “pattern of abuse,” the Title IX Coordinator can sign a formal complaint and initiate the formal grievance process against the complainant’s wishes. However, this must be a “reasonable” decision and not show “deliberate indifference” to the complainant’s wishes.

If a Title IX Coordinator is made aware of an instance of sex-based harassment, they are responsible for contacting the complainant to inform them of supportive measures and about reporting processes. This is protocol regardless of who provided notice of sex-based harassment to the Title IX Coordinator. This alone does not begin a formal grievance process or investigation. For that to happen, the complainant must file a formal complaint.

The Title IX Coordinator must be unbiased in the formal grievance process. They can also serve as an investigator, but cannot be a decision maker. Recipients adopt either the “preponderance of evidence” standard (more likely than not, 50.01%) or “clear and convincing” standard (~75%). The formal grievance process concludes with a written determination to both parties. For post-secondary institutions, the formal grievance process includes a live hearing of evidence. If the respondent is found responsible, the Title IX Coordinator is responsible for implementing corrective measures. Both parties have a right to appeal if they believe a Title IX Coordinator, investigator, or decision maker was biased in a way that affected the decision, if there was a procedural irregularity, or if there is new evidence.

The 2020 Title IX regulations move away from “responsible employee” rubric and diminish the number of employees whose knowledge of sexual harassment *requires* reporting to the Title IX Coordinator. In post-secondary institutions, only a few select employees have the “actual knowledge” responsibility, relinquishing other employees from an obligation to report to Title IX if they receive notice of sexual harassment. However, for elementary and secondary recipients, *any* employee who is aware of sexual harassment has “actual knowledge” and is required to report to the Title IX Coordinator.

Furthermore, the final rule no longer requires Title IX Coordinators or recipients to investigate instances of violence that happened to a student who was either off-campus or outside of the United States. This excludes any student from reporting an instance of violence that happened to them while abroad. Recipients can still choose to investigate these instances, but are not required.

- Each school district, college, and university must have at least one Title IX Coordinator who is responsible for coordinating all compliance with Title IX of Education Amendments Act of 1972.

- In the summary of their regulations, the OCR states that each recipient (school, university, etc.) must designate a Title IX Coordinator to address sex discrimination, including sexual harassment. Recipients must ensure adequate dissemination of a university’s non-discrimination policy and the contact information of their Title IX Coordinator. (Federal Register, 30026).
  - Each postsecondary college/university must have its own Title IX Coordinator.
  - Every elementary and secondary institution is allowed to have its own Title IX Coordinator, however not required. Each school district, however, must have a Title IX Coordinator.
  - Title IX Coordinator does not have to be an independently held position. Recipients can designate an employee to be the Title IX Coordinator, regardless of whether they hold another position.
- Individual(s) who believe a recipient has treated them differently based on sex in a manner prohibited under Title IX may file a complaint of sex discrimination with the Title IX Coordinator, who will undergo the “prompt and equitable grievance procedures” adopted and published by the recipients pursuant to §106.8c. (Federal Register, 30096).
- Section 106.8(a) “requires a recipient to give the Title IX Coordinator authority to meet specific responsibilities as well as to coordinate the recipient’s overall efforts to comply with Title IX and these final regulations” (Federal Register, 30118).
- Title IX Coordinator is responsible for ensuring recipient compliance with Title IX. As the Office for Civil Rights states, “the function of a Title IX Coordinator is necessary to increase the likelihood that recipients will fulfill those obligations” (Federal Register, 30118).
- In the summary of major provisions, the Office for Civil Rights states that these regulations require recipients to allow “a fair grievance process to resolve sexual harassment allegations when a complainant requests an investigation or a Title IX Coordinator decides on the recipient’s behalf that an investigation is necessary.” (Federal Register, 30030). As discussed in next two sections, the breadth of what triggers recipient response has been limited in the 2020 OCR regulations.
- Reports to a Title IX Coordinator do not equate to a formal grievance process. The Title IX Coordinator receives reports and reaches out to the complainant, informing them of supportive services and of reporting options. Complainant can then choose to formally report, initiating a formal grievance process. In some cases, Title IX Coordinator can initiate a formal grievance process without the permission of the complainant. More details on this are provided in the “Formal Complaint / Grievance Process” section.

## Summary of Elementary and Secondary Title IX Process

Elementary and secondary institutions are not required to have their own Title IX Coordinator; however, every school *district* must have at least one Title IX Coordinator. Regardless, the recipient must provide information around Title IX on their website, which includes a district or school's Title IX Coordinator's contact information, definition of sexual harassment, and information about reporting options (Stop Sexual Assault in Schools, Title IX).

A Title IX Coordinator or *any* employee's knowledge of sexual harassment that occurred during school or a school-sponsored activity constitutes "actual knowledge" and triggers recipient response. All elementary and secondary employees with knowledge of violence must report to Title IX. Recipient response is also triggered with any third party report of sexual harassment to Title IX, requiring the Title IX Coordinator to reach out to the complainant (and any legal guardians if the complainant is below legal adult age) about supportive measures and the option to report. The process is outlined below.

- 1) Title IX Coordinator receives notice of sex-based harassment from any third party member.
- 2) With notice of Title IX Coordinator, recipient response is "triggered."
- 3) If report meets sex-based harassment definition and standards in final rule, Title IX Coordinator sends message to the person who has allegedly experienced sexual harassment (complainant), informing them of reporting options and supportive measures. This is also sent to parent/legal guardian if the complainant is under legal adult age.
- 4) Complainant receives notice from Title IX Coordinator
  - a. Complainant can choose to take action by filing a formal complaint, beginning formal grievance process. If child is under legal adult age, parent or legal guardian can choose to file a formal complaint and initiate formal grievance process on child's behalf.
  - b. Complainant is under no obligation to respond to Title IX Coordinator and can choose to not take action. If allegations pertain to a pattern of harassment from recipient employee or where Coordinator sees investigation as "necessary," recipient may be obligated to investigate without permission from complainant. This must not be "deliberately indifferent" to the needs of complainant. If Title IX Coordinator signs formal complaint, complainant does not have to participate in this process, but is still considered a party.
- 5) If a formal complaint has been made, a formal grievance process begins. Notice of allegations is given to both parties, which includes mention of evidence standard and presumption of innocence for respondent. Formal grievance process begins where recipient investigates and adjudicates allegations.
- 6) Investigation ensues with "preponderance of evidence" or "clear or convincing" standard. Final determination is given to both parties. The decision maker, who cannot be a Title IX Coordinator, makes determination. Title IX Coordinator is responsible for implementing corrective measures.
- 7) Appeal option is available to either party who believes Title IX Coordinator, investigator, decision maker, etc. was biased in a way that affected final decision, if they believe there was a procedural irregularity, or if there is new evidence.

## Summary of Post-Secondary Title IX Process

Every post-secondary recipient has at least one Title IX Coordinator. Information on the Title IX Coordinator must be accessible on the recipient's website and include Coordinator's contact information, definition of sexual harassment, and information about reporting options. For post-secondary recipients, recipients have only a few designated employees whose knowledge of an instance of sexual harassment constitutes "actual knowledge" and thus requires reporting to the Title IX Coordinator. Employees and other third party members are still allowed to report knowledge of harassment to Title IX, even if not required. Regardless of who reports to Title IX, if the Title IX Coordinator receives a report of sex-based harassment, they are required to reach out to the complainant about supportive measures and the option to report. The process is outlined below.

- 1) Title IX Coordinator receives notice of sex-based harassment from any third party member.
- 1) With notice to Title IX Coordinator, recipient response is "triggered."
- 2) If report meets sex-based harassment definition and standards in final rule, Title IX Coordinator then sends message to the person who has allegedly experienced sexual harassment (complainant) letting them know of their reporting options and supportive measures.
- 3) Complainant receives information from Title IX Coordinator
  - a. Complainant can choose to take action by filing a formal complaint. This starts formal grievance process.
  - b. Complainant is under no obligation to respond to Title IX Coordinator and can choose to not take action. If allegations pertain to a pattern of harassment from recipient employee or where Coordinator sees investigation as "necessary," recipient may be obligated to investigate without permission from complainant. This must not be "deliberately indifferent" to the needs of complainant. If Title IX Coordinator signs formal complaint, complainant does not have to participate in this process, but is still considered a party.
- 4) Once a formal complaint has been made, a formal grievance process begins. Notice of allegations is given to both parties, which includes mention of evidence standard and presumption of innocence for respondent. Formal grievance process begins where recipient investigates and adjudicates allegations.
- 5) Investigation ensues with "preponderance of evidence" or "clear or convincing" standard. Final determination is given to both parties. The decision maker, who cannot be a Title IX Coordinator, makes determination. Title IX Coordinator is responsible for implementing corrective measures.
- 6) Appeal option is available to either party who believes Title IX Coordinator, investigator, decision maker, etc. was biased in a way that affected final decision, if they believe there was a procedural irregularity, or if there is new evidence.

## Distancing from Responsible Employee Metric

Select employees are obligated to report to their Title IX Coordinator if they have knowledge of/receive notice of sex-based harassment. The breadth of employees with reporting obligations is different for elementary/secondary institutions than it is for post-secondary institutions. The Department of Education's Office for Civil Rights is distancing themselves from the responsible employee rubric, diminishing the number of post-secondary employees whose notice of sex-based harassment constitutes "actual knowledge" and triggers required recipient response.

- The Department of Education's Office for Civil Rights' 2020 regulations distance themselves from the "should have known" standard, which says that a recipient is liable if *any* responsible employee "knew" or "could have known" about sex-based harassment. This change more greatly affects post-secondary institutions, where recipients can choose to select only a few administrative employees whose notice or awareness of sex-based harassment triggers a recipient's obligation to respond. This change better enables colleges and universities to ignore instances of violence. It also places a greater responsibility on postsecondary students to report directly to a Title IX Coordinator (Federal Register, 30039).
  - The argument for this change is that the "Department believes that complainants will benefit from allowing postsecondary institutions to decide which of their employees (aside from the Title IX Coordinator, and officials with authority) may listen to a student's disclosure of sexual harassment without being mandated to report the sexual harassment incident to the Title IX Coordinator" (Federal Register, 30113).
  - Select employees who receive notice of sex-based harassment have "actual knowledge" of an incidence. Actual knowledge triggers recipient response through Title IX.
  - This is contrary to previous regulations where the "could have known," "actual knowledge," and "responsible employee" standard/rubric was used.
  - Recipients can still choose to broaden their pool of "responsible employees:" employees with actual knowledge that triggers recipient response. "Nothing in final regulations prevents a postsecondary institution or any other recipient from requiring employees who are not Title IX Coordinators or officials with authority, to report allegations of sexual harassment to the Title IX Coordinator when such employees become aware of such allegations" (Federal Register, 30112).
- For elementary and secondary recipients, the OCR also gets rid of the "responsible employee" rubric, saying it is not necessary because *any* employee's knowledge of sex-based harassment triggers a recipient Title IX response (Federal Register, 30039).

- In elementary and secondary schools, notice of violence to *any* employee or Title IX Coordinator triggers recipient response obligations. This is based off *Geber/Davis* condition from the Supreme Court decision. Because any employee triggers reporting, elementary or secondary students do not need to report allegations to a specific employee such as a Title IX Coordinator to trigger a recipient’s obligation to respond to such allegations.
- The OCR explains, saying, “It is unreasonable to expect young children to seek out specific employees for the purpose of disclosing Title IX sexual harassment. Elementary and secondary school employees other than the Title IX Coordinator, teachers, or officials with authority may observe or witness sexual harassment or have notice of sexual harassment through other means such as a third-party report, and we agree that in the elementary and secondary school context such notice must trigger the school’s mandatory response obligations because otherwise, a young complainant may not be offered supportive measures or know of the option to file a formal complaint that initiates a grievance process against the respondent” (Federal Register, 30116).
- Furthermore, in elementary and secondary institutions, any *third party* disclosure of sex-based harassment also triggers a recipient Title IX response. “If the complainant tells a parent, or a friend, or a trusted adult in the complainant’s life, that third party has the right to report sexual harassment to the school’s Title IX Coordinator, obligating the school to promptly respond, even if that third party has no affiliation with the school” (Federal Register, 30116).
- In summary, “students in elementary and secondary schools may report sexual harassment or allegations of sexual harassment to any employee. Students in postsecondary institutions can always report sexual harassment to the Title IX Coordinator” (Federal Register, 30119).

## Title IX Jurisdiction

The Office for Civil Rights' 2020 regulations modify which instances of sex-based harassment are included under Title IX and, thus, which reports Title IX Coordinators are obligated to investigate if a formal complaint is made. Under the 2020 regulations, definitions of sexual harassment and sexual assault have been narrowed. Recipients are also no longer obligated to investigate instances of sexual harassment that occurred outside of the United States or that occurred to a student while off-campus.

- The 2020 regulations narrow the definition of sexual harassment and sexual assault only to behavior that is “severe, pervasive, and objectively offensive” and that would, if left unaddressed, impede on a student’s access to education. The Department also adopts the *Gebser/Davis* definition of sexual harassment by also including *quid pro quo* harassment and Clery Act/VAWA offenses (Federal Register 30033).
- Under the 2020 regulations, Title IX Coordinators are not obligated to investigate any incidences of violence that happened to a student while they were off-campus. Incidents must have occurred on school grounds or during a school activity. For all institutions, sexual harassment that occurred during a school field trip or school-sponsored extracurricular activity is still protected under Title IX (Federal Register 30194).
  - This is contrary to previous Title IX regulations. Previously, Title IX Coordinators and recipients were to investigate any incidence of sexual violence involving a student, *regardless of where the violence occurred*.
- Under the 2020 regulations, actionable reports of sex-based harassment must have been perpetrated against a person *in the United States* (Federal Register 30069). This excludes those studying abroad. Similar to the other regulatory changes, this reduces the number of incidents of which the Title IX Coordinator is obligated to investigate. Specific Title IX Coordinators, with recipient approval, can choose to investigate incidents that happened abroad or while on-campus, but are now under no obligation to.
- Section 106.45(b) 9 allows Title IX Coordinators, along with other decision-makers, to facilitate “informal resolutions” to claims of sexual harassment, including mediation or restorative justice.
- Section 106.45 also requires recipients to keep records of reports made in the past seven years and publish the materials used for training of Title IX Coordinators. Title IX Coordinators themselves are required to keep records of compliance and grievances. Parties may request access to these documents (Summary 6) (Federal Register 30054).

## Training and Qualifications of Title IX Coordinators

Title IX Coordinators must be trained in bias and serve free from conflicts of interest. Recipients can, however are not required, to have their Title IX Coordinator be independently held positions. In other words, a recipient employee fulfilling another purpose can also serve as the Title IX Coordinator. Recipients can, however are not required, to designate several Title IX Coordinators. Recipients are only required to thoroughly train Title IX Coordinator on topics around Title IX and sexual harassment – not other employees. Recipients are allowed, however not required, to train other employees on topics around sexual harassment.

- Section 106.45 specifies that Title IX Coordinators be “free from conflicts of interest and bias” and are “trained to serve impartially without prejudging the facts at issue.” OCR clarifies that this means having a grievance process that presumes “non-responsibility of respondent until conclusion of grievance process” and includes “reasonably prompt time frame.” There is no specificity for training and no recommendation of independent, full-time Coordinators (Federal Register, 30053, 30083).
- There are no written specifications on the level of education or prior work experience of Title IX Coordinators. “The Department declines to impose a requirement that Title IX Coordinators, investigators, or decision makers be licensed attorneys (or otherwise to specify the qualifications or experience needed for a recipient to fill such positions). Department of Education believes that leaving recipients as much flexibility as possible to fulfill the obligations that must be performed by such individuals will make it more likely that all recipients reasonably can meet their Title IX responsibilities” (Federal Register, 30105).
- Distancing of “responsible employee” metric also relinquishes postsecondary recipients from training employees. As the OCR states, “Rather than mandate training for all employees, these final regulations require robust, specific training of every recipient’s Title IX Coordinator and place specific responsible obligations on the Title IX Coordinator.” There is an emphasis on training to “serve free from bias” (Federal Register, 30114).
  - Breadth of training is largely due to the diminished “responsible employee” rubric. The focus of training suggests an increased responsibility of solely Title IX Coordinators to support students impacted by sexual violence. Postsecondary employees now have permission to be exempted from this responsibility.
  - That said, the Department of Education clearly states that any postsecondary institution is welcome to train all employees or require all employees to report sexual harassment to the Title IX Coordinator through policies that these final regulations do not require without fearing Department interference (Federal Register, 30115).

- “Any recipient may train coaches and athletic trainers to report notice of sexual harassment to the recipient’s Title IX Coordinator. We reiterate that as to elementary and secondary schools, notice to a coach or trainer charges the recipient with actual knowledge, if the coach or trainer is an employee” (Federal Register, 30115).
- “The final regulations require Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution, to be trained on how to conduct an investigation and grievance process; this would include how to apply definitions used by the recipient with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with the other provisions of § 106.45” (Federal Register, 30125).
- The final rule gives permission for recipients to “designate multiple employees as Title IX Coordinators, or designate a Title IX Coordinator and additional staff to serve as deputy Title IX Coordinator, or take other administrative steps to ensure that the Title IX Coordinator can adequately fulfill the recipient’s Title IX obligations.” However, the final rule also notes sensitivity to “the financial and resource challenges” of many recipients in doing this (Federal Register, 30117).
  - There is no requirement to designate several Title IX Coordinators; the Department of Education states that some recipients find it more beneficial to invest all resources to properly equipping one Title IX Coordinator (Federal Register, 30118).
- In addressing frequent turnover of Title IX Coordinators, the final rule “require[s] recipients to carefully “designate and authorize” Title IX Coordinators” (Federal Register, 30118).
- The final rule acknowledged commenters’ concerns about the burden on Title IX Coordinators. OCR responds by saying, “The Department believes this emphasis on the need for recipients to rely heavily on Title IX Coordinators to fulfill recipient’s obligations will result in more recipients effectively responding to Title IX sexual harassment because recipients will be incentivized to properly train and authorize qualified individuals to serve this important function” (Federal Register, 30118). Accessible contact information is especially important for this reason.

## Reporting or Notice to Title IX Coordinator

Any person with knowledge of sexual harassment can report to their Title IX Coordinator. Some employees are obligated to report to Title IX Coordinator if they have knowledge of sex-based harassment. For those employees, knowledge of sexual harassment is called “actual knowledge” and triggers recipient Title IX response. Reporting does not equate to a formal grievance process, however it does require that the Title IX Coordinator reach out to the complainant about supportive measures and with information about reporting options. This section provides information on reporting to the Title IX Coordinator.

- Elementary, secondary, post-secondary recipients are required to prominently display contact information of Title IX Coordinators on recipient website. This must include a specification that any person (third party or complainant) can file a report at any time (including non-business hours) by using listed phone number or email address. This information clarifies that “giving the Title IX Coordinator notice of sexual harassment that triggers the recipient’s response obligations does not require scheduling an in-person appointment with the Title IX Coordinator” (Federal Register, 30067, 30115).
- At elementary, secondary, and post-secondary educational institutions, there are several means to report to the Title IX Coordinator, including in-person, by mail, or by electronic mail. Contact information on recipient website should clarify this (Federal Register, 30137).
- Recipient notice of violence (which then requires Title IX Coordinator to reach out to complainant with supportive measures and information on reporting options) does not have to be a written statement. It can be much less formal and can include notice from *any* person, regardless of whether the person gives notices anonymously (Federal Register, 30128).
- Post-secondary institutions have distanced from “responsible employee” rubric. However, select employees who receive notice of sex-based harassment have “actual knowledge.” “Actual knowledge” occurs when these select employees are aware of sexual harassment, thus triggering recipient response through Title IX. These employees *must* report to the Title IX Coordinator, who then reaches out to complainant with supportive measures and reporting options.
  - Examples of supportive measures include contact restrictions, modification of class schedules, or counseling services.
- In elementary and secondary schools, *any* employee’s notice of sexual harassment triggers recipient response. They must report to Title IX Coordinator who then reaches out to complainant. Title IX Coordinator must also act on any third-party notice. If the complainant is under 18 years of age, their parent or guardian also receives notice.

- In some instances, where the allegations have to do with child abuse or the respondent is an employee, the Title IX Coordinator will begin a formal investigation even if complainant wants otherwise. The Title IX Coordinator will still reach out to complainant and legal guardians about supportive measures; however, these measures may be different. See “Formal Complaint/ Formal Grievance Process” section for more information.
- Section 106.30 allows third party reporting; however reporting must be done to the Title IX Coordinator or another authority official (Federal Register, 30121).
  - “Nothing in the final regulations requires an alleged victim to be the person who reports; any person may report that another person has been sexually harassed” (Federal Register, 30121).
  - Third party can report, but cannot file a formal complaint or begin the grievance process for another person.
- Section 106.44(a): For anyone who is even “allegedly the victim of sex-based harassment,” (aka, the complainant), Title IX Coordinator must contact them to discuss the availability of supportive measures and explain reporting options. This is required, irrespective of the complainant’s intention to formally report. In both elementary/secondary and postsecondary institutions, this is the Title IX Coordinator’s next step after receiving information about an instance of violence, regardless of who gave them notice (Federal Register, 30056).
  - “In order for a recipient to provide supportive measures to a complainant, it is not possible for the complainant to remain anonymous because at least one school official (e.g., the Title IX Coordinator) will need to know the complainant’s identity in order to offer and implement any supportive measures” (Federal Register, 30132).
- For complainants under age of 18, parents or lead guardians must also be contacted about supportive measures and option of reporting.
- Department of Education reaffirms that “if a Title IX Coordinator responds to a complainant by not taking a report seriously, or with bias against the complainant, the recipient has violated these final regulations” (Federal Register, 30112).
- Even when there is a recipient-triggered Title IX response, the person allegedly impacted still has options. While Title IX Coordinator is required to reach out to the complainant, they are under no obligation to formally respond. Title IX Coordinator will notify them and inform them of their options – reporting and supportive. Therefore, “a complainant may report to the Title IX Coordinator and receive supportive measures without filing a formal complaint or otherwise participating in a grievance process.” This may differ for elementary and secondary students who are below legal adult age (Federal Register, 301113).

- “The formal complaint requirement ensures that a grievance process is the result of an *intentional* decision on the part of either the complainant or the Title IX Coordinator. A complainant (or a third party) may report sexual harassment to a school for a different purpose than desiring an investigation. Thus, if an investigation is an action the complainant desires, the complainant must file a written document requesting an investigation” (Federal Register, 30130).
  - “Other school administrators may report sexual harassment incidents to the Title IX Coordinator, and may express to the Title IX Coordinator reasons why the administrator believes that an investigation is warranted, but the decision to initiate a grievance process is one that the Title IX Coordinator must make” (Federal Register, 30134).
- In both elementary/secondary and post-secondary situations, there are instances where a formal grievance process can ensue against the desire of the complainant. In those cases, the Title IX Coordinator signs a formal complaint and initiates the formal grievance process. In this case, the complainant does not have to participate in the grievance process, but is still a party.
  - If there is a pattern of harassment from someone in authority, recipient may have to investigate even without permission from person impacted. In that case, Title IX Coordinator has discretion to initiate formal grievance process.
  - If complainant is under age and the respondent is above legal age, the Title IX Coordinator has the discretion to initiate the formal grievance process.
  - Title IX Coordinators are not exempted from state criminal laws. If they, or any employee, receive knowledge of abuse of a minor, they are required to initiate a formal grievance process and report to the police.

## Formal Complaints / Formal Grievance Process

Only a complainant or the Title IX Coordinator can file/sign a formal complaint, which initiates a formal grievance process. This leads to an investigation into the allegations of violence. This section outlines initiating a formal grievance process – whether it be by the complainant or Title IX Coordinator.

- “A recipient is obligated to begin a grievance process against a respondent (investigate and adjudicate allegations) only where a complainant has filed a formal complaint or a Title IX Coordinator has signed a formal complaint” (Federal Register, 30122).
  - Only a Title IX Coordinator or complainant can begin formal grievance process. Not third party. “Other than the Title IX Coordinator (who is in a specially trained position to evaluate whether a grievance process is necessary under particular circumstances even without a complainant desiring to file the formal complaint or participate in the grievance process), a person who does not meet the definition of “complainant” under § 106.30 cannot file a formal complaint requiring the recipient to initiate a grievance process” (Federal Register, 30122).
- There is no “statute of limitations” on filing a formal complaint. No requirement that formal reports must be filed without “undue delay,” as that is “unfair to complainants” (Federal Register, 30127).
- During grievance process, respondent is presumed not responsible for violence alleged against them. However, recipients can place accused *non-student employees* on administrative leave while a grievance process is pending.
- Final rule allows, but does not require, K-12 schools to hold a live hearing to adjudicate the matter after an initial investigation is completed. This allows cross-examination of parties and witnesses (Campus Safety).

### *Complainant Initiating Grievance Process*

A complainant can begin a formal grievance process by filing and signing a formal complaint. This can be done in-person, through mail, or by electronic mail. The Title IX Coordinator then decides whether it meets the recipient’s Title IX policy, which is based off the federal regulations. For K-12 students under legal adult age, the complainant’s parent or legal guardian can also choose to initiate a formal grievance process on their behalf.

- Complainant can choose to begin a formal grievance process by filing a formal complaint. In the regulation language summary, a formal complaint is defined as a “document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the

allegation of sexual harassment.” Complainant must be participating in or attempting to participate in education program or activity of recipient.

- Formal complaint filed with Title IX Coordinator in person, by mail, or by electronic mail and must include the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- Title IX Coordinator must consider whether a report satisfies the criteria in the recipient’s policy. The Department of Education’s Office for Civil Rights claims that these final regulations are not creating new obstacles in that regard. However, the definition of sex-based harassment has been limited, which allows Title IX Coordinator to deny investigating complaints that do not fit within the narrowed definition. However, while not required, recipients can *choose* to keep their previous definition of sexual harassment, invite reports from off-campus instances, and preserve their breadth of “responsible employees” (Federal Register, 30090).
- Final regulations allow “the recipient, in its discretion, to dismiss a formal complaint” if the complainant notifies the Title IX Coordinator in writing that they wish to withdraw it, or if their respondent is no longer enrolled or employed by the recipient, or if the recipient can no longer collect sufficient evidence, pursuant to Section 106.45(b)3 (Federal Register, 30105).
- “Although these final regulations do not expressly require recipients to allow complainants to bring a supportive friend to an initial meeting with the Title IX Coordinator, nothing in these final regulations prohibits complainants from doing so.” (Federal Register, 300109)

### *Title IX Coordinator Initiating Grievance Process*

A Title IX Coordinator and the complainant are the only two parties who can initiate a formal grievance process. A Title IX Coordinator is the only individual who can initiate a formal grievance process without the permission of the complainant. This can only occur in certain situations. A Title IX Coordinator has this discretion if there is a pattern of sexual harassment by a perpetrator in a position of authority. Unfortunately, the final rule provides little further clarity on when a Title IX Coordinator has this authority. However, the final rule warns that the decisions of a Title IX Coordinator to initiate a formal grievance process will be scrutinized for “deliberate indifference.”

- Section 106.45 states that if a recipient has actual knowledge of a *pattern* of alleged sexual harassment by a perpetrator *in a position of authority*, then they may require the recipient’s Title IX Coordinator to sign a formal complaint obligating the recipient to investigate, even if the complainant does not wish to file a formal complaint or participate in a grievance process.

- “Under the final regulations, a Title IX Coordinator has discretion to sign a formal complaint that initiates a grievance process.” The Gebser vs. Davis framework determines the threshold for “actionable sexual harassment” and “actual knowledge” (Federal Register, 30128).
- While any person can disclose knowledge of sex-based harassment, “an investigation against a complainant’s wishes or without a complainant’s willingness to participate, should happen only when the Title IX Coordinator has determined that the investigation is necessary under the particular circumstances” (Federal Register, 30131).
- The Department of Education clarifies that when Title IX Coordinator signs a complaint, “Title IX Coordinator [is not] in a position adverse to the respondent; the Title IX Coordinator is initiating an investigation based on allegations of which the Title IX Coordinator has been made aware, but that does not prevent the Title IX Coordinator from being free from bias or conflict of interest with respect to any party” (Federal Register, 30123).
- Title IX Coordinator must not act unreasonably; they must make a “reasonable” decision to initiate formal grievance process includes communication with complainant to understand complainant’s wishes concerning grievance process (Federal Register, 30131).
- Title IX Coordinator must document the reasons why they did or did not sign a formal complaint. These reasons must show that their decision was “not deliberately indifferent.”
- While the language on when a Title IX Coordinator can sign a formal complaint and initiate a formal grievance process against the complainant’s wishes are vague, the final rule explicitly states that such a decision will be scrutinized by the United States Department of Education’s Office for Civil Rights (OCR) for “deliberate indifference.” Thus, the Title IX Coordinator must act reasonably if the complainant is unknown or does not want to file a formal complaint.
- If Title IX Coordinator “thoughtfully and intentionally” decides an investigation is necessary even against the desire of the complainant and initiates a formal grievance process, the complainant does not have to participate in formal grievance process; however is still a party in grievance process (Federal Register, 30131).
  - “When a formal complaint is signed by a Title IX Coordinator rather than filed by a complainant, the written notice of allegations in § 106.45(b)(2) requires the recipient to send both parties details about the allegations, including the identity of the parties if known, and thus, if the complainant’s identity is known it must be disclosed in the written notice of allegations” (Federal Register, 30133).

- A Title IX Coordinator can also serve as the investigator, however must be trained in and uphold impartiality (Federal Register, 30135). Title IX Coordinator cannot be the decision-maker.

### *Basic Requirements for Grievance Process*

The requirements below pertain to the procedures of the formal grievance process. They must be included in the written notice to both parties before the investigation begins. They are outlined in Section 106.45 (Federal Register 30053).

1. Treat complaints and respondents equitably.
2. Provide complainants with remedies where a determination of responsibility against respondent has been made.
3. Require an objective evaluation of all evidence.
4. Require that any Title IX Coordinator, investigator, decision-maker, or person designated by recipient to facilitate informal resolution process does not have a conflict interest or bias for/against complainant or respondent.
5. Include presumption that respondent is not responsible.
6. Include “reasonably prompt time frames” for conclusion of grievance process.
7. Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility.
8. State what standard of evidence will be used: preponderance of evidence (50.01%) or clear and convincing evidence (~75%).
9. Include procedures and permissible base for both parties to appeal.
10. Describe range of supportive measures available to respondent and complainant.
11. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
12. Written notice of allegations to both parties once formal complaint is made. This must include statement that respondent is presumed not responsible for alleged misconduct, must inform both parties that they can have an advisor of their choice who may be, but is not required to be, an attorney, and must inform both parties that they are prohibited from making false statements.

## Post-Formal Grievance Process

The decision-maker, who must not be the Title IX Coordinator, reaches a conclusion on the responsibility of the respondent following the formal grievance process. This conclusion is sent as a written determination to both parties and explains the conclusion. If the respondent has been found responsible, the Title IX Coordinator is responsible for implementing corrective measures and providing remedies to the complainant. Both parties have a right to appeal the decision if they believe the Title IX Coordinator, decision-maker, or investigator was biased towards one of the parties in a way that affected the determination, if there was a procedural irregularity, or if there is new evidence.

- A Title IX Coordinator is *not* responsible for reaching the conclusion. Section 106.45b (7) requires that the decision-maker is not the same person as the Title IX Coordinator.
- Unlike in previous years, the decision maker is now required to apply *either* the preponderance of evidence standard (more likely than not, 50.01%) or clear or convincing evidence standard (~75%) (Federal Register 30053).
- The recipient must send both parties a written determination that explains the conclusion. (Federal Register 30054)
- If/when, a respondent is found responsible for sexual harassment, “the recipient must provide remedies to the complainant designated to restore or preserve the complainant’s equal access to education. The final regulations expressly require the Title IX Coordinator to be responsible for the effective implementation of remedies.” (Federal Register 30083).
  - Examples of corrective measures include the firing of an accused non-student employee or the suspension of an accused student.
- *Either* party (complainant or respondent) can file an appeal if they believe the Title IX Coordinator, decision-maker, or investigator had a conflict of interest or bias for or against complaints or respondents that affected the outcome, if there was a procedural irregularity, or if there is new evidence -- under 106.45b8 (Federal Register 30104).

## **Similarities and Differences from Previous Title IX Regulations**

Please note that the 2020 Title IX regulations apply to sex-based harassment, whereas the previous Title IX Coordinator Guidance Document refers to all types of sex discrimination.

### **1. Title IX Coordinator Responsibilities**

Similar to the responsibilities of the Title IX Coordinator under the Obama administration, Title IX Coordinators under the Trump administration must ensure recipient compliance with Title IX of the Education Amendments Act of 1972. In the Department of Education's Office for Civil Rights' 2015 Guidance Document, OCR specified how a Title IX Coordinator can help their recipient ensure non-discrimination. They shared that the Title IX Coordinator may help coordinate the implementation and administration of the recipient's procedures for resolving Title IX complaints and may help the institution in developing a campus climate survey (Guidance Document 2).

In 2015, the Department of Education's Office for Civil Rights also specified that the Title IX Coordinator should provide training and technical assistance on issues relating to Title IX (Guidance Document 2). Under the Trump administration and Secretary of Education DeVos, the Department of Education's 2020 regulations requires robust training of the Title IX Coordinator, but does not mandate training for other school employees (Federal Register 30114).

In 2015, the Department of Education's Office for Civil Rights stated that it might be helpful for recipients to hire more than one Title IX Coordinator, especially for larger institutions. In the 2020 final rule, the Office for Civil Rights does not require or encourage schools to designate more than one Title IX Coordinator, noting sensitivity to the "financial and resource challenges" of many recipients (Federal Register 30177).

In the 2020 regulations, all Title IX Coordinators' contact information and notice of nondiscrimination should be available to the community, particularly through their recipient's website. In their 2020 final rule, the Department of Education emphasizes the importance of explicitly stating that a report can be made through many means of contact (in-person, mail, or electronic mail) at any time (Federal Register 30026). This was the same under the Obama administration, however the Obama administration's Department of Education also emphasized language accessibility (Guidance Document 4).

Under both the Trump administration and the Obama administration, Title IX Coordinators must coordinate record keeping and monitor systemic patterns in complaints (Guidance Document 16) (Summary 6).

The most substantial changes regarding Title IX Coordinators' responsibilities under the Trump administration pertain to the formal grievance process. Among many changes, the Title IX Coordinator is now unable to also serve as the decision-maker, which gets rid of the Obama administration's "single investigator" model. This adds more individuals to the Title IX process along with the Title IX Coordinator. Furthermore, all post-secondary institutions are now

required to have live hearings with cross-examination of all witnesses who contribute to evidence. This is pertinent to the Title IX Coordinator, especially if they also serve as the investigator. More details on the new changes in the grievance process are included in the paragraphs below.

## 2. Evidence Standard

Title IX Coordinators under the Obama administration were required to use the preponderance of evidence standard. This standard requires that the respondent is found responsible more likely than not (50.01%). Under the Trump administration, recipients are allowed to use either the preponderance of evidence standard or the clear and convincing evidence standard. The threshold for proving responsibility is higher with the clear and convincing evidence standard – around 75% (Federal Register 30053). Recipients designate in their recipient policy which standard of evidence will be used in their grievance process. That will be applied and used in all formal complaints of sexual harassment (Federal Register 30054).

## 3. Time Frame

Under the Obama administration's Department of Education, formal grievance processes were required to be conducted within 60 days of a formal complaint being filed. Under the Trump administration, no specific time regulations are given. Instead, Section 106.45 of the 2020 final rule merely requires that Title IX Coordinators conduct the investigation "within a reasonably prompt time frame" (Federal Register 30053). As Megan Farrell interprets, "this open-ended guidance may allow schools to unnecessarily delay investigations in the future" (Campus Safety).

## 4. "Responsible Employee"

For both K-12 and post-secondary schools, the Department of Education states that they are abandoning the "responsible employee" rubric. This, however, means different things for each level of education. For K-12 schools, every employee (from a teacher to a bus driver) still has "actual knowledge" if they receive notice or are made aware of sexual harassment. This requires every K-12 employee to report to the Title IX Coordinator if they have knowledge of sexual harassment. The 2020 regulations explicitly differentiate this from the "responsible employee" rubric, saying it is not needed since "actual knowledge" applies to every elementary and secondary employee (Federal Register 30039).

For post-secondary schools, this change allows recipients to relinquish employees from the obligation to report to their Title IX Coordinator if they receive knowledge of sexual harassment. Instead, recipients are required to select a few designated employees whose knowledge of sexual harassment constitutes "actual knowledge" and requires reporting to the Title IX Coordinator and thus "recipient response." For the other employees, they are allowed – however not required – to report to the Title IX Coordinator if they are aware of sexual harassment. This likely decreases

the number of reports a Title IX Coordinator receives from third party members. If a Title IX Coordinator receives notice of sexual harassment from any third party, they are still required to reach out the alleged complainant with supportive measures and information about reporting (Federal Register 30039).

This also relinquishes recipients from training employees other than Title IX Coordinators. As the Department of Education states in their 2020 regulations, “rather than mandate training for all employees, these final regulations require robust, specific training of every recipient’s Title IX Coordinator and place specific responsible obligations on the Title IX Coordinator” (Federal Register 30114).

## 5. Live Hearings

Under the Obama administration, live hearings for Title IX investigations were permitted, but discouraged. Under the Trump administration’s Department of Education, post-secondary institutions are *required* to hold live hearings with cross-examination of parties and any witness who contributed to evidence (for example: police officers, SANE nurses, etc.). Each party’s advisor conducts the cross-examination, while a third party member determines whether questions are permissible (Melnik, Brookings).

In her final rule, the Department of Education states that “fundamental fairness” requires that “no decision-maker be the same person as the Title IX Coordinator or the investigator” (Final Rule 1247). As a result, the Title IX Coordinator is allowed to serve as an investigator, but is prohibited from serving as a decision-maker. This is different from the Obama administration’s single investigator model.

The appointed decision-maker(s), which can be a person or a panel, must be trained (Federal Register 30125). In their role, they must review the evidence gathered by investigators and hear live testimony from witnesses. For a witness’ testimony to be admissible, the witness must be willing to submit cross-examination for both parties’ advisors (Melnick, Brooking). Schools, however, do not have subpoena power; if a witness does not want to be cross-examined; their evidence is not shared or included in the investigation.

This live hearing requirement does not apply to elementary and secondary schools, however they can choose to adopt the live hearing method. As the Department of Education states, “Section 106.45(b)(6) clarifies that only postsecondary institutions must hold live hearings; other recipients (including elementary and secondary schools) may use a hearing or nonhearing model for adjudication” (Federal Register 30055). Elementary and secondary schools likely will not choose to utilize live hearings given its higher costs.

## 6. Presumed Non-Responsibility of Respondent

OCR’s 2020 Title IX regulations enhance impartiality and the equal treatment of both parties. In previous years, interim restrictions were allowed to be placed on the respondent before the formal grievance process began. Under the Trump administration, restrictions on just the

respondent is prohibited, as both parties must be treated equally innocent with “an equitable grievance process” (Federal Register 30048). As Section 105.45 of the final rule requires, the presumed innocence of the respondent must also be included in the written notice of allegations given to both parties before the formal grievance process begins. Impartiality is further ensured through Section 106.45b(7), which requires that Title IX Coordinators and investigators do not also serve as decision-makers

## 7. Procedural Mandates

In the 2020 final rule, more procedural mandates are placed on the Title IX Coordinator. Many of them are outlined in Section 106.45 of the final rule (Federal Register 30053).

Before the formal grievance process begins, the Title IX Coordinator must provide notice to both parties on the allegations, the presumed innocence of the respondent, the “reasonably prompt time-frame” and more (Federal Register 30053).

At least ten days before the hearing begins, Title IX Coordinator must send both parties a summary of all the evidence gathered by the investigator. Both parties have a right to see all the evidence collected by the investigator (Federal Register 30053).

For post-secondary schools: Any witness who contributed to evidence must be cross-examined by both parties for their evidence to be included in the final determination. While the Title IX Coordinator does not conduct cross-examination, this is a new procedural mandate for post-secondary schools (Melnick, Brookings).

While this responsibility does not fall on the Title IX Coordinator, the decision-maker must provide a written determination to both parties at the conclusion of the hearing. Either party can appeal this. An appeal can be made based on bias, procedural irregularity, and/or new evidence (Federal Register 30053).

## 8. Definition of Sexual Harassment

The 2020 Title IX regulations narrow the definition of sexual harassment. Under the Trump administration, the definition of sexual harassment and sexual assault only applies to behavior that is “severe, pervasive, and objectively offensive” and would, if left unaddressed, impede on a student’s access to education. This gives permission for recipients and Title IX Coordinators to dismiss Title IX claims if they believe they do not meet this rubric. The Department also adopts the *Gebser/Davis* definition of sexual harassment by also including *quid pro quo* harassment and Clery Act/ VAWA offenses (Federal Register 30033).

Under the Obama administration, the definition of sexual harassment was much more expansive. As the Department of Education’s Office for Civil Rights explain in their 2015 Guidance Document, sex-based harassment includes sexual harassment, sexual violence, and gender-based harassment. The Guidance Document emphasizes that harassment can come in many forms, including verbal or non-verbal behavior. The document notes, “The more severe the conduct, the

less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. [However], a single or isolated incident of sexual violence may create a hostile environment” (Guidance Document 16).

## 9. Title IX Jurisdiction

Under the Obama administration, Title IX Coordinators and recipients were required to investigate incidences of sexual violence involving a student, regardless of where this violence occurred. In OCR’s 2020 regulations, the breadth of obligatory Title IX investigations has been narrowed.

With the new regulations, Title IX Coordinators do not have a duty to investigate any incidences of violence that happened to a student while they were off-campus or not at a campus activity. Incidents must have occurred on school grounds or during a school activity. For all institutions, sexual harassment that occurred during a school field trip or school-sponsored extracurricular activity is still protected under Title IX (Federal Register 30194).

Furthermore, actionable reports of sex-based harassment must have been perpetrated against a person *in the United States* (Federal Register 30069). Similar to other regulatory changes, this diminishes the number of incidents that a Title IX Coordinator is obligated to investigate. Title IX Coordinators, with their recipient approval, can choose to investigate incidents that happened abroad or while on-campus, but are now under no obligation to.

While Title IX Coordinators are not obligated to investigate off-campus incidents or incidents that occurred outside the United States, they are allowed to. When constructing their own university Title IX policy, Title IX Coordinators can choose to include those incidents as within their jurisdiction.

## 10. Corrective Measures and Remedies

As Melnick from Brookings interprets, “one of the biggest differences between the Obama-era Title IX guidance and the 2020 regulations is what the latter do *not say*.” The Obama administration’s 2015 Title IX Guidance Document provided a list of services and corrective measures that the recipient must provide to the complainant. This included counseling, medical services, academic accommodations, and more.

In their 2020 regulations, the Office for Civil Rights declines to specify what corrective measures look like, leaving it to the recipient’s discretion. However, they state that the Title IX Coordinator is responsible for implementing corrective measures for the complainant if the respondent is found responsible (Federal Register 30083).

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