

ALLEGATIONS OF SEXUAL MISCONDUCT ON CAMPUS: COMPLYING WITH THE US DEPARTMENT OF EDUCATION'S FINAL REGULATIONS ON TITLE IX

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ALLEGATIONS OF SEXUAL MISCONDUCT ON CAMPUS: COMPLYING WITH THE US DEPARTMENT OF EDUCATION'S FINAL REGULATIONS ON TITLE IX

The US Department of Education (DOE) on May 6, 2020 issued legally binding amended regulations governing how institutions that receive federal funding under Title IX of the Education Amendments of 1972 (Title IX) must respond to allegations of sexual misconduct, including sexual harassment (the Final Regulations).¹ The release came 18 months after the DOE issued a lengthy notice of proposed rulemaking, to which it received more than 124,000 comments in response.

While the Final Regulations focus primarily on institutions of higher education, their detailed processes largely apply to elementary and secondary schools as well. Reactions have been mixed, with many supporting the changes that they say protect the due process rights of alleged perpetrators, and many others condemning the Final Regulations and expressing concern that they will undermine the purpose of Title IX and deter students from reporting sexual harassment and assault.

Regardless of viewpoint, the fast approaching implementation deadline of August 14, 2020² means that thousands of educational institutions, as well as their partners, such as hospitals, clinical affiliates, and academic medical centers, will need to put new sexual harassment complaint processes in place quickly.

The Final Regulations represent a significant divergence from Obama-era guidance in 2011 and 2014 in that they

- provide a narrower definition of sexual harassment;
- limit the circumstances in which covered institutions are legally obligated to address or respond to allegations of sexual misconduct;
- mandate an initial response to all complaints of sexual misconduct of which covered institutions actually are aware;
- require a presumption of innocence for all individuals accused of sexual misconduct;
- require equal access to all evidence relevant to the allegations;
- permit covered institutions to choose the applicable standard of evidence, as long as it is the same standard used in all matters;
- prohibit the single investigator model; and
- require post-secondary institutions to conduct live hearings with cross-examination by someone other than the parties.

¹ [Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance](#), 85 Fed. Reg. 30,026 (May 19, 2020).

² On June 4, 2020, in an attempt to block the Final Regulations, democratic attorneys general from 17 states and the District of Columbia filed a lawsuit in federal court, naming Education Secretary Betsy DeVos, the Department of Education, and the United States of America as defendants. *See Commonwealth of Pa. v. DeVos*, 1:20-cv-1468 (D.D.C. filed June 4, 2020). The State of New York filed its own lawsuit the same day. *See State of N.Y. v. U.S. Dep't of Educ.*, No. 1:20-cv-4260 (S.D.N.Y. filed June 4, 2020). The Pennsylvania lawsuit states that the Final Regulations, if permitted to take effect, will "reverse decades of effort to end the corrosive effects of sexual harassment on equal access to education," and that the timing is burdensome and unreasonable because it gives institutions only three months to "completely overhaul" their sexual misconduct review systems in the midst of a global pandemic. Success could result in postponement of the implementation and enforcement of the Final Regulations until the conclusion of the lawsuit. However, it is unlikely that a decision will come until much later in the summer, so covered institutions will need to proceed with changes and refinements of their systems in accordance with the Final Regulations.

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DEFINITION OF SEXUAL HARASSMENT

The Final Regulations define “sexual harassment” to include any of three types of conduct on the basis of sex:

- Quid pro quo harassment, i.e., conditioning any educational opportunity, aid, or benefit on the granting of sexual favors.
- Hostile educational environment, i.e., unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive as to effectively deny a person equal access to an educational program or activity.
- Sexual assault (as defined by the Clery Act) or dating violence, domestic violence, or stalking (each as defined by the Violence Against Women Act).³

While the Final Regulations broaden the definition of sexual harassment by including relationship violence, they also narrow it by requiring that alleged hostile environment harassment be severe *and* pervasive *and* offensive to be actionable. In doing so, the Final Regulations depart significantly from the standard used when analyzing claims under Title VII of the Civil Rights Act of 1964—the conduct is severe or pervasive enough to create an environment that a reasonable person would consider intimidating, hostile, or abusive—and from previous Obama-era guidance, which defined sexual harassment more broadly as “unwelcome conduct of a sexual nature.”

According to the Final Regulations’ preamble, the DOE intentionally applied a narrower definition in recognition of “the importance of respecting the unique nature and purpose of educational environments [and to avoid] infring[ing] upon the First Amendment freedoms of students, teachers, and faculty.”⁴ Notwithstanding this limitation, the Final Regulations also state that covered institutions may prohibit and address conduct falling outside of the new definition.⁵

Additionally, many believe the Final Regulations roll back protections of transgender individuals, an interpretation that is bolstered by the preamble, which states that, while the Final Regulations do not define “sex,” “[t]he most recent position of the United States . . . is that the ordinary public meaning of ‘sex’ at the time of Title VII’s passage was biological sex and thus the appropriate construction of the word ‘sex’ does not extend to a person’s sexual orientation or transgender status, and that discrimination based on transgender status does not constitute sex stereotyping.”⁶

RESPONDING TO SEXUAL MISCONDUCT ALLEGATIONS

The Final Regulations also narrow the circumstances under which covered institutions are legally obligated to respond to allegations or complaints of sexual misconduct.⁷ Under previous guidance, covered institutions had to respond when any “responsible employee,” which was defined broadly, knew or should have known about possible harassment. Now, the pool of employees to whom notice triggers

³ Nondiscrimination on the Basis of Sex in Education Programs, 85 Fed. Reg. at 30,574 (to be codified at 34 C.F.R. § 106.30(a)).

⁴ *Id.* at 30,037.

⁵ *Id.* at 30,091.

⁶ *Id.* at 30,178. The US Supreme Court’s recent landmark ruling that “sex” under Title VII encompasses both sexual orientation and gender identity provides individuals and educational institutions the opportunity to establish that discrimination based on sex as prohibited under Title IX also applies to transgender students. See *Bolstock v. Clayton Cnty., Ga.*, 2020 WL 3146686; 2020 U.S. LEXIS 3252 (2020).

⁷ Nondiscrimination on the Basis of Sex in Education Programs, 85 Fed. Reg. at 30,574-75 (to be codified at 34 C.F.R. § 106.44(a)).

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the institution's response obligations is smaller,⁸ and a response is required only if the institution has "actual knowledge" of alleged sexual misconduct (rejecting the concepts of constructive notice and vicarious liability). Under the Final Regulations, "actual knowledge" is notice by means of, among other things, witnessing or hearing about sexual harassment from a complainant or third party or receiving a written or verbal complaint about sexual harassment or sexual harassment allegations.

Additionally, in a departure from prior guidance, the Final Regulations only require covered institutions to address or respond to alleged sexual misconduct that occurs (1) on a campus within the United States, or (2) at a school-sanctioned event, i.e., within the covered institution's own programs and activities, defined as "locations, events, or circumstances over which the [covered institution] exercises substantial control over both the respondent and the context in which the harassment occurs," including officially recognized student groups.⁹

Previous guidance encouraged institutions to include off-campus and extraterritorial sexual misconduct that impacted education-related activities or experiences for students and/or employees, e.g., study-abroad programs. Now, a covered institution may address sexual harassment affecting its students or employees that falls outside of Title IX's jurisdiction in any manner it chooses—including by not addressing it.

While actual knowledge may not trigger the obligation to investigate (discussed below), it does trigger the obligation to "promptly" respond in a manner that is not "deliberately indifferent." Under the Final Regulations, a covered institution cannot be held liable for failing to respond to known allegations of sexual harassment unless it acts with "deliberate indifference," defined as actions that are "clearly unreasonable in light of the known circumstances."¹⁰ At a minimum, the covered institution's Title IX coordinator must promptly do the following:

- Contact the complainant confidentially to offer and discuss available supportive measures.¹¹
- Let the complainant know that supportive measures are available regardless of whether a formal complaint is filed.
- Consider the complainant's wishes with respect to supportive measures.
- Explain to the complainant the process for filing a formal complaint.
- Contact the respondent, who also must be offered supportive measures.
- If supportive measures are not provided to the complainant, document why and explain why not providing such measures is not deliberately indifferent.¹²

⁸ For all covered institutions, notice to the Title IX coordinator or to "any official . . . who has authority to institute corrective measures on behalf of the [institution] conveys actual knowledge." *Id.* at 30,574 (to be codified at 34 C.F.R. § 106.30(a)). Additionally, in elementary and secondary schools, notice to any employee triggers the institution's response obligations. *Id.*

⁹ *Id.* (to be codified at 34 C.F.R. § 106.44(a)). This includes "any building owned or controlled by a student organization that is officially recognized by a postsecondary institution." *Id.* The DOE has been clear that this is intended to cover sexual misconduct at off-campus fraternity and sorority houses. *Id.* at 30,516. It likely also encompasses off-campus events put on by student organizations.

¹⁰ *Id.* at 30,574-575 (to be codified at 34 C.F.R. § 106.44(a)).

¹¹ The Federal Regulations define "supportive measures" as individualized services that are nondisciplinary and nonpunitive against any party, and not unreasonably burdensome to the respondent, nor affect the respondent's presumption of innocence, that are reasonably available and provided free of charge to the complainant or respondent. Such measures should be designed to ensure equal educational access, protect safety, and/or deter sexual harassment, and include but are not limited to measures designed to protect the safety of all parties, counseling, extensions of deadlines, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, and other similar measures. *Id.* (to be codified at 34 C.F.R. § 106.30(a)).

¹² *Id.* (to be codified at 34 C.F.R. § 106.44(a)).

OBLIGATION TO INVESTIGATE

The deliberate indifference standard is also applied to the covered institution's decision to investigate. Under the Final Regulations, covered institutions are obligated to initiate a grievance process only when a complainant files, or a Title IX coordinator signs, a "formal complaint" alleging sexual harassment against a respondent and requesting that the covered institution investigate.¹³ According to the DOE, covered institutions should consider the complainant's wishes regarding whether to pursue an investigation, but if an investigation is necessary for safety reasons or if failing to conduct an investigation would be deliberately indifferent, Title IX coordinators may sign a complaint to initiate an investigation.¹⁴ Similarly, a covered institution's decision not to investigate when the complainant does not wish to file a formal complaint will be evaluated by the DOE under the deliberate indifference standard as well.

THE GRIEVANCE PROCESS

The Final Regulations made a number of significant changes to requirements for how covered institutions must investigate and adjudicate formal complaints of sexual harassment, largely aimed at ensuring greater "due process," fairness, and equal treatment for all involved parties. Pursuant to the Final Regulations, from the outset of an investigation, a complainant should not be considered any more credible than a respondent and, in fact, a respondent must be presumed not responsible until the conclusion of the grievance process.

Time Frame for Completion

Covered institutions must conclude the grievance process, including informal resolution processes and filing and resolving appeals, within a "reasonably prompt time frame," with "[t]emporary delays and limited extensions . . . permitted only for good cause."¹⁵

Evidentiary Standard

Unlike Obama-era guidance, which required all institutions to use a "preponderance of the evidence" rather than the more demanding "clear and convincing evidence" standard of proof, the Final Regulations give covered institutions discretion to choose which evidentiary standard to use in adjudicating sexual harassment allegations.¹⁶ However, the institution must apply the same standard to all sexual harassment claims—whether involving employees, staff, or students.¹⁷

Many covered institutions will be required to apply the "clear and convincing" standard because of existing evidentiary requirements for disciplinary proceedings regarding collective bargaining agreements, tenure rules, and academic freedom codes.

¹³ *Id.* at 30,575 (to be codified at 34 C.F.R. § 106.44(b)); *see also* 85 Fed. Reg. 30,574 (to be codified at 34 C.F.R. § 106.30(a)) (defining "formal complaint").

¹⁴ *Id.* at 30,045.

¹⁵ *Id.* at 30,575 (to be codified at 34 C.F.R. § 106.45(b)(1)(v)).

¹⁶ *Id.* at 30,575 (to be codified at 34 C.F.R. § 106.45(b)(1)(vii)).

¹⁷ *Id.* at 30,275.

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Written Notice of Allegations

Upon receipt of a formal complaint, the covered institution must provide to all known parties written notice that

- provides sufficient detail of the allegations (including the identities of the parties, the conduct allegedly constituting sexual harassment, and the date and location of the alleged conduct) with sufficient time to prepare for an initial interview;¹⁸
- explains the grievance process, including any informal resolution process;
- states that the respondent is presumed not responsible and a determination regarding responsibility will be made at the conclusion of the grievance process;
- states that all parties may have an advisor of their choice and may inspect and review evidence; and
- informs the parties of any provision in the institution's code of conduct or other policies that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

The Investigation

Pursuant to the Final Regulations, which direct the way in which formal complaints must be investigated,¹⁹ covered institutions must do the following:

- Ensure that the burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the covered institution, not on the parties.
- Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations, even if it is evidence upon which the covered institution does not intend to rely in reaching a determination.
- Provide an equal opportunity for the parties to present witnesses and evidence, including fact and expert witnesses and other inculpatory and exculpatory evidence.
- Ensure that any party's ability to discuss the allegations and/or to gather and present relevant evidence is not restricted.
- Provide the parties with the same opportunities to have others present during any investigation-related meeting or proceeding.²⁰
- Provide written notice, with sufficient time to prepare, to any party whose participation is invited or expected of the date, time, location, participants, and purpose of all hearings, investigative interviews, and/or other meetings.
- Prepare an investigative report that fairly summarizes relevant evidence.

Covered institutions no longer can use a "single investigator model," i.e., where one official is tasked with investigating, adjudicating, and issuing disciplinary measures against respondents. Instead, the Final Regulations require three separate officials to work through separate facets of a single Title IX complaint process: (1) a Title IX coordinator, who receives reports of sexual misconduct; (2) an investigator to

¹⁸ If the covered institution decides to investigate allegations that were not initially included in this notice, the covered institution must provide notice of these additional allegations to all parties. *Id.* at 30,576 (to be codified at 34 C.F.R. § 106.45(b)(2)(ii)).

¹⁹ *Id.* at 30,576-577 (to be codified at 34 C.F.R. § 106.45(b)(5)).

²⁰ Institutions are still allowed to establish restrictions regarding the scope of the advisor's participation in the proceedings as long as those restrictions apply equally to all parties. *Id.* at 30,575 (to be codified at 34 C.F.R. § 106.45(b)(5)(iv)).

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gather facts and interview parties and witnesses; and (3) a decisionmaker to determine findings, sanctions, and remedies for the parties.²¹

Review of the Evidence

Expanding upon prior guidance, covered institutions now are required, before concluding the investigation, to provide the parties and their advisors equal opportunity to inspect and review²² any evidence obtained during the investigation that is directly related to the allegations in the formal complaint—even if the institution will not rely on that evidence in reaching a conclusion. Additionally, all parties must be given at least 10 days to submit a written response to the proffered evidence, which the investigator must consider prior to completing the investigative report.

At the conclusion of the investigation, the investigator must draft a report fairly summarizing relevant evidence. The investigator must provide the report to all parties and their advisors for their review and written response at least 10 days before a hearing or time of determination.²³

Live Hearings and Cross-Examination

One of the Final Regulations' major changes to prior Title IX practice is the new requirement that postsecondary institutions hold "live" hearings, either in person or virtually (if requested by either party), and allow cross-examination of witnesses.²⁴

A decisionmaker who has extensive training in Title IX procedures and relevant state and local laws, and who is not the Title IX coordinator or investigator, must preside over the hearing. That decisionmaker must analyze all relevant evidence and reach a conclusion on responsibility by applying the standard of proof the institution has chosen to use in all formal complaints of sexual harassment: preponderance of the evidence or clear and convincing evidence.

The hearing must be conducted in real time and in a way that allows both parties to see and hear the questioning of the parties and witnesses. At the request of one or more of the parties, the covered institution must arrange for the parties to be in separate rooms equipped with technology that enables the decisionmakers and parties to see and to hear the examinations at the same time. Additionally, while the hearings will not be open to the public, a recording of the live hearing must be made available for the parties' inspection and review.

Every witness at the hearing (including the parties) must be subjected to cross-examination by the parties' advisors, but not directly by the parties themselves.²⁵ The advisors may ask all relevant questions, including those aimed at challenging credibility, with relevance decided by the decisionmaker before an answer is provided.²⁶ The Final Regulations specifically state that questions and evidence about

²¹ "[F]undamental fairness to both parties requires . . . that no decision-maker be the same person who serves as the Title IX Coordinator or the investigator." *Id.* at 30,367-68.

²² Relevant evidence may be made available in hard copy or electronically on platforms that prevent the downloading of the materials. *Id.* at 30,576 (to be codified at 34 C.F.R. § 106.45(b)(5)(vi)). The Final Regulations permit nondisclosure agreements to prevent the disclosure or distribution of the evidence. *Id.* at 30,438.

²³ *Id.* at 30,576-77 (to be codified at 34 C.F.R. § 106.45(b)(5)(vii)).

²⁴ K-12 schools' grievance procedures may, but are not required to, include live hearings and cross-examination. Regardless, K-12 schools must provide to each party and their parents or guardians an explanation of the allegation(s) and a copy of the investigative report. Additionally, before reaching a determination regarding responsibility, the decisionmaker must provide each party the opportunity to submit relevant written questions that a party wants asked of any party or witness, provide each party with the responses, and allow for limited follow-up questions. *Id.* at 30,577 (to be codified at 34 C.F.R. § 106.45(b)(6)(ii)).

²⁵ If a party does not have an advisor, the covered institution must provide that party with an advisor at no cost. That advisor can be, but is not required to be, an attorney. *Id.* (to be codified at 34 C.F.R. § 106.45(b)(6)(i)).

²⁶ *Id.* (to be codified at 34 C.F.R. § 106.45(b)(6)(i)-(ii)).

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a complainant's prior sexual behavior are not relevant unless offered to prove someone else committed the alleged conduct or to prove consent. Submitting written questions in advance for the purpose of ascertaining the relevance of the question is not permitted under the Final Regulations.

If a witness refuses cross-examination, the decisionmaker is prohibited from relying on any of that witness's statements in reaching a determination about responsibility. On the other hand, the decisionmaker may not draw an adverse inference solely from a witness's absence from the hearing or refusal to answer questions.

Written Determination

Upon conclusion of the investigation and hearing, the decisionmaker, who cannot be the same person as the Title IX coordinator or the investigator, must issue a written decision to both parties at the same time, which includes the following specific information:

- Allegations at issue, i.e., what is the alleged sexual harassment
- Procedural steps taken from receipt of the complaint through determination
- Findings of fact supporting the determination
- Conclusions about responsibility for each allegation
- Decisionmaker's rationale for the result as to each allegation
- Any disciplinary sanctions imposed on the respondent
- Whether the complainant will be provided remedies
- Information about the appeals process

The Final Regulations also expressly prohibit retaliation against any individual for exercising his/her Title IX rights and clarify that complaints of retaliation may be filed and addressed through a covered institution's grievance procedure.²⁷

DISMISSAL OF FORMAL COMPLAINT

Pursuant to the Final Regulations, covered institutions' grievance processes must include a provision for mandatory dismissal of a formal complaint if the alleged conduct does not meet the definition of sexual harassment or otherwise is not covered (i.e., because the alleged conduct did not occur in the United States or during a covered educational program or activity).²⁸

Additionally, covered institutions may now dismiss formal complaints, at any time, if

- the complainant provides written notice of a request for dismissal to the Title IX Coordinator;
- the respondent is no longer enrolled or employed by the covered institution; or
- specific circumstances prevent the gathering of evidence sufficient to reach a determination.

Notably, however, dismissal of a formal complaint does not preclude covered institutions from taking action under other provisions of its code of conduct or policies.

²⁷ *Id.* at 30,578 (to be codified at 34 C.F.R. § 106.71).

²⁸ *Id.* at 30,576 (to be codified at 34 §106.45(b)(3)).

APPEALS

The Final Regulations require covered institutions to offer both parties the opportunity to appeal determinations regarding responsibility, or from an institution's dismissal of a formal complaint or any specific allegations contained in the formal complaint.²⁹ Parties must be permitted to appeal on any of the following bases:

- A procedural irregularity affected the outcome of the matter.
- New evidence that was not reasonably available when the determination of responsibility or dismissal was made could have affected the outcome of the matter.
- The Title IX coordinator, investigator, or decisionmaker had a conflict of interest or bias that affected the outcome of the matter.

Should a party choose to appeal, the covered institution must notify the other party in writing that an appeal has been filed, implement appeal procedures equally for both parties, ensure that the decisionmaker for the appeal is not the same person as the Title IX coordinator, investigator, or decisionmaker regarding responsibility or dismissal, and give both parties a reasonable and equal opportunity to submit a written statement in support or opposition of the outcome. The covered institution also must issue a written decision describing the result of the appeal, with the rationale, and provide the decision to both parties at the same time.

INFORMAL RESOLUTION OPTIONS

As with prior guidance, the Final Regulations permit covered institutions to resolve complaints through an "informal resolution process," such as mediation, restorative justice, or other options, which may replace the investigation or subsequent process.³⁰ However, the informal resolution process is only available if (1) a formal complaint has been filed; (2) the formal complaint is not one of a student against an employee; and (3) both parties provide voluntary written consent (after receiving written notice of the allegations and the requirements of the informal resolution process).

TRAINING REQUIREMENTS

The Final Regulations require covered institutions to implement extensive training for Title IX coordinators, investigators, decisionmakers, and anyone else involved in the covered institution's formal or informal resolution process,³¹ including training on the following:

- Definition of sexual harassment
- How to conduct an investigation and grievance process, including hearings and appeals, and the informal resolution process, as applicable
- Scope of the covered institution's education programs or activities
- How to serve impartially, including avoiding prejudgment of facts at issue, conflicts of interest, and bias
- Issues of relevance with respect to preparing fair investigative summaries

²⁹ *Id.* at 30,577-578 (to be codified at 34 C.F.R. §106.45(b)(8)).

³⁰ *Id.* at 30,578 (to be codified at 34 C.F.R. § 106.45(b)(9)).

³¹ *Id.* at 30,575 (to be codified at 34 C.F.R. § 106.45(b)(1)(iii)).

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- Issues of relevance of questions and evidence at live hearings, including rape-shield limitations
- The technology to be used at live hearings

Additionally, covered institutions must make these training materials publicly available on their website, or otherwise available for inspection by the public upon request.³²

RECORDKEEPING REQUIREMENTS

Under the Final Regulations, covered institutions must maintain the following records for a period of seven years:

- Each sexual harassment investigation, including
 - Any determination regarding responsibility
 - Any audio or video recording or transcript of proceedings
 - Any disciplinary sanctions imposed on the respondent
 - Any remedies provided to the complainant
- Any appeal and the result
- Any informal resolution and the result
- All materials used to train Title IX coordinators, investigators, decisionmakers, and any person who facilitates an informal resolution process

Additionally, covered institutions must create and maintain for seven years records of any actions, including any supportive measures,³³ taken in response to a report or formal complaint of sexual harassment and documentation of the basis for the conclusion that the response was not deliberately indifferent.

CONCLUSION AND RECOMMENDATIONS

The Final Regulations present significant changes in the way covered institutions—including elementary, secondary, and postsecondary schools—must respond to complaints of sexual misconduct. While some aspects of the Final Regulations narrow or limit the situations where covered institutions are legally obligated to respond, other aspects implement new, expanded, or revised procedural requirements. Additionally, the DOE has made clear through these Final Regulations that the above-described policies and procedures apply to complaints regarding *both* students and employees.

Given the DOE's stated deadline of August 14, 2020 for compliance, covered institutions must begin reviewing and, if necessary, revising their current policies and procedures now. In particular, covered institutions should take the following actions:

- Review and, if necessary, update their definition of "sexual harassment," while considering definitions and requirements set forth in applicable employment laws.
- Determine what off-campus events and locations might be deemed an "education program or activity."

³² *Id.* at 30,578 (to be codified at 34 C.F.R. § 106.45(10)(i)(D)).

³³ If a covered institution does not provide a complainant with supportive measures, it must document the reasons why such response was not clearly unreasonable in light of the circumstances. *Id.* at 30,578 (to be codified at 34 C.F.R. § 106.45(b)(10)(ii)).

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- Decide whether to limit responses under their policies to alleged sexual misconduct that occurs in the United States during sanctioned educational programs or activities, or to create separate procedures addressing anything that is no longer required to be covered.
- Review any organizations and events that the institution funds, promotes, or sponsors to determine potential Title IX coverage.
- For postsecondary institutions, document who has authority to “institute corrective measures.”
- Revise current policies and procedures to ensure there are different decisionmakers at each step of the process (i.e., eliminate any reliance on the single-investigator model).
- Determine which evidentiary standard will be used—preponderance of the evidence or clear and convincing evidence—and ensure that the same standard applies for all Title IX complaints (and, if using preponderance of the evidence, ensure that this standard applies to all similar policies and procedures).
- Revise current policies—for students and employees—to include live hearings for all responsibility determinations and ensure they have the necessary technology, if not already available.
- Develop and implement training for all individuals involved in the Title IX complaint, investigation, resolution, and appeals procedures, including Title IX coordinators, decisionmakers, and advisors.
- Revise applicable record retention policies and establish processes and practices for completing and maintaining required documentation for seven years.

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