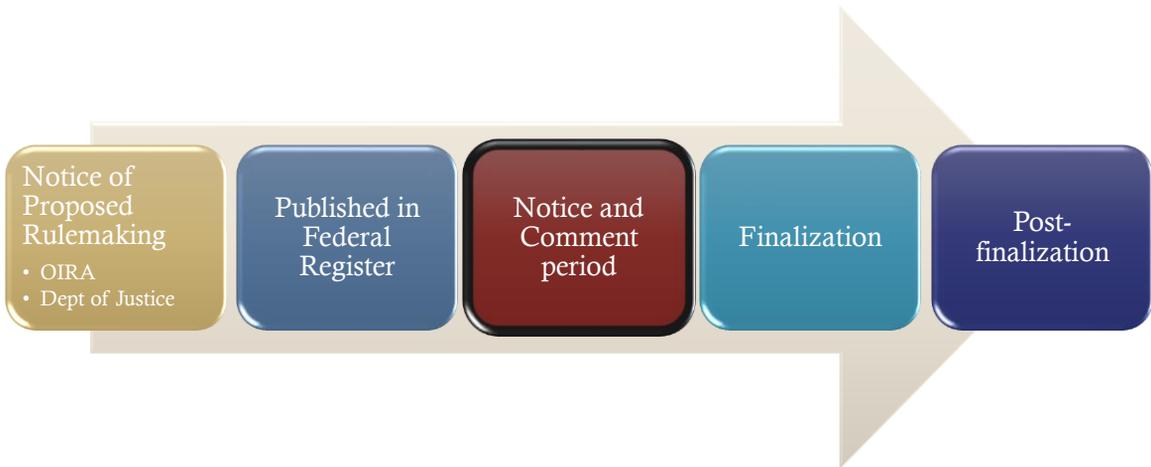


# LOOKING AHEAD – THE 2022 PROPOSED REGULATIONS



## REGULATORY PROCESS - WHERE WE ARE



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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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## SCOPE OF TITLE IX

### Sex Discrimination

#### Sex-based Harassment

- Sexual Assault
- Dating/Domestic Violence
- Stalking
- Hostile Environment
- Quid Pro Quo

#### Sex Discrimination

- Pregnancy & related conditions
- Parental, family or marital status
- Inequity in funding and programming
- Applies to
  - Admission
  - Employment
  - Educational programs
  - Athletics



## PROHIBITIONS

### Sex Discrimination

- sex stereotypes
- sex characteristics
- pregnancy or related conditions
- sexual orientation
- gender identity

### Sex-based harassment

- Sexual harassment;
  - Quid pro quo
  - Hostile environment
  - Sexual assault, dating violence, domestic violence and stalking
- Harassment based on sex discrimination (see above)

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## SEX-BASED HARASSMENT

### Quid pro quo

- when an employee or other person authorized by a recipient to provide an aid, benefit, or service explicitly or impliedly conditions that aid, benefit or service on a person's participation in unwelcome sexual conduct

### Specific Offenses

- sexual assault
- dating violence
- domestic violence
- stalking

### Hostile environment

- unwelcome sex-based conduct that is sufficiently severe or pervasive that, based on the totality of the circumstances and evaluated subjectively and objectively, it denies or limits a person's ability to participate in or benefit from the recipient's education program or activity

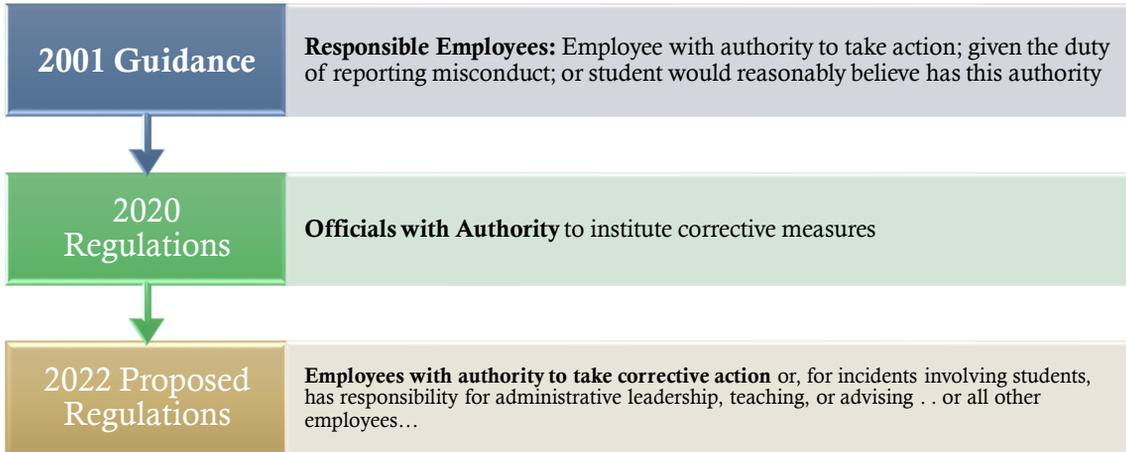
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# REPORTERS



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# REPORTING REQUIREMENTS (POST-SECONDARY)

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

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## EXAMPLES

- 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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## LOCATION JURISDICTION 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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## 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

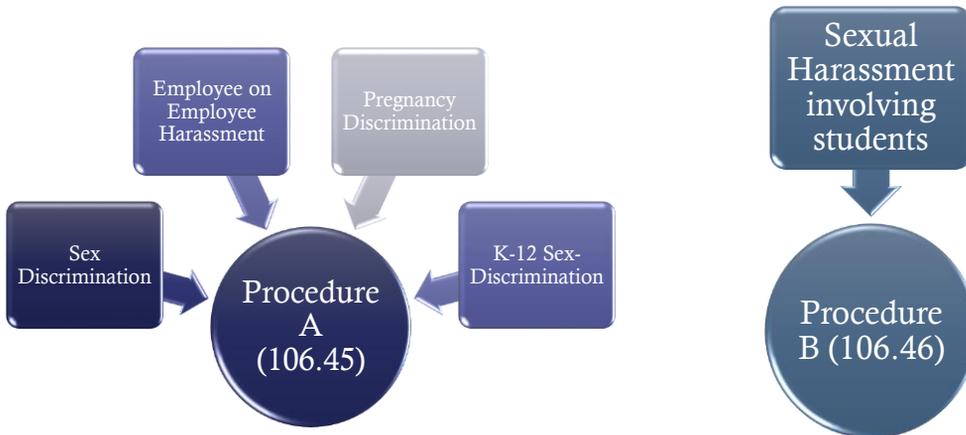
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## TWO GRIEVANCES PROCEDURES



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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 “Sufficient 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

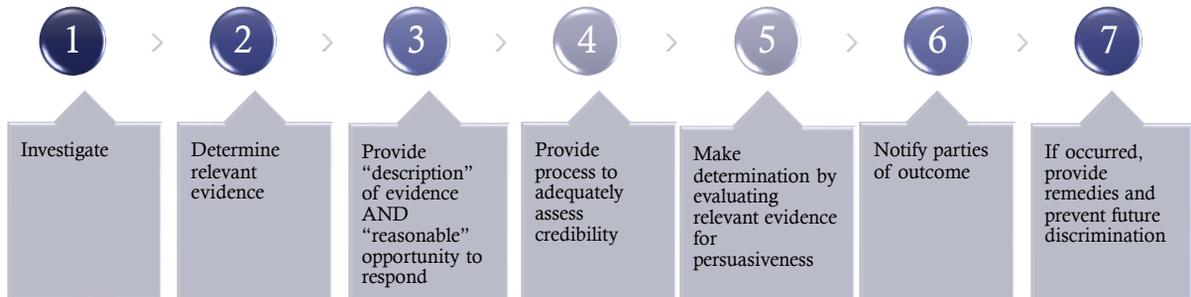
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## NEW PROPOSED §106.45



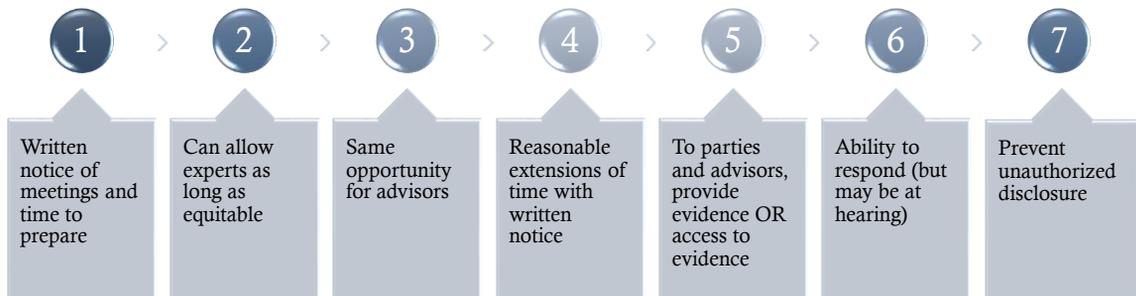
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## NEW PROPOSED §106.45




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## §106.46 - PROCESS FOR EVALUATING ALLEGATIONS AND ASSESSING CREDIBILITY

- No requirement for live hearing
- Decision-maker can ask questions at individual meetings or at live hearing
  - Ask parties and witnesses relevant questions and follow-up questions including questions challenging credibility
  - Allow each party to propose relevant questions and follow-up questions
- If allow live hearing with advisor questions...
  - No questioning by parties
  - If a party does not respond to questions related to their credibility, the decisionmaker must not rely on any statement of that party that supports that party's position.



## 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



## PREGNANCY AND PARENTAL STATUS

- 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



## REMINDERS!



## DIRECTED QUESTIONS FROM OCR

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

# Discussion: The proposed Regulations



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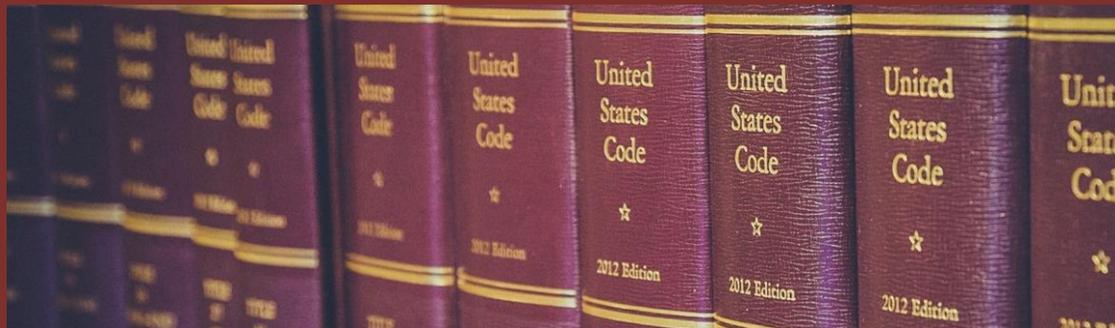
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THANK YOU

