QUICK-REFERENCE GUIDE · HIGHER EDUCATION

Navigating Title IX: Annual Compliance Refresher 2026

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1 The Current Framework

OPERATIVE RULE

The 2020 Title IX regulations govern OCR enforcement.

- **Jan. 9, 2025:** A federal court vacated the 2024 regulations nationwide.
- **Feb. 4, 2025:** OCR confirmed it enforces the 2020 regulations.
- **Sept. 28, 2026:** ED formally rescinded the 2024 rule and restored the 2020 text in the Code of Federal Regulations.

OBLIGATIONS MAY ALSO ARISE FROM

- The Title IX statute (20 U.S.C. § 1681) and federal case law
- The Clery Act and VAWA
- State and local law
- Institutional policy and collective bargaining agreements

ENFORCEMENT DEVELOPMENTS TO WATCH

- **2025:** Executive Orders 14168 and 14201 direct agencies to treat "sex" as biological sex and prioritize athletics enforcement; ED and DOJ formed a Title IX Special Investigations Team (Apr. 2025).
- **Apr. 2026:** OCR rescinded gender-identity terms in several existing resolution agreements.
- **June 30, 2026:** *West Virginia v. B.P.J.* held that Title IX permits limiting girls' and women's teams to biological females. Review athletics, facilities, and harassment policies with counsel.

2 Two Questions for Every Report

1. Does the conduct raise a Title IX concern?

Title IX broadly prohibits sex discrimination: disparate treatment, unequal access, pregnancy and parental status, sexual harassment, and retaliation.

2. Which process applies?

The § 106.45 grievance process applies to formal complaints of sexual harassment that meet the regulatory definition and jurisdiction requirements.

Remember: Outside § 106.45 is not outside every obligation. Another law, policy, or process may still require a response. Document the routing decision.

3 Sexual Harassment Under the 2020 Regulations

Quid pro quo

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

Hostile environment

Unwelcome conduct a reasonable person would find so severe, pervasive, **and** objectively offensive that it effectively denies equal access.

Specified offenses

Sexual assault, dating violence, domestic violence, or stalking, as defined in the incorporated federal definitions.

Severe + **Pervasive** + **Objectively offensive** = **Effectively denies equal access**

Consider nature, frequency, ages and roles, location, and effect on access.

34 C.F.R. § 106.30(a)

Definitions, Retaliation, and the Response Process

CONSENT

No single federal definition. Apply the policy in effect at the time of the conduct. Common elements:

- **Capacity** to understand the nature and consequences
- **Communication** of willingness by words or conduct
- **Voluntary:** no force, coercion, threats, or intimidation
- **Specific:** yes to one act is not yes to another
- **Ongoing:** may be withdrawn at any time

INCAPACITATION

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

- Intoxication is not the same as incapacitation.
- Memory loss alone does not resolve the question.
- Address what the respondent knew or reasonably should have known, if policy requires.

NIBRS NOTE

The FBI's 2025 NIBRS manual renamed "Fondling" as "Criminal Sexual Contact." The Clery regulations were not amended. Coordinate definitions with Clery staff and counsel.

RETALIATION · 34 C.F.R. § 106.71

No one may intimidate, threaten, coerce, or discriminate to interfere with a Title IX right, or because someone reported, complained, testified, assisted, participated, or refused to participate. **Causation evidence:** knowledge of the protected activity · timing · statements · treatment of similarly situated people · procedural departures · the documented reason. Close timing alone is not proof; a vague reason alone is not a defense.

4 From Notice to Resolution

Report

Anyone may report, by any method, at any time, including outside business hours.

Actual knowledge

Notice to the Title IX Coordinator or an official with authority to institute corrective measures. Requires a prompt response.

Formal complaint

Filed by the complainant or signed by the Coordinator; alleges sexual harassment and requests an investigation.

COORDINATOR'S INITIAL OUTREACH

1. **Contact** the complainant promptly
2. **Discuss** available supportive measures
3. **Consider** the complainant's wishes
4. **Clarify** that support does not require a formal complaint
5. **Explain** how to file a formal complaint

Document each step and any follow-up.

JURISDICTION CHECK · § 106.45(B)(3)

- ✓ Would constitute sexual harassment if proved
- ✓ Occurred in the education program or activity (includes buildings owned or controlled by officially recognized student organizations)
- ✓ Against a person in the United States
- ✓ Complainant participating or attempting to participate when filing

Mandatory dismissal if a requirement is not met.
Discretionary dismissal if the complainant withdraws in writing, the respondent is no longer enrolled or employed, or circumstances prevent gathering evidence. Give written notice; dismissals are appealable.

Timelines, Hearings, and Appeals

5 Key Timelines and Records

REQUIREMENT	RULE	CITATION
Notice of allegations	Written notice to both parties with sufficient time to prepare before any initial interview	§ 106.45(b)(2)
Evidence review	Share all evidence directly related to the allegations; at least **10 days** to submit a written response	§ 106.45(b)(5)(vi)
Investigative report	Provide to both parties at least **10 days** before the hearing for review and written response	§ 106.45(b)(5)(vii)
Recordkeeping	Keep investigations, recordings, sanctions, remedies, appeals, informal resolutions, and training materials for **7 years**	§ 106.45(b)(10)
Training materials	Post materials used to train Title IX personnel on the institution's website	§ 106.45(b)(10)(i)(D)

6 Hearings and Determinations

LIVE HEARING · § 106.45(B)(6)(I)

- Decision-maker is not the Coordinator or investigator
- Advisors cross-examine directly, orally, and in real time; parties never question each other
- Institution provides an advisor at no cost if a party has none
- Relevance ruled on before each answer; exclusions explained
- Separate rooms on request; recording or transcript required
- The statement-exclusion rule was vacated (2021). Statements may be considered without cross-examination, but no inference solely from absence or refusal to answer

WRITTEN DETERMINATION · § 106.45(B)(7)

Standard: preponderance or clear and convincing, applied the same way to all formal complaints (students, employees, faculty).

Must include: allegations · procedural history · findings of fact · policy conclusions · result and rationale for each allegation, with sanctions and whether remedies will be provided · appeal procedures. Issue to both parties simultaneously.

APPEALS · § 106.45(B)(8)

Available to both parties from determinations and dismissals on three grounds: **procedural irregularity**, **new evidence** not reasonably available, or **conflict of interest or bias**, each affecting the outcome.

SEXUAL HISTORY · § 106.45(B)(6)(I)

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant unless offered to prove (1) that someone other than the respondent committed the conduct, or (2) consent, through specific incidents between the complainant and respondent.

Interim Measures, Impartiality, and Resources

7 Supportive, Protective, and Employment Actions

TOOL	PURPOSE AND STANDARD	CITATION
Supportive measures	Preserve access. Individualized, free, non-disciplinary, non-punitive, available to either party with or without a formal complaint. Assess the **cumulative** effect: measures reasonable alone can become punitive together.	§§ 106.30(a), 106.44(a)
Emergency removal	Address an immediate threat. Requires an individualized safety and risk analysis, an immediate threat to physical health or safety arising from the allegations, and notice with an immediate opportunity to challenge.	§ 106.44(c)
Administrative leave	Employment action for non-student employee respondents while the process is pending. Employment policy, CBAs, and disability law still apply.	§ 106.44(d)
Informal resolution	Only after a formal complaint and before a determination; voluntary written consent from both parties; either may withdraw before agreement; trained, impartial facilitator. **Not permitted** for allegations that an employee sexually harassed a student.	§ 106.45(b)(9)

IMPARTIALITY · § 106.45(B)(1)(III)

Conflict of interest: a personal, professional, supervisory, or financial interest. **Bias:** a predisposition for or against a party or group. **Prejudgment:** conclusions before evaluating the evidence. Identify early, disclose, and reassign when impartiality could reasonably be questioned.

FIVE THINGS TO REMEMBER

1. Start with the governing framework
2. Analyze jurisdiction carefully
3. Individualize the response
4. Protect the integrity of the process
5. Document the reasoning

Resources

- ED: Title IX and Sex Discrimination
- 2020 Title IX Final Rule (Federal Register)
- Feb. 4, 2025 Title IX Enforcement Directive
- Aug. 2021: Statement-Exclusion Vacatur
- June 30, 2026: *West Virginia v. B.P.J.*
- Sept. 28, 2026: ED Restores 2020 Regulation

These materials provide general educational information and do not constitute legal advice. Consult legal counsel on specific matters. Questions: camie@equitycompliancesolutions.com

Scenario Answer Key

SCENARIO 1 · RETALIATION

Two weeks after serving as a witness, a graduate assistant is removed from a research project. The supervisor says the assistant is "not a team player"; the file has no documented performance concerns.

Not yet determinable

The timing and the lack of documented concerns raise legitimate questions, but neither establishes retaliation on its own. Investigate:

- **Knowledge:** Did the supervisor know about the participation?
- **Timing:** When did the supervisor learn of it, and when was the decision made?
- **Consistency:** How were similarly situated assistants treated?
- **Other evidence:** Emails, evaluations, procedural departures, intervening events

Do not assume close timing proves retaliation, and do not accept a vague explanation without testing it against the evidence.

SCENARIO 2 · SUPPORTIVE MEASURES

Before any investigation, the institution moves the respondent to another residence hall, removes the respondent from both shared classes, and bars the respondent from the shared organization, with no individualized assessment.

Likely punitive in effect

Each action could be a supportive measure, but the label does not decide the question. Here, every burden fell on the respondent at once, before an investigation, without documented assessment or less burdensome alternatives.

- Consider alternatives: section changes for either party, housing options that weigh both parties' needs, a tailored contact restriction
- If there is an immediate physical threat, use the emergency-removal analysis, with notice and an opportunity to challenge
- Document the burdens imposed and when measures will be reassessed

SCENARIO 3 · JURISDICTION

A sexual assault is reported at an off-campus fraternity house that an officially recognized fraternity owns. The enrolled complainant files a signed formal complaint. **Answer: B. Yes**

Under 34 C.F.R. § 106.30(a), a postsecondary institution's education program or activity includes any building owned or controlled by an officially recognized student organization. Being off campus does not remove it from jurisdiction. Still confirm that the conduct meets the definition, occurred against a person in the United States, and that the complainant was participating in the program when filing. At a privately owned location with no recognized-organization connection, the analysis turns on the institution's substantial control over the respondent and the context. Another conduct policy may apply either way.

Scenario 4 · Evidence and Relevance

The complainant alleges sexual activity continued after consent was withdrawn; the respondent says it remained consensual. Keep three questions separate: Is it relevant? How much weight does it deserve? Does it prove the disputed fact?

EVIDENCE	RULING	WHY
Next-morning text: "I told you to stop"	Relevant	A relatively contemporaneous account of whether withdrawal was communicated. Relevance does not establish accuracy.
Friend saw the complainant crying shortly after	Potentially relevant	Circumstantial evidence of condition. The friend may describe personal observations, not what happened during the encounter.
Complainant's prior relationship with another student	Excluded	Falls within the sexual-history restriction; neither exception applies.
Prior consensual interactions between the parties	Potentially relevant	Permitted when offered to prove consent. Consent on one occasion does not establish consent on another.
Respondent's grades and clean record	Generally irrelevant	Does not make consent more or less likely. Prior discipline may matter at the sanction stage, depending on policy.