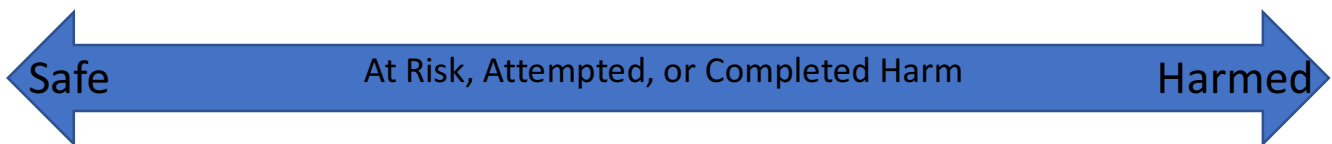




Training is Prevention

PREVENTION IN PHASES		
<i>Primary</i>	<i>Secondary</i>	<i>Tertiary</i>
Before harm occurs	During period of heightened risk	After misconduct or assault has occurred



Community Wide Efforts

Providing Notice of rights and responsibilities

Training all in the community to recognize behavior expectations, adverse behaviors, and indicators of healthy or unhealthy environments.

Role Specific Training

Training staff to conduct effective response: at intake, investigation, adjudication, informal resolution steps, following established policy and procedure.

Foundation of knowledge & related skills

- definitions and terms – general and institution specific
- availability of support, supportive measures, and remedy
- decision making – generally and process specific
- documentation and record keeping – generally and process specific



OCR 2020 Regulations § 106.45 (b)(1)(iii)¹

Impartiality and Mandatory Training of Title IX Personnel

(iii) Require that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in § 106.30, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on 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, as set forth in paragraph (b)(6) of this section. A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in paragraph (b)(5)(vii) of this section. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;

WHO must receive training²:

- Title IX Coordinator and Deputy Coordinators
- Investigator(s) – whether internal or external hire
- Decision makers – outcome and appeals decision makers
- Anyone else who may facilitate informal resolution

WHAT must be included in training:

- On Title IX's definition of "sexual harassment"
- On the scope of the school's education program or activity
- On how to conduct an investigation and grievance process
- On how to serve impartially, including by avoiding prejudgment of the facts at issue
- On how to avoid conflicts of interest and bias
- Decision-makers must receive training on technology used at a live hearing, and on issues of relevance of questions and evidence, including when questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant
- Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence

¹ <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf> final regs, pg. 30575

² <https://www2.ed.gov/about/offices/list/ocr/blog/20200518.html>



The Regulations text does not specifically define or guide how to meet the required elements of training. Look to the discussion of the regulations to begin to understand how OCR may interpret the regulations. Below are a sampling of specific mentions from regulations and discussion in the final regulations document to inform training content.

DEFINITION OF SEXUAL HARASSMENT

Training on definitions of sexual harassment, domestic and dating violence, and stalking, as defined in the regulations and the Clery Act (as amended by VAWA)³:

“receive training on the definition of sexual harassment in § 106.30”

“The final regulations define and apply the following terms, as discussed in the “Section 106.30 Definitions” section of this preamble: “actual knowledge,” “complainant,” “elementary and secondary schools,” “formal complaint,” “postsecondary institution,” “respondent,” “sexual harassment,” and “supportive measures”; each term has a specific meaning under these final regulations.”⁴

“The Department uses the phrase “Title IX sexual harassment” to refer to the conduct defined in § 106.30 to be sexual harassment as well as the conditions described in § 106.44(a) that require a recipient to respond to sexual harassment under Title IX and these final regulations”⁵

“the Department has revised the definition of “sexual harassment” in § 106.30 to expressly include domestic violence (and dating violence, and stalking) as those offenses are defined under VAWA, amending the Clery Act.”⁶

“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; or
- (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).”⁷

Also note: “Recipients may continue to address harassing conduct that does not meet the § 106.30 definition ... dismissal of a formal complaint because the allegations do not meet the Title IX definition ..., does not preclude a recipient from addressing the alleged misconduct under other provisions of the recipient’s own code of conduct.”⁸

³ § 106.30 Definitions. Final Regs p. 30574; refers to VAWA amendment to Clery definitions

⁴ p. 30030

⁵ p. 30031

⁶ p. 30065

⁷ p, 30574

⁸ p. 30037-8



EDUCATION PROGRAM OR ACTIVITY

Training on the scope of the recipient's education program or activity:

"training about the scope of the recipient's education program or activity, so that recipients accurately identify situations that require a response under Title IX."⁹

"An "education program or activity" includes, but is not limited to, locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution, whether such a building is on campus or off campus."¹⁰

"Section 106.45(b)(1)(iii) is revised to include training for Title IX Coordinators, investigators, decision-makers, and persons who facilitate informal resolutions on "the scope of the recipient's education program or activity." Section 106.45(b)(3)(i) is revised to expressly provide that a mandatory dismissal of allegations in a formal complaint about conduct not occurring in the recipient's education program or activity is "for purposes of title IX or [34 CFR part 106]; such a dismissal does not preclude action under another provision of the recipient's code of conduct."¹¹

"If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the recipient's education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX or this part; such a dismissal does not preclude action under another provision of the recipient's code of conduct."¹²

"Recipients are subject to Title IX obligations, including these final regulations, with respect to all of the recipient's education programs or activities; there is no exemption from Title IX coverage for fraternities and sororities, and in fact these final regulations specify in § 106.44(a) that the education program or activity of a postsecondary institution includes any building owned or controlled by a student organization officially recognized by the postsecondary institution."¹³

HOW TO SERVE IMPARTIALLY & AVOID BIAS AND CONFLICT OF INTEREST

Training on impartiality, Bias, and Conflict of Interest

Summary of 106.45 "requires Title IX Coordinators, investigators, decision-makers, and persons who facilitate informal resolutions to be free from conflicts of interest and bias and trained to serve impartially without prejudging the facts at issue"¹⁴

⁹ p. 30093

¹⁰ p. 30550

¹¹ p. 30201

¹² p.30576

¹³ p. 30061

¹⁴ p. 30053



TRAINING & PREVENTION In the context of compliance

"...the § 106.45 grievance process requires allegations to be investigated and adjudicated impartially, without bias, based on objective evaluation of the evidence relevant to each situation."¹⁵

"Every Title IX Coordinator must be free from conflicts of interest and bias and, under revised § 106.45(b)(1)(iii), trained in how to serve impartially and avoid prejudgment of the facts at issue. No recipient is permitted to ignore a sexual harassment report, regardless of the identity of the person alleged to have been victimized, and whether or not a school administrator might be inclined to apply harmful stereotypes against believing complainants generally or based on the complainant's personal characteristics or identity. The Department will enforce the final regulations vigorously to ensure that each complainant receives the response owed to them by the recipient."¹⁶

Basic requirements for the grievance process include "...any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent."¹⁷

A recipient must offer an appeal on the basis "...The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter."¹⁸

"The purpose of the § 106.45 grievance process is to resolve allegations of sexual harassment impartially, without conflicts of interest or bias, and to objectively examine relevant evidence before reaching a determination regarding responsibility."¹⁹

HOW TO CONDUCT INVESTIGATION & PROCESS

Training on how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable:

106.44 Recipient's response to sexual harassment

106.45 Grievance process for formal complaints of sexual harassment

"For the purpose of addressing formal complaints of sexual harassment, a recipient's grievance process must comply with the requirements of this section. Any provisions, rules, or practices other than those required by this section that a recipient adopts as part of its grievance process for handling formal complaints of sexual harassment as defined in § 106.30, must apply equally to both parties."²⁰

Elements of investigation and grievance process: See Summary of § 106.45 p. 30053

¹⁵ p. 30065

¹⁶ p. 30083

¹⁷ p. 30575

¹⁸ p. 30577

¹⁹ p. 30214

²⁰ p. 30575



TRAINING & PREVENTION In the context of compliance

“The Department believes that these final regulations provide protections for complainants while ensuring that investigations and adjudications of sexual harassment are handled in a grievance process designed to impartially evaluate all relevant evidence so that determinations regarding responsibility are accurate and reliable, ensuring that victims of sexual harassment receive justice in the form of remedies.”²¹

Technology used for the process. “The Department is persuaded by commenters’ concerns that it is beneficial for § 106.45(b)(1)(iii) to emphasize the need for decision-makers to receive training in how to conduct hearings, and we have revised this provision to specify that decision-makers receive training in how to conduct a grievance process including how to use technology that will be used by a recipient to conduct a live hearing, ...”²²

“the final regulations revise § 106.45(b)(6)(i) to expressly allow a recipient to hold the live hearing virtually (including for witness participation), with technology enabling participants to see and hear each other.”²³

Steps in the process (follow your published policy and process, compliant with the regs)

ISSUES OF RELEVANCE (of evidence and questions during hearing)

“In response to commenters’ concerns about how to determine “relevance” in the context of these final regulations, we have revised § 106.45(b)(1)(iii) specifically to require training on issues of relevance (including application of the “rape shield” protections in § 106.45(b)(6)). Thus, these final regulations require Title IX personnel to be well trained in how to conduct a grievance process; within the requirements stated in § 106.45(b)(1)(iii) recipients have flexibility to adopt additional training requirements concerning evidence collection or evaluation.”²⁴

“Section 106.45(b)(6)(i)-(ii) protects complainants (but not respondents) from questions or evidence about the complainant’s prior sexual behavior or sexual predisposition, mirroring rape shield protections applied in Federal courts. The § 106.45 grievance process, therefore, treats complainants and respondents equally in nearly every regard, with three exceptions (one imposing equitable treatment for both parties, one applicable only to respondents, and one applicable only to complainants).”²⁵

Provisions of 106.45 “...deems irrelevant all questions or evidence of a complainant’s prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged offense or if the questions or evidence concern specific sexual behavior between the complainant and respondent and are offered to prove consent. No other use of a complainant’s sexual behavior is authorized under this provision.”²⁶

²¹ p.30068

²² p.30254

²³ p. 30333

²⁴ p. 30247

²⁵ p. 30103

²⁶ p.30353



“§ 106.45(b)(5)(vii) requires that recipients create an investigative report that fairly summarizes all relevant evidence. The final regulations add language in 106.45(b)(5)(vi) stating that evidence subject to inspection and review must include inculpatory and exculpatory evidence whether obtained from a party or from another source.”²⁷

“A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on 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, as set forth in paragraph (b)(6) of this section. A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in paragraph (b)(5)(vii) of this section.”²⁸

WRITTEN NOTICE AND INVESTIGATION REPORT (and other documentation)

Elements required in written notice, investigation reports, determination and appeal options.

“Upon receipt of a formal complaint, a recipient must provide the following written notice to the parties who are known:”²⁹

- (A) Notice of grievance process, including informal resolution process
- (B) Notice of allegations

As part of investigation of formal complaint, “...(vii) Create an investigative report that fairly summarizes relevant evidence”³⁰

(ii) The written determination must include— (p30577-8)

- (A) Identification of the allegations potentially constituting sexual harassment as defined in § 106.30;
- (B) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- (C) Findings of fact supporting the determination;
- (D) Conclusions regarding the application of the recipient’s code of conduct to the facts;
- (E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient’s education program or activity will be provided by the recipient to the complainant; and

²⁷ p. 30248

²⁸ p. 30575

²⁹ p. 30576

³⁰ p. 30576



(F) The recipient's procedures and permissible bases for the complainant and respondent to appeal

"For each response required under § 106.44, a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances."³¹

TITLE IX COORDINATOR RESPONSIBILITIES & RESPONSE

"These final regulations require recipients to offer supportive measures to every complainant, irrespective of whether the complainant files a formal complaint."³²

"Recipients may also choose to provide supportive measures to any complainant, regardless of whether the alleged sexual harassment is covered under Title IX."

"With respect to the relationship between supportive measures and informal resolution, the Department wishes to clarify that supportive measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party and without constituting punitive or disciplinary actions including by protecting the safety of all parties and the recipient's educational environment or deterring sexual harassment. Unlike informal resolutions, which may result in disciplinary measures designed to punish the respondent, supportive measures must be non-disciplinary and non-punitive."³³

"Section 106.45(b)(9) requires that recipients who wish to provide parties with the option of informal resolution of formal complaints, may offer this option to the parties but may only proceed by: First, providing the parties with written notice disclosing the sexual harassment allegations, the requirements of an informal resolution process, any consequences from participating in the informal resolution process; and second, obtaining the parties' voluntary, written consent to the informal resolution process. This provision permits—but does not require—recipients to allow for voluntary participation in an informal resolution as a method of resolving the allegations in formal complaints without completing the investigation and adjudication. This provision prohibits recipients from offering or facilitating an informal resolution process to resolve allegations that an employee sexually harassed a student."³⁴

³¹ p. 30578

³² p. 30030

³³ p. 30401

³⁴ p. 30571



OTHER NOTES TO INFORM TRAINING

"...The final regulations do not preclude a recipient from providing training to an investigator concerning effective interview techniques applicable to children or to individuals with disabilities."³⁵

"Contrary to a commenter's assertion, the Department is acutely concerned about the way that sexual harassment—and recipients' responses to it—have ruined lives and deprived students of educational opportunities. The Department aims through these final regulations to create legally enforceable requirements for the benefit of all persons participating in education programs or activities, including graduate students, for whom commenters asserted that sexual harassment is especially prevalent."³⁶

"The Department disagrees that the proposed regulations will negatively impact women, people of color, LGBTQ individuals, or any other population. The proposed regulations are designed to provide supportive measures for all complainants and remedies for a complainant when a respondent is found responsible for sexual harassment, and the Department believes that, contrary to commenters' assertions, the final regulations will help protect against sex discrimination regardless of a person's race or ethnicity, age, sexual orientation, or gender identity and will give complainants greater autonomy to receive the kind of school-level response to a reported incident of sexual harassment that will best help the complainant overcome the effects of sexual harassment and retain educational access."³⁷

"These final regulations apply to prohibit certain conduct and apply to anyone who has experienced such conduct, irrespective of a person's sexual identity or orientation. The Department believes that these final regulations provide the best protections for all persons, including women and people who identify as LGBTQ, in an education program or activity of a recipient of Federal financial assistance who experience sex discrimination, including sexual harassment."³⁸

"The Department is sensitive to the unique trauma that sexual violence often inflicts on women (as well as men, and LGBTQ individuals); ... we endeavor in these final regulations to give each complainant (regardless of sex) more control over the response of the complainant's school, college, or university in the wake of sexual harassment that violates a woman or other complainant's physical and emotional dignity and autonomy."³⁹

"The Department disagrees that the proposed regulations are not "trauma-informed" insofar as the Department recognizes and acknowledges the traumatic impact of sexual harassment and aims to hold recipients accountable for legally binding obligations throughout these final regulations in part because the experience of sexual harassment can traumatize victims in a

³⁵ p. 30364

³⁶ p. 30062

³⁷ p. 30064

³⁸ p. 30478

³⁹ p. 30093



TRAINING & PREVENTION
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way that jeopardizes the victim's equal access to education."⁴⁰

"While these training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of sexual harassment, recipients may use their discretion to adopt additional components to training, including materials describing the impact of trauma."⁴¹

"...nothing in the final regulations precludes a recipient from training its Title IX personnel in trauma-informed approaches as long as such training also complies with the requirements in §106.45(b)(1)(iii)."⁴²

"Recipients have discretion to train Title IX personnel in trauma-informed approaches or practices, so long as all requirements of these final regulations are met. A trauma-informed approach or training on trauma-informed practices may be appropriate¹⁸⁴⁴ as long as such an approach or training is consistent with § 106.45(b)(1)(iii), which requires recipients to train Title IX personnel (*i.e.*, Title IX Coordinators, investigators, decision-makers, persons who facilitate informal resolutions) to serve impartially, without prejudging the facts at issue, using materials free from reliance on sex stereotypes, and requires Title IX personnel to avoid conflicts of interest and bias for or against complainants or respondents generally or an individual complainant or respondent."⁴³

"Section 106.8 requires all recipients to notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient of its non-discrimination on the basis of sex as well as its grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond."⁴⁴

"...the Department will hold recipients accountable for meeting Title IX obligations, the Department requires Title IX Coordinators to be well trained, and the Department leaves recipients discretion to determine the kind of training to other employees that will best enable the recipient, and its Title IX Coordinator, to meet Title IX obligations."⁴⁵

⁴⁰ p. 30426

⁴¹ p. 30489

⁴² p. 30491

⁴³ p. 30527

⁴⁴ p. 30477

⁴⁵ p. 30114