



The Proposed Changes to the Title IX Regulations

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Agenda

- Where we are
 - Title IX overview
 - Regulatory process
- Where we are going
 - Proposed regulations
 - Notice and Comment period
- What should we do now?

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The Proposed Regulations



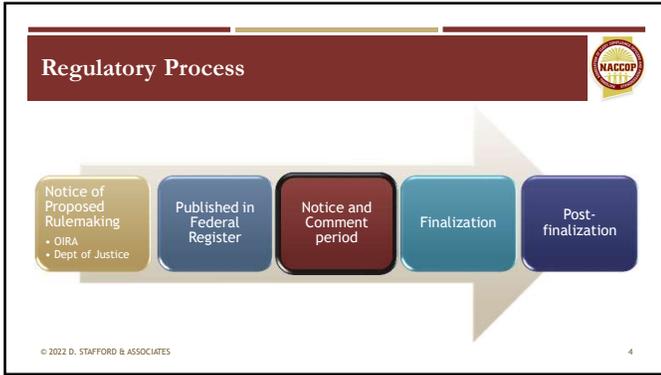
Just a draft

Current rules
STILL IN EFFECT

Not about
athletics and
gender identity
(coming later)

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What is Prohibited?

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The slide lists prohibited actions under two categories: Sex Discrimination and Sex-based harassment. Sex Discrimination includes sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Sex-based harassment includes sexual harassment (quid pro quo, hostile environment), sexual assault, dating violence, domestic violence, and stalking, and harassment based on sex discrimination.

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Sex-Based Harassment Defined

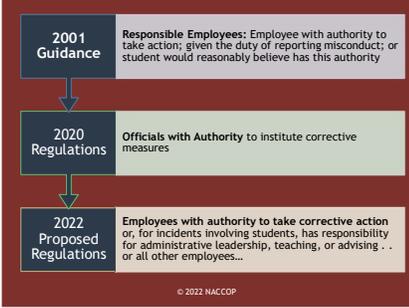
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The slide defines sex-based harassment through three categories: Quid pro quo (unwelcome sexual conduct for aid/benefit), Specific Offenses (sexual assault, dating violence, domestic violence, stalking), and Hostile environment (unwelcome sex-based conduct that is severe or pervasive, limiting participation in programs or activities).

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Who Must Report



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Reporting Requirements (Post-Secondary)



Employee Role	Involving	Notify T9	Provide T9 info
Confidential Employee	Student or Employee	No	Yes
Employee with ability to institute corrective measures	Student or Employee	Yes	
Employee responsible for administrative leadership, teaching, or advising	Student	Yes	
Employee responsible for administrative leadership, teaching, or advising	Employee	Yes	OR Yes
All other employees	Student or Employee	Yes	OR Yes

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Must report?



- Employee or student tells chaplain: NO
- Student tells Dean of Students who happens to be ordained minister? YES
- Student tells advisor to outdoors program: YES
- Student worker tells student working as a supervisor: YES
- Student living off campus tells friend that happens to be an RA: NO
 - RA continues to be a CSA for Clery purposes
- Student tells neighbor who happens to be a professor: YES?
- Student tells housekeeper in building: YES to EITHER tell OR provide Title IX Coordinator contact information
- Employee tells colleague? NO, unless colleague is an administrator, teacher, or advisor and then can EITHER tell OR provide Title IX Coordinator contact information
- Employee tells any other employee: YES to EITHER tell OR provide contact information

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Confidential Employees DEFINED





PRIVILEGED (IN ROLE)



DESIGNATED (WHEN PROVIDING SERVICES)



HUMAN-SUBJECTS RESEARCH ON SEX DISCRIMINATION

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Notification Requirement



“Must notify the Title IX Coordinator when the employee has information about conduct that may constitute sex discrimination under Title IX.”

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Jurisdictional of Location Changes



A recipient has an obligation to address a sex-based hostile environment under its education program or activity, even if sex-based harassment contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States.



Outside the US?



Off campus?



Still includes student orgs

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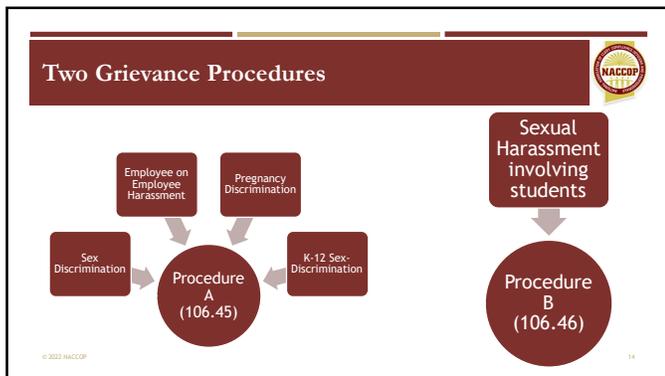
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ADDITIONAL TIDBITS...

- ✓ Can have temporary Supportive Measures that "burden" a respondent (with some parameters)
- ✓ While different treatment is permissible, cannot cause more than "de minimis harm"
- ✓ Permissive dismissal (not mandatory dismissal)
- ✓ Complaint can be written or oral (and not formal)
- ✓ Informal is option without "formal" complaint

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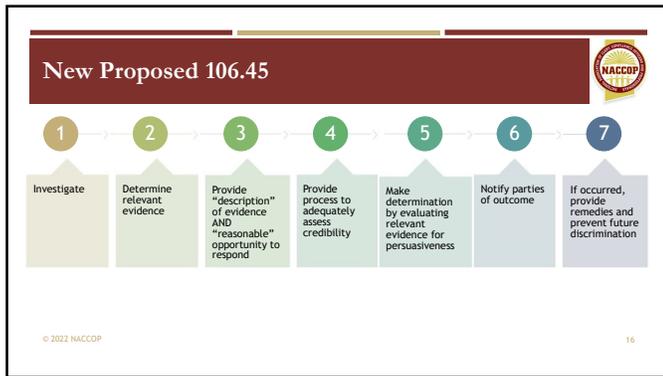
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Comparing Notice

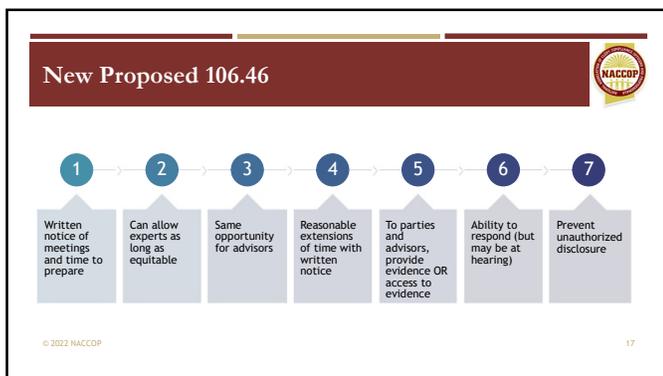
2020	NEW 106.45 (DOES NOT NEED TO BE IN WRITING!!!)	NEW 106.46
Grievance Procedures	YES	YES
"Sufficient details" (parties, conduct, date, location)	YES "Sufficient information"	YES "Sufficent information"
Statement that retaliation prohibited	YES	YES
Respondent is presumed not responsible		YES
Right to advisor of choice		YES
Right to inspect and review evidence		YES (Evidence OR summary in report with evidence by request)
Prohibition on false statements*		YES

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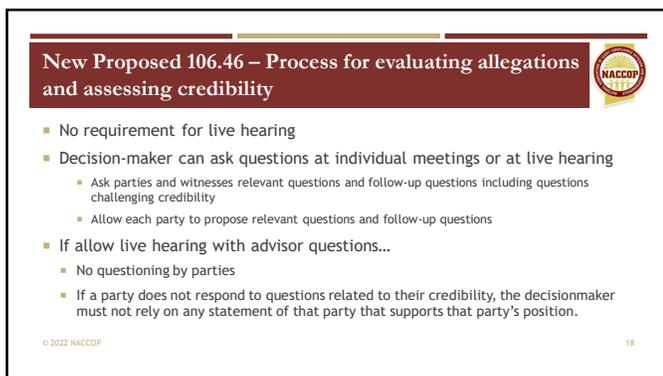
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Appeals (106.46 only)

- Procedural irregularity that would change the determination of whether sex-based harassment occurred
- New evidence that would change the outcome of the matter and that was not reasonably available at the time the determination of whether sex-based harassment occurred or dismissal was made
- Title IX Coordinator, investigator, or decision-maker had conflict of interest or bias that would change the outcome

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Pregnancy and Parental Status Discrimination

- Sections applying to Employees and Students
- Lactation time and space
- Comparable treatment to temporary disabilities or conditions
- When employee informed of student pregnancy ...promptly informs that person of how to notify the Title IX Coordinator
- When Title IX learns...must inform student
 - prohibit sex discrimination
 - reasonable modifications
- Allow access to separate and comparable program or activity
- Allow voluntary leave of absence
- Lactation space
- Grievance procedures

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REMINDERS!

It's a DRAFT

↓

Nothing changes NOW

↓

But...how do you address Sex DISCRIMINATION?

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FERPA <ul style="list-style-type: none">• Intersection between the proposed Title IX regulations and FERPA, any challenges and any steps the Department might take to address those challenges	Recipient's obligation to provide an educational environment free from sex discrimination <ul style="list-style-type: none">• Additions or subtractions to proposed grievance procedures and application to various subgroups	Single investigator <ul style="list-style-type: none">• Experiences using that model and steps taken to ensure adequate, reliable, and impartial investigation and resolution of complaints, (and from parties and advisors)	Standard of proof <ul style="list-style-type: none">• Preponderance or Clear and Convincing?
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Directed Questions from OCR

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WHAT SHOULD I DO NOW?



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