



## What Investigators Need to Know About the 2020 Title IX Regulations

1

### Background

- ▶ NPRM Released November 2018
- ▶ Released May 6, 2020
- ▶ Implementation date of August 14, 2020
- ▶ Replaced prior guidance
- ▶ Applies to students and employees
- ▶ Established jurisdiction requirements

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2

### §106.30 Definitions – Complainant & Respondent

**COMPLAINANT**  
 “an individual who is alleged to be the victim of conduct that could constitute sexual harassment”

**RESPONDENT**  
 “an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment”

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3

### §106.30 Definitions – Formal Complaint

- ▶ “... 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.”
- ▶ “At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.”
- ▶ “Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.”

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4

### §106.30 Definitions - Sexual Harassment

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;
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).

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5

### PRONG 1: Quid Pro Quo

- ▶ Must be an employee (not volunteer, visitor, student)
- ▶ “This for that” harassment
- ▶ When favorable professional or educational treatment is conditioned on a sexual activity

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### PRONG 2: Hostile Environment+ (The Davis Standard)

- No definition of consent required
- Not the same Title VII "hostile environment" or 2001 Guidance
- First Amendment protections

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7

### PRONG 3: The VAWA Crimes

- Sexual Assault
  - Rape
  - Fondling
  - Incest
  - Statutory Rape
- Intimate Partner Violence
  - Dating Violence
  - Domestic Violence
- Stalking

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8

### §106.45 Grievance Process for Formal Complaints

Equitable	Objective evaluation	Impartiality and training
Presumption of "not responsible"	Prompt time frame	Respect privilege

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9

### §106.45 Grievance Process for Formal Complaints



Notice Requirements



Additional Allegations

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### §106.45 Grievance Process for Formal Complaints

Burden of Proof

Equal Participation

No restrictions on Discussions

Advisor

Inspect and Review Evidence

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11

### §106.45 Grievance Process for Formal Complaints



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12

### §106.45 Grievance Process for Formal Complaints

- ▶ Investigative report
  - “fairly summarizes relevant evidence”



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13

### §106.45 Hearings



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14

### §106.71 Retaliation

*“No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.”*

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15