DEAR COLLEAGUE LETTER RE TITLE IX ENFORCEMENT GUIDANCE

FEBRUARY 4, 2025

https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf

https://www.ed.gov/laws-and-policy/civil-rights-laws/title-ix-and-sex-discrimination/sex-discrimination-overview-of-law

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ACTING ASSISTANT SECRETARY

February 4, 2025

Dear Colleague:

This letter[1] is to clarify that, in light of a recent court decision, the United States Department of Education's (ED) Office for Civil Rights (OCR) will enforce Title IX under the provisions of the 2020 Title IX Rule,[2] rather than the 2024 Title IX Rule.[3] Accordingly, lawful Title IX enforcement includes, *inter alia*, the definition of sexual harassment, the procedural protections owed to complainants and respondents, the provision of supportive measures to complainants, and school-level reporting processes as outlined in the 2020 Title IX Rule.

On January 9, 2025, the United States District Court for the Eastern District of Kentucky issued a decision that vacated the entirety of the 2024 Title IX Rule nationwide.[4] Prior to that decision, federal courts in other jurisdictions had enjoined the 2024 Title IX Rule, which amounted to a prohibition against its enforcement in 26 states.[5] Although the United States Department of Justice is responsible for determining whether to appeal the United States District Court for the Eastern District of Kentucky's vacatur order, that judgment was immediately effective and no portion of the 2024 Title IX Rule is now in effect in any jurisdiction.

In addition, on January 20, 2025, President Trump issued an Executive Order, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government. President Trump ordered all agencies and departments within the Executive Branch to "enforce all sex-protective laws to promote [the] reality" that there are "two sexes, male and female," and that "[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality." ED and OCR must enforce Title IX consistent with President Trump's Order.

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[1] This letter replaces and supersedes the January 31, 2025, letter issued on Title IX enforcement.
[2] 85 Fed. Reg. 30026 (2020).
[3] 89 Fed. Reg. 33474 (2024).
[4] *Tennessee v. Cardona*, No. 24-0072-DCR, 2025 WL 63795, at *6 (E.D. Ky. Jan. 9, 2025).
[5] *See Alabama v. U.S. Sec. of Educ.*, No. 24-12444, 2024 WL 3981994 (11th Cir. Aug. 22, 2024); *Oklahoma v. Cardona*, No. CIV-24-00461-JD, 2024 WL 3609109 (W.D. Okla. July 31, 2024); *Arkansas v. Dep't of Educ.*, No. 4:24-CV-636-RWS, 2024 WL 3518588 (E.D. Mo. July 24, 2024); *Texas v. United States*, No. 2:24-CV-86-Z, 2024 WL 3405342 (N.D. Tex. July 11, 2024); *Kansas v. Dep't of Educ.*, No. 24-4041-JWB, 2024 WL 3273285 (D. Kan. July 2, 2024); *Louisiana v. Dep't of Educ.*, No. 3:24-CV-00563, 2024 WL 2978786 (W.D. La. June 13, 2024).

In light of the recent federal court decision vacating the 2024 Title IX Rule, and consistent with President Trump's *Defending Women* Executive Order, the binding regulatory framework for Title IX enforcement includes the principles and provisions of the 2020 Title IX Rule and the longstanding Title IX regulations outlined in 34 C.F.R. 106 et seq., but excludes the vacated 2024 Title IX Rule. Accordingly, open Title IX investigations initiated under the 2024 Title IX Rule should be immediately reevaluated to ensure consistency with the requirements of the 2020 Title IX Rule and the preexisting regulations at 34 C.F.R. 106 et seq.

Resources pertaining to Title IX and the 2020 Title IX Rule are available here.

Sincerely,

/s/
Craig Trainor
Acting Assistant Secretary for Civil Rights
United States Department of Education

Summary of Major Provisions of the Department of Education's Title IX Final Rule Released August, 2020

Summary of Major Provisions of the Department of Education's Title IX Final Rule

Issue	The Title IX Final Rule: Addressing Sexual Harassment in Schools
1. Notice to the School, College, University ("Schools"): Actual Knowledge	The Final Rule requires a K-12 school to respond whenever *any* employee has notice of sexual harassment, including allegations of sexual harassment. Many State laws also require all K-12 employees to be mandatory reporters of child abuse. For postsecondary institutions, the Final Rule allows the institution to choose whether to have mandatory reporting for all employees, or to designate some employees to be confidential resources for college students to discuss sexual harassment without automatically triggering a report to the Title IX office. For all schools, notice to a Title IX Coordinator, or to an official with authority to institute corrective measures on the recipient's behalf, charges a school with actual knowledge and triggers the school's response obligations.
2. Definition of Sexual Harassment for Title IX Purposes	The Final Rule defines sexual harassment broadly to include any of three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect: Any instance of *quid pro quo* harassment by a school's employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA). - The Final Rule prohibits sex-based misconduct in a manner consistent with the First Amendment. *Quid pro quo* harassment and Clery Act/VAWA offenses are <u>not</u> evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, because such misconduct is sufficiently serious to deprive a person of equal access. - The Final Rule uses the Supreme Court's *Davis* definition (severe *and* pervasive *and* objectively offensive conduct, effectively denying a person equal educational access) as one of the three categories of sexual harassment, so that where unwelcome sex-based conduct consists of speech or expressive conduct, schools balance Title IX enforcement with respect for free speech and academic freedom. - The Final Rule uses the Supreme Court's Title IX-specific definition rather than the Supreme Court's Title VII workplace standard (severe *or* pervasive conduct creating a hostile work environment). First Amendment concerns differ in educational environments and workplace environments, and the Title IX definition provides First Amendment protections appropriate for educational institutions where students are learning, and employees are teaching. Students, teachers, faculty, and others should enjoy free speech and academic freedom protections, even when speech or expression is offensive.

3. Sexual Harassment Occurring in a School's "Education Program or Activity" and "in the United States"	The Title IX statute applies to persons in the United States with respect to education programs or activities that receive Federal financial assistance. Under the Final Rule, schools must respond when sexual harassment occurs in the school's education program or activity, against a person in the United States. - The Title IX statute and existing regulations contain broad definitions of a school's "program or activity" and the Department will continue to look to these definitions for the scope of a school's education program or activity. Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution (such as a fraternity or sorority house). - Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off-campus. A school may address sexual harassment affecting its students or employees that falls outside Title IX's jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.
4. Accessible Reporting to Title IX Coordinator	The Final Rule expands a school's obligations to ensure its educational community knows how to report to the Title IX Coordinator. - The employee designated by a recipient to coordinate its efforts to comply with Title IX responsibilities must be referred to as the "Title IX Coordinator." - Instead of notifying only students and employees of the Title IX Coordinator's contact information, the school must also notify applicants for admission and employment, parents or legal guardians of elementary and secondary school students, and all unions, of the name or title, office address, e-mail address, and telephone number of the Title IX Coordinator. - Schools must prominently display on their websites the required contact information for the Title IX Coordinator. - Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. - Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address, listed for the Title IX Coordinator.
5. School's Mandatory Response Obligations: The Deliberate Indifference Standard	Schools must respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means a response that is not clearly unreasonable in light of the known circumstances. Schools have the following mandatory response obligations: - Schools must offer supportive measures to the person alleged to be the victim (referred to as the "complainant").

	- The Title IX Coordinator must promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. - Schools must follow a grievance process that complies with the Final Rule before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent. - Schools must not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, when complying with Title IX. - The Final Rule requires a school to investigate sexual harassment allegations in any formal complaint, which can be filed by a complainant, or signed by a Title IX Coordinator. - The Final Rule affirms that a complainant's wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances. - If the allegations in a formal complaint do not meet the definition of sexual harassment in the Final Rule, or did not occur in the school's education program or activity against a person in the United States, the Final Rule clarifies that the school must dismiss such allegations *for purposes of Title IX* but may still address the allegations in any manner the school deems appropriate under the school's own code of conduct.
6. School's Mandatory Response Obligations: Defining "Complainant," "Respondent," "Formal Complaint," "Supportive Measures"	When responding to sexual harassment (e.g., by offering supportive measures to a complainant and refraining from disciplining a respondent without following a Title IX grievance process, which includes investigating formal complaints of sexual harassment), the Final Rule provides clear definitions of complainant, respondent, formal complaint, and supportive measures so that recipients, students, and employees clearly understand how a school must respond to sexual harassment incidents in a way that supports the alleged victim and treats both parties fairly. The Final Rule defines "complainant" as an individual *who is alleged to be the victim* of conduct that could constitute sexual harassment. - This clarifies that any third party as well as the complainant may report sexual harassment. - While parents and guardians do not become complainants (or respondents), the Final Rule expressly recognizes the legal rights of parents and guardians to act on behalf of parties (including by filing formal complaints) in Title IX matters. The Final Rule defines "respondent" as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

	The Final Rule defines "formal complaint" as a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment and states: - 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 school with which the formal complaint is filed. - A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under the Final Rule, and by any additional method designated by the school. - The phrase "document filed by a complainant" means a document or electronic submission (such as by e-mail or through an online portal provided for this purpose by the school) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. - Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during a grievance process, and must comply with requirements for Title IX personnel to be free from conflicts and bias. The Final Rule defines "supportive measures" as individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment. - The Final Rule evaluates a school's selection of supportive measures and remedies based on what is not clearly unreasonable in light of the known circumstances, and does not second guess a school's disciplinary decisions, but requires the school to offer supportive measures, and provide remedies to a complainant whenever a respondent is found responsible.
7. Grievance Process, General Requirements	The Final Rule prescribes a consistent, transparent grievance process for resolving formal complaints of sexual harassment. Aside from hearings (see Issue #9 below), the grievance process prescribed by the Final Rule applies to all schools equally including K-12 schools and postsecondary institutions. The Final Rule states that a school's grievance process must: - Treat complainants equitably by providing remedies any time a respondent is found responsible, and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process prescribed in the Final Rule. - Remedies, which are required to be provided to a complainant when a respondent is found responsible, must be designed to maintain the complainant's equal access to education and may include the same individualized services described in the Final Rule as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. - Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.

	- Require Title IX personnel (Title IX Coordinators, investigators, decision-makers, people who facilitate any informal resolution process) to be free from conflicts of interest or bias for or against complainants or respondents. - Training of Title IX personnel must include training on the definition of sexual harassment in the Final Rule, the scope of the school's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. - A school must ensure that decision-makers receive training on any technology to be used at a live hearing. - A school's decision-makers and investigators must receive training on issues of relevance, including how to apply the rape shield protections provided only for complainants. - Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. - Recipients must post materials used to train Title IX personnel on their websites, if any, or make materials available for members of the public to inspect. - Include reasonably prompt time frames for conclusion of the grievance process, including appeals and informal resolutions, with allowance for short-term, good cause delays or extensions of the time frames. - Describe the range, or list, the possible remedies a school may provide a complainant and disciplinary sanctions a school might impose on a respondent, following determinations of responsibility. - State whether the school has chosen to use the preponderance of the evidence standard, or the clear and convincing evidence standard, for all formal complaints of sexual harassment (including where employees and faculty are respondents). - Describe the school's appeal procedures, and the range of supportive measures available to complainants and respondents. - A school's grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. - Any provisions, rules, or practices other than those required by the Final Rule that a school adopts as part of its grievance process for handling formal complaints of sexual harassment, must apply equally to both parties.

8. Investigations	The Final Rule states that the school must investigate the allegations in any formal complaint and send written notice to both parties (complainants and respondents) of the allegations upon receipt of a formal complaint. During the grievance process and when investigating: - The burden of gathering evidence and burden of proof must remain on schools, not on the parties. - Schools must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence. - Schools must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no "gag orders"). - Parties must have the same opportunity to select an advisor of the party's choice who may be, but need not be, an attorney. - Schools must send written notice of any investigative interviews, meetings, or hearings. - Schools must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence. - Schools must send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond. - Schools must dismiss allegations of conduct that do not meet the Final Rule's definition of sexual harassment or did not occur in a school's education program or activity against a person in the U.S. Such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner the school deems appropriate. - Schools may, in their discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination. - Schools must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal. - Schools may, in their discretion, consolidate formal complaints where the allegations arise out of the same facts. - The Final Rule protects the privacy of a party's medical, psychological, and similar treatment records by stating that schools cannot access or use such records unless the school obtains the party's voluntary, written consent to do so.
9. Hearings:	The Final Rule adds provisions to the "live hearing with cross-examination" requirement for postsecondary institutions and clarifies that hearings are optional for K-12 schools (and any other recipient that is not a postsecondary institution).

Summary of Major Provisions of the Department of Education's Title IX Final Rule

(a) *Live Hearings & Cross-Examination (for Postsecondary Institutions)*	(a) For postsecondary institutions, the school's grievance process must provide for a live hearing: - At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. - Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. - At the request of either party, the recipient must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other. - Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not relevant. - If a party does not have an advisor present at the live hearing, the school must provide, without fee or charge to that party, an advisor of the school's choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party. - If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. - Live hearings may be conducted with all parties physically present in the same geographic location or, at the school's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. - Schools must create an audio or audiovisual recording, or transcript, of any live hearing.
(b) *Hearings are Optional, Written Questions Required (for K-12 Schools)*	(b) For recipients that are K-12 schools, and other recipients that are not postsecondary institutions, the recipient's grievance process may, *but need not*, provide for a hearing: - With or without a hearing, after the school has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
(c) *Rape Shield Protections for Complainants*	(c) The Final Rule provides rape shield protections for complainants (as to all recipients whether postsecondary institutions, K-12 schools, or others), deeming irrelevant questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.

Summary of Major Provisions of the Department of Education's Title IX Final Rule

10. Standard of Evidence & Written Determination	The Final Rule requires the school's grievance process to state whether the standard of evidence to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard. The Final Rule makes each school's grievance process consistent by requiring each school to apply the same standard of evidence for all formal complaints of sexual harassment whether the respondent is a student or an employee (including faculty member). - The decision-maker (who cannot be the same person as the Title IX Coordinator or the investigator) must issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant. - The written determination must be sent simultaneously to the parties along with information about how to file an appeal.
11. Appeals	The Final Rule states that a school must offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on the following bases: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter. - A school may offer an appeal equally to both parties on additional bases.
12. Informal Resolution	The Final Rule allows a school, in its discretion, to choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. Any person who facilitates an informal resolution must be well trained. The Final Rule adds: - A school may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. Similarly, a school may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. - At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. - Schools must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Summary of Major Provisions of the Department of Education's Title IX Final Rule

13. Retaliation Prohibited	The Final Rule expressly prohibits retaliation. - Charging an individual with code of conduct violations that do not involve sexual harassment, but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation. - The school must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding. - Complaints alleging retaliation may be filed according to a school's prompt and equitable grievance procedures. - The exercise of rights protected under the First Amendment does not constitute retaliation. - Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.

OCR FAQ - PART 1: QUESTIONS AND ANSWERS REGARDING THE DEPARTMENT'S TITLE IX REGULATIONS DATED JANUARY 15, 2021

January 15, 2021

Part 1: Questions and Answers Regarding the Department's Title IX Regulations

The Department of Education's (Department) Office for Civil Rights (OCR), through its Outreach, Prevention, Education and Non-discrimination (OPEN) Center, issues the following technical assistance document to support institutions with meeting their obligations under the Title IX regulations. This is Part 1.

The Department announced new Title IX regulations on May 6, 2020. The new regulations were published in the *Federal Register* on May 19, 2020 at 85 Fed. Reg. 30026 (codified in 34 C.F.R. Part 106), and became effective on August 14, 2020. Many of the questions in this document are derived from questions posed to the OPEN Center via e-mail. This document supplements the Question and Answer document issued by the OPEN Center on September 4, 2020. OCR may periodically release additional Question and Answer documents addressing the Title IX regulations. All references and citations are to the official version of the Title IX regulations, as published in the Federal Register here.

Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Applicability of Prior OCR Guidance

Question 1: How should recipients reconcile the requirements in the Title IX regulations with different requirements in guidance documents previously issued by OCR?

Answer 1: In the Preamble to the Title IX regulations at 30535, the Department explains: "On September 22, 2017, the Department expressly stated that its 2017 Q&A along with the 2001 Guidance 'provide information about how OCR will assess a school's compliance with Title IX.'"

The Department further states at 30535 of the Preamble: "To the extent that these final regulations differ from any of the Department's guidance documents (whether such documents remain in effect or are withdrawn), these final regulations, when they become effective, and not the Department's guidance documents, are controlling."

The Department also unequivocally states at 30029 of the Preamble to the regulations that "guidance is not legally enforceable," and cites to *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 96-98 (2015),

for that proposition. Additionally, at 30068, the Department acknowledges that guidance documents do not have the force and effect of law and states: "Because guidance documents do not have the force and effect of law, the Department's Title IX guidance could not impose legally binding obligations on recipients."

The new Title IX regulations became effective on August 14, 2020, and the Department will not apply or enforce the new regulations retroactively. As to alleged sexual harassment occurring prior to the effective date of the new regulations, recipients may find it helpful to refer to the now-rescinded 2001 Revised Sexual Harassment Guidance and the 2017 Q&A on Campus Sexual Misconduct, which remain accessible on the Department's website.

Definitions

Question 2: If a formal complaint alleges attempted sexual assault, would that be covered under the definition of sexual harassment in 34 C.F.R. § 106.30(a), or would a recipient need to dismiss that complaint for Title IX purposes?

Answer 2: The Preamble to the Title IX regulations at 30174 and FN 777-779 addresses attempted sexual assault (such as rape): "With respect to an attempted rape, we define 'sexual assault' in § 106.30 by reference to the Clery Act, which in turn defines sexual assault by reference to the [Federal Bureau of Investigation's Uniform Crime Reporting system], and the FBI has stated that the offense of rape includes attempts to commit rape."

For further information on the definition of sexual harassment, see this blog post published by OCR. Additionally, even if allegations in a formal complaint do not meet the Title IX definition of sexual harassment, a recipient school is only required to dismiss such allegations *for purposes of Title IX* and may address such allegations under the recipient's own code of conduct. 34 C.F.R. § 106.45(b)(3)(i).

Deliberate Indifference

Question 3: Under the Title IX regulations, will the Department apply the deliberate indifference standard to a complaint regarding a recipient's response to sexual harassment? For example, will the Department apply the deliberate indifference standard to assess a respondent's allegations that the recipient's grievance process was inequitable or that the supportive measures implemented by the recipient were unreasonably burdensome?

Answer 3: The Title IX regulations require a recipient to promptly respond to actual knowledge of sexual harassment in the recipient's education program or activity against a person in the United States in a manner that is not deliberately indifferent. 34 C.F.R. § 106.44(a). The regulations further require, as part of the recipient's response, that the recipient treat the parties equitably, which for a respondent means refraining from imposing disciplinary sanctions or other actions that are not supportive measures (as defined in 34 C.F.R. § 106.30) against a respondent, without following the 34 C.F.R. § 106.45 grievance process. *See, e.g.*, 34 C.F.R. §§ 106.44(a), 106.45(b)(1)(i).

With respect to a respondent's claim that a recipient's grievance process was inequitable, the recipient's legal obligation is to comply with 34 C.F.R. §§ 106.44, 106.45 as it conducts a grievance process. Where a recipient's supportive measures unreasonably burden a respondent, those supportive measures would not meet the definition of a "supportive measure" in 34 C.F.R. § 106.30. The recipient must follow the grievance process specified in 34 C.F.R. § 106.45 before taking an action that is not a supportive measure, unless the emergency removal provision in 34 C.F.R. § 106.44(c) or administrative leave provision in 34 C.F.R. § 106.44(d) applies.

Program or Activity

Question 4: May a recipient use the procedures outlined in 34 C.F.R. § 106.45 of the Title IX regulations even in cases where an incident of sexual harassment occurs outside of the recipient's education program or activity and thus does not trigger the recipient's duties under 34 C.F.R. § 106.44(a)?

Answer 4: Yes. Nothing in the regulations precludes a recipient from responding under its code of conduct to sexual harassment that does not trigger its duties under 34 C.F.R. § 106.44(a), using grievance procedures that nevertheless correspond with those described in 34 C.F.R. § 106.45. The regulations leave recipients flexibility in this regard.

Off-campus Locations

Question 5: Is a recipient required to investigate a formal complaint alleging that sexual harassment occurred off campus or against a student engaged in a study abroad program, or must such complaints be dismissed?

Answer 5: The Title IX regulations recognize the statutory jurisdiction of Title IX's language, which applies to persons in the United States. *See* 20 U.S.C. § 1681(a) (beginning with the words, "No person in the United States . . . ."). A recipient's study abroad program may be part of the recipient's "education program or activity," but Title IX does not extend to conduct that occurs outside the United States. However, even when a recipient must dismiss allegations of sexual harassment because the alleged misconduct occurred outside the United States, nothing in the regulations precludes the recipient from addressing those allegations under the recipient's own code of conduct. 34 C.F.R. § 106.45(b)(3)(i).

With respect to conduct that occurs at an off-campus location within the United States, the regulations require a recipient to respond to actual knowledge of sexual harassment in the recipient's education program or activity against a person in the United States. 34 C.F.R. § 106.44(a). The regulations state in 34 C.F.R. § 106.44(a): "Education program or activity" includes "locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution."

The Preamble to the regulations contains extensive discussion of the "education program or activity" jurisdictional condition, at 30195-30201, including, for example, the following statement from the Department at 30196 (footnotes omitted here):

> For purposes of § 106.30, § 106.44, and § 106.45, the phrase "education program or activity" includes "locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurs" and also includes "any building owned or controlled by a student organization that is officially recognized by a postsecondary institution." The Title IX statute and existing Title IX regulations already contain detailed definitions of "program or activity" that, among other aspects of such definitions, include "all of the operations of" a postsecondary institution or local education agency. The Department will interpret "program or activity" in these final regulations in accordance with the Title IX statutory (20 U.S.C. 1687) and regulatory definitions (34 CFR 106.2(h)), guided by the Supreme Court's language applied specifically for use in sexual harassment situations under Title IX regarding circumstances over which a recipient has control and (for postsecondary institutions) buildings owned or controlled by student organizations if the student organization is officially recognized by the postsecondary institution.

With respect to addressing such conduct via a recipient's code of conduct, 34 C.F.R. § 106.45(b)(3)(i) expressly authorizes a recipient to address alleged misconduct that does not meet the Title IX jurisdictional requirements (i.e., did not allegedly occur in the recipient's education program or activity, or did not occur against a person in the United States). Furthermore, at 30199 of the Preamble to the regulations, the Department notes:

> [N]othing in the final regulations prevents recipients from initiating a student conduct proceeding or offering supportive measures to students affected by sexual harassment that occurs outside the recipient's education program or activity. Title IX is not the exclusive remedy for sexual misconduct or traumatic events that affect students. As to misconduct that falls outside the ambit of Title IX, nothing in the final regulations precludes recipients from vigorously addressing misconduct (sexual or otherwise) that occurs outside the scope of Title IX or from offering supportive measures to students and individuals impacted by misconduct or trauma even when Title IX and its implementing regulations do not require such actions.

Parents (Role, Filing Complaints)

Question 6: Is a recipient required to notify a parent or guardian of reported sexual harassment that affects that parent or guardian's student?

Answer 6: To comply with 34 C.F.R. § 106.6(g) (i.e., in order to not derogate the legal rights of parents and guardians), a recipient may need to notify a parent or legal guardian so that the recipient adequately respects any underlying legal rights of a parent or guardian to make decisions "on behalf of" a complainant, respondent, or other individual involved in a Title IX matter. Additionally, the Title IX regulations impose a duty on the recipient not to respond in a manner that is deliberately indifferent. 34 C.F.R. § 106.44(a). Thus, if it would be "clearly unreasonable in light of the known circumstances" for the recipient not to notify a parent or legal guardian of reported sexual harassment

that affects that parent or guardian's student, the school must notify the parent or guardian of the Title IX matter.

Employees

Question 7: Do the requirements in the Title IX regulations apply to allegations between employees of a recipient?

Answer 7: Yes. The Title IX regulations, in 34 C.F.R. § 106.30(a), define "complainant" and "respondent" respectively as "an individual who is alleged to be the victim" and "an individual who has been reported to be the perpetrator." Any person may be a complainant or respondent, regardless of whether the person is a student, employee, or otherwise affiliated with the university.

Similarly, the regulations require a university to respond promptly when the university has actual knowledge of sexual harassment in the university's education program or activity against a person in the United States, and that response must treat the complainant and respondent equitably by offering supportive measures to the complainant and refraining from imposing disciplinary sanctions on the respondent without following a grievance process that complies with 34 C.F.R. § 106.45. (34 C.F.R. § 106.44(a)). Thus, the regulations cover sexual harassment allegations in cases where the complainant and respondent are both employees.

At 30439 of the Preamble to the regulations, the Department explains:

> The Department appreciates support for its final regulations, which apply to employees. Congress did not limit the application of Title IX to students. Title IX, 20 U.S.C. 1681, expressly states: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . . ." Title IX, thus, applies to any person in the United States who experiences discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. Similarly, these final regulations, which address sexual harassment, apply to any person, including employees, in an education program or activity receiving Federal financial assistance.

(footnotes omitted).

Recipients who are subject to both Title VII and Title IX must comply with both. The Title IX regulations, at 34 C.F.R. § 106.6(f), provide that nothing about the Title IX regulations lessens an individual's rights under Title VII. In the Preamble to the regulations, at 30438-30441, the Department discusses at length the intersection between Title VII and the Title IX regulations, and the application of the Title IX regulations to employees.

Question 8: Is a recipient permitted to conduct teacher or faculty discipline processes in which sanctions are reviewed by a separate committee, and which can lead to tenure revocation proceedings, outside of the requirements of 34 C.F.R. §106.45, or are recipients required to combine the

determination regarding responsibility and sanctions aspects of a Title IX grievance process into a single process subject to the requirements of 34 C.F.R. § 106.45?

Answer 8: The Title IX regulations, at 34 C.F.R. § 106.45(b)(7), require a recipient's decision-maker to issue a written determination regarding responsibility that must include, among other items, the result as to each allegation and rationale for the result, any disciplinary sanctions imposed by the recipient against the respondent, and whether remedies will be provided by the recipient to the complainant.

The regulations do not preclude a recipient from using one decision-maker to reach the determination regarding responsibility, and having different decision-maker(s) (e.g., a tenure committee) determine appropriate disciplinary sanctions (including making such a decision during a separate process, such as another hearing), so long as the end result is that the single written determination includes any disciplinary sanctions imposed by the recipient against the respondent, pursuant to 34 C.F.R. § 106.45(b)(7). The issuance of a written determination cannot be a piecemeal process that is broken down into chronologically occurring sub-parts.

Recipients should also remain aware of their obligation to conclude the grievance process within the reasonably prompt time frames designated in the recipient's grievance process, under 34 C.F.R. § 106.45(b)(1)(v). Additionally, each decision-maker—whether an employee of the recipient or an employee of a third party such as a consortium of schools—must not have a conflict of interest or bias for or against complainants or respondents generally, or with respect to an individual complainant or respondent, pursuant to 34 C.F.R. § 106.45(b)(1)(iii).

The above principles apply to recipients that are not postsecondary institutions, with respect to determinations regarding responsibility and sanction decisions involving teachers, staff, or other employees, except that the regulations do not govern whether a non-postsecondary institution holds a hearing as part of its Title IX grievance process.

Record-Keeping

Question 9: What happens to records following the required seven-year retention period?

Answer 9: The Title IX regulations require that the records described in 34 C.F.R. § 106.45(b)(10) must be maintained for a period of seven years. The regulations do not specify what must or may happen to such records after the seven-year period has elapsed. In the Preamble to the regulations at 30411, the Department notes that "while the final regulations require records to be kept for seven years, nothing in the final regulations prevents recipients from keeping their records for a longer period of time if the recipient wishes or due to other legal obligations."

FERPA and Confidentiality

Question 10: The Title IX regulations make the release of a respondent's identity confidential unless the FERPA exceptions apply. FERPA permits but does not require the nonconsensual disclosure of records by postsecondary educational institutions in connection with disciplinary proceedings concerning crimes of violence or non-forcible sex offenses. Crimes of violence and non-forcible sex offenses do not include all forms of sexual harassment as defined in 34 C.F.R § 106.30(a). Does that mean that recipients cannot reveal the identity of a respondent found responsible for sexual harassment, including in response to a reference check, because it would be retaliatory to release this confidential information, assuming there is no state law requiring this information to be revealed?

Answer 10: In the Preamble to the regulations at 30426-27 (emphasis added), the Department addresses the intersection of FERPA and the regulations' requirement in 34 C.F.R. § 106.45(b)(5)(vi).

The Title IX regulations, at 34 C.F.R. § 106.71(a), state the general rule that a recipient must keep confidential the identity of any person who has reported sexual harassment, or who has been reported to be a perpetrator of sexual harassment. The purpose of this provision is to prevent the school from retaliating against anyone. This duty of confidentiality has three exceptions in 34 C.F.R. § 106.71(a): if disclosure is permitted under FERPA; if disclosure is required by law; or if disclosure is necessary to carry out the purposes of Title IX and its regulations, including to conduct a grievance process.

A recipient's disclosure of the identity of a respondent cannot be made with a retaliatory purpose without violating 34 C.F.R. § 106.71. If the disclosure is made by a recipient without falling into one of the three exceptions listed in 34 C.F.R. § 106.71, OCR may view the disclosure as potentially retaliatory, and examine the facts and circumstances to determine whether the disclosure either (i) satisfied one of the three exceptions (for example, the disclosure was necessary to carry out the purposes of the Title IX regulations), or (ii) was made for a non-retaliatory purpose.

Question 11: How can a recipient address a complainant's request for confidentiality, including in instances where a Title IX Coordinator signs the formal complaint initiating an investigation into a complainant's sexual harassment allegations?

Answer 11: The Title IX regulations balance a complainant's desire for confidentiality (in terms of, for instance, the complainant's identity not being disclosed to the respondent) with a school's discretion to pursue an investigation where factual circumstances warrant an investigation even though the complainant does not desire to file a formal complaint or participate in a grievance process. In the Preamble to the regulations at 30133-30134, the Department discusses these issues at length, including the following (footnotes omitted here):

> A complainant (or third party) who desires to report sexual harassment without disclosing the complainant's identity to anyone may do so, but the recipient will be unable to provide supportive measures in response to that report without knowing the complainant's identity. If a complainant desires supportive measures, the recipient can, and should, keep the complainant's identity confidential (including from the respondent), unless disclosing the complainant's identity is necessary to provide

supportive measures for the complainant (e.g., where a no-contact order is appropriate and the respondent would need to know the identity of the complainant in order to comply with the no-contact order, or campus security is informed about the no-contact order in order to help enforce its terms). . . .

A formal complaint initiates a grievance process (i.e., an investigation and adjudication of allegations of sexual harassment). A complainant (i.e., a person alleged to be the victim of sexual harassment) cannot file a formal complaint anonymously because § 106.30 defines a formal complaint to mean a document or electronic submission (such as an e-mail or using an online portal provided for this purpose by the recipient) that contains the complainant's physical or digital signature or otherwise indicates that the complainant is the person filing the formal complaint. The final regulations require a recipient to send written notice of the allegations to both parties upon receiving a formal complaint. The written notice of allegations under § 106.45(b)(2) must include certain details about the allegations, including the identity of the parties, if known.

Where a complainant desires to initiate a grievance process, the complainant cannot remain anonymous or prevent the complainant's identity from being disclosed to the respondent (via the written notice of allegations). Fundamental fairness and due process principles require that a respondent knows the details of the allegations made against the respondent, to the extent the details are known, to provide adequate opportunity for the respondent to respond. The Department does not believe this results in unfairness to a complainant. Bringing claims, charges, or complaints in civil or criminal proceedings generally requires disclosure of a person's identity for purposes of the proceeding. Even where court rules permit a plaintiff or victim to remain anonymous or pseudonymous, the anonymity relates to identification of the plaintiff or victim in court records that may be disclosed to the public, not to keeping the identity of the plaintiff or victim unknown to the defendant. The final regulations ensure that a complainant may obtain supportive measures while keeping the complainant's identity confidential from the respondent (to the extent possible while implementing the supportive measure), but in order for a grievance process to accurately resolve allegations that a respondent has perpetrated sexual harassment against a complainant, the complainant's identity must be disclosed to the respondent, if the complainant's identity is known. However, the identities of complainants (and respondents, and witnesses) should be kept confidential from anyone not involved in the grievance process, except as permitted by FERPA, required by law, or as necessary to conduct the grievance process, and the final regulations add § 106.71 to impose that expectation on recipients.

When a formal complaint is signed by a Title IX Coordinator rather than filed by a complainant, the written notice of allegations in § 106.45(b)(2) requires the recipient to send both parties details about the allegations, including the identity of the parties if known, and thus, if the complainant's identity is known it must be disclosed in the written notice of allegations. However, if the complainant's identity is unknown (for example, where a third party has reported that a complainant was victimized by sexual

> harassment but does not reveal the complainant's identity, or a complainant has reported anonymously), then the grievance process may proceed if the Title IX Coordinator determines it is necessary to sign a formal complaint, even though the written notice of allegations does not include the complainant's identity.

Clery Act

Question 12: Do the Title IX regulations intend to mirror Clery Act geography in all off-campus descriptions?

Answer 12: No. The Title IX regulations, at 34 C.F.R. § 106.44(a), state that a recipient's "education program or activity" includes "any building owned or controlled by a student organization that is officially recognized by a postsecondary institution." At page 30197 of the Preamble to the regulations, the Department explains:

> We note that the revision in § 106.44(a) referencing a "building owned or controlled by a student organization that is officially recognized by a postsecondary institution" is not the same as, and should not be confused with, the Clery Act's use of the term "noncampus building or property," even though that phrase is defined under the Clery Act in part by reference to student organizations officially recognized by an institution.
>
> For example, "education program or activity" in these final regulations includes buildings within the confines of the campus on land owned by the institution that the institution may rent to a recognized student organization. As discussed in the "Clery Act" subsection of the "Miscellaneous" section of this preamble, the Clery Act and Title IX serve distinct purposes, and Clery Act geography is not co-extensive with the scope of a recipient's education program or activity under Title IX.

(internal footnotes omitted).

Question 13: How would a complainant's request to dismiss, or a postsecondary institution's decision to dismiss, a formal complaint of sexual harassment under Title IX affect the postsecondary institution's responsibility under the Clery Act?

Answer 13: A complainant's request to dismiss or a recipient's decision to dismiss a formal complaint of sexual harassment under Title IX does not affect a postsecondary institution's obligations under the Clery Act, if the Clery Act applies to the institution. The Title IX regulations do not change a postsecondary institution's responsibilities under the Clery Act. At page 30511 of the Preamble to the Title IX regulations, the Department states: "These final regulations do not change, affect, or alter any rights, obligations, or responsibilities under the Clery Act."

Elementary and Secondary School Proceedings

Question 14: Do the provisions in the Title IX regulations regarding a complainant's prior sexual history and sexual predisposition apply at both the elementary and secondary school and postsecondary levels?

Answer 14: Yes. The Title IX regulations state that with or without a hearing, questions and evidence about the complainant's sexual predisposition are never relevant, and questions and evidence about a complainant's prior sexual behavior are not relevant unless such questions and evidence are offered to (1) prove that someone other than the respondent committed the conduct alleged by the complainant, or (2) if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(b)(6)(i)-(ii). The same requirements apply at all educational levels and to all recipients whose education programs or activities are covered by Title IX.

Question 15: Are all of the written notifications and opportunities for parties to provide feedback during an investigation of a formal complaint, outlined in 34 C.F.R. § 106.45, required for both elementary and secondary schools, and postsecondary institutions? If not, what Title IX grievance process requirements differ for elementary and secondary schools?

Answer 15: All of the provisions in 34 C.F.R. § 106.45 apply equally to all recipients except § 106.45(b)(6) (regarding hearings). Thus, all recipients (including elementary and secondary schools) must comply with, for instance: 34 C.F.R. §§ 106.45(b)(2) (written notice of allegations); 106.45(b)(3) (written notice of dismissals); 106.45(b)(5)(v) (written notice of investigatory interviews and meetings); 106.45(b)(5)(vi) (parties' inspection and review of evidence); 106.45(b)(5)(vii) (parties' review of the investigative report); 106.45(b)(7) (written determination regarding responsibility); and 106.45(b)(8) (appeals).

The Department has also created a website to aid schools, students, and other stakeholders to better understand the new Title IX regulations.

If you have questions for OCR, want additional information or technical assistance, or believe that a school is violating federal civil rights law, visit OCR's website at www.ed.gov/ocr, or the Department's Title IX page at www.ed.gov/titleix. You may contact OCR at (800) 421-3481 (TDD: 800-877-8339), ocr@ed.gov, OCR's Outreach, Prevention, Education and Non-discrimination (OPEN) Center at OPEN@ed.gov, or e-mail the OPEN Center with additional questions about the Title IX regulations at T9questions@ed.gov. You may also fill out a complaint form online at https://www2.ed.gov/about/offices/list/ocr/complaintintro.html.

OCR FAQ - Part 2: Questions and Answers Regarding the Department's Title IX Regulations dated January 15, 2021

January 15, 2021

Part 2: Questions and Answers Regarding the Department's Title IX Regulations

The Department of Education's (Department) Office for Civil Rights (OCR), through its Outreach, Prevention, Education and Non-discrimination (OPEN) Center, issues the following technical assistance document to support institutions with meeting their obligations under the Title IX regulations. This is Part 2.

The Department announced new Title IX regulations on May 6, 2020. The new regulations were published in the *Federal Register* on May 19, 2020 at 85 Fed. Reg. 30026 (codified in 34 C.F.R. Part 106), and became effective on August 14, 2020. Many of the questions in this document are derived from questions posed to the OPEN Center via e-mail. This document supplements the Question and Answer document issued by the OPEN Center on September 4, 2020. OCR may periodically release additional Question and Answer documents addressing the Title IX regulations. All references and citations are to the official version of the Title IX regulations as published in the Federal Register here.

Other than the statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Role of the Title IX Coordinator

Question 1: Do the Title IX regulations specify who can and cannot serve as a recipient's Title IX Coordinator?

Answer 1: The Title IX regulations state in 34 C.F.R. § 106.8(a): "Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the 'Title IX Coordinator.'" Thus, the restriction placed on a recipient's choice of a Title IX Coordinator is that the person must be the recipient's "employee." Additionally, under 34 C.F.R. § 106.45(b)(1)(iii), the Title IX Coordinator must serve without bias or conflicts of interest, and receive the training specified in that provision. The same requirements apply at all educational levels (e.g., elementary and secondary schools, and postsecondary institutions). As explained below in response to Question 2, the Title IX Coordinator cannot serve as

the decision-maker who makes the determination regarding responsibility. *See* 34 C.F.R. § 106.45(b)(7)(i).

Question 2: Can a Title IX Coordinator also serve as an investigator?

Answer 2: Yes. The Title IX regulations state in 34 C.F.R. § 106.45(b)(7)(i) that the decision-maker "cannot be the same person(s) as the Title IX Coordinator or the investigator(s)." Similarly, the regulations state in 34 C.F.R. § 106.45(b)(8)(iii)(B) that a decision-maker for an appeal is "not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator." Neither of these provisions prevents a Title IX Coordinator from also serving as an investigator (though, as stated above, not as a decision-maker). Indeed, at page 30370 of the Preamble to the regulations, the Department notes: "The . . . final regulations leave significant flexibility to recipients, including whether the Title IX Coordinator can also serve as the investigator, whether to use a panel of decision-makers or a single decision-maker, and whether to use the recipient's own employees or outsource investigative and adjudicative functions to professionals outside the recipient's employ."

Question 3: Can a Title IX Coordinator serve as a non-decision-making procedural facilitator during the live hearing?

Answer 3: Yes. The Title IX regulations do not preclude a Title IX Coordinator from serving as a hearing officer whose function is to control the order and decorum of the hearing, so long as that role as a hearing officer is distinct from the "decision-maker" whose role is to, among other obligations, objectively evaluate all relevant evidence, apply the standard of evidence to reach a determination regarding responsibility, issue the written determination, and (during any live hearing with cross-examination) determine whether a question is relevant (and explain any decision to exclude a question as not relevant) before a party or witness answers a question.

Whether or not serving as a hearing officer, the Title IX Coordinator (like the decision-maker and other Title IX personnel) must not have a conflict of interest or bias for or against complainants or respondents generally or against an individual complainant or respondent. 34 C.F.R. § 106.45(b)(1)(iii).

Question 4: Assuming that the Title IX Coordinator is free of any conflict of interest or bias, is the Title IX Coordinator permitted to serve as an Informal Resolution Facilitator?

Answer 4: 34 C.F.R. § 106.45(b)(9) of the Title IX regulations permits informal resolutions as long as both parties voluntarily consent to attempt an informal resolution process. The Department recognizes the importance of giving recipients flexibility and discretion to satisfy their Title IX obligations in a manner consistent with their unique values and the needs of their educational communities, while respecting the wishes of the parties to the formal complaint. *See* Preamble at 30371-30372. The regulations do not preclude the Title IX Coordinator from serving as the person designated by a recipient to facilitate an informal resolution process. *See* Preamble at 30558.

Question 5: If a complainant reports or discloses information that puts a recipient on notice of alleged sexual assault, should the Title IX Coordinator sign a formal complaint?

Answer 5: The Title IX regulations direct recipients to respond promptly to each instance of notice of sexual harassment (or allegations of sexual harassment) in the recipient's education program or activity, against a person in the United States, by taking specific, required actions such as:

- offering supportive measures to the complainant;
- promptly contacting the complainant to discuss the availability of supportive measures as defined in § 106.30;
- considering the complainant's wishes with respect to supportive measures;
- informing the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
- if a formal complaint is filed, following a grievance process that complies with § 106.45.

See 34 C.F.R. §§ 106.44(a), 106.44(b)(1). These obligations must be met in order for a recipient's response to comply with Title IX.

Additionally, the deliberate indifference standard for judging a recipient's response may require the school to take actions that are not specifically listed as mandatory response obligations. For example, depending on the specific facts of a situation, it may be "clearly unreasonable in light of the known circumstances" for a Title IX Coordinator not to sign a formal complaint even after having discussed the complainant's wishes and understanding that the complainant does not wish to file a formal complaint. The Department understands that deciding how to exercise discretion in each factual circumstance may be challenging, but the purpose is to give recipients flexibility to respond appropriately to each situation, so that the regulations neither automatically override the wishes of a complainant, nor restrict a recipient from investigating when specific circumstances dictate that an investigation is warranted.

In the Preamble to the regulations at 30134-30135, the Department explains:

> While it is true that school administrators other than the Title IX Coordinator may have significant interests in ensuring that the recipient investigate potential violations of school policy, for reasons explained above, the decision to initiate a grievance process in situations where the complainant does not want an investigation or where the complainant intends not to participate should be made thoughtfully and intentionally, taking into account the circumstances of the situation including the reasons why the complainant wants or does not want the recipient to investigate. The Title IX Coordinator is trained with special responsibilities that involve interacting with complainants, making the Title IX Coordinator the appropriate person to decide to initiate a grievance process on behalf of the recipient. Other school administrators may report sexual harassment incidents to the Title IX Coordinator, and may express to the Title IX Coordinator reasons why the administrator believes that an

> investigation is warranted, but the decision to initiate a grievance process is one that the Title IX Coordinator must make.
>
> . . .
>
> In order to ensure that a recipient has discretion to investigate and adjudicate allegations of sexual harassment even without the participation of a complainant, in situations where a grievance process is warranted, the final regulations leave that decision in the discretion of the recipient's Title IX Coordinator. However, deciding that allegations warrant an investigation does not necessarily show bias or prejudgment of the facts for or against the complainant or respondent. The definition of conduct that could constitute sexual harassment, and the conditions necessitating a recipient's response to sexual harassment allegations, are sufficiently clear that a Title IX Coordinator may determine that a fair, impartial investigation is objectively warranted as part of a recipient's non-deliberately indifferent response, without prejudging whether alleged facts are true or not. Even where the Title IX Coordinator is also the investigator, the Title IX Coordinator must be trained to serve impartially, and the Title IX Coordinator does not lose impartiality solely due to signing a formal complaint on the recipient's behalf.

Role of the Investigator

Question 6: Can the investigator testify, either voluntarily or in response to a question from a party or from the decision-maker, about the investigator's report or recommendations, at a Title IX grievance process hearing?

Answer 6: Yes. In the Preamble to the Title IX regulations at 30314, the Department contemplates that an investigator might be a witness:

> The Department further notes that § 106.45(b)(6)(i) already contemplates parties' equal right to cross-examine any witness, which could include an investigator, and § 106.45(b)(1)(ii) grants parties equal opportunity to present witnesses including fact and expert witnesses, which may include investigators.

Note, however, that in the context of a hearing held by a postsecondary institution or on behalf of a postsecondary institution by a consortium or other third party, an investigator may not testify as to statements made by others, including the complainant or respondent, if the individual who made a statement does not submit to cross-examination. 34 C.F.R. § 106.45(b)(6)(i).

Question 7: May the investigator make recommendations in the investigative report?

Answer 7: The Title IX regulations do not require or prohibit an investigator from making a recommendation with respect to a determination regarding responsibility. The Preamble to the regulations at 30308 states: "The Department does not wish to prohibit the investigator from

including recommended findings or conclusions in the investigative report. However, the decision-maker is under an independent obligation to objectively evaluate relevant evidence, and thus cannot simply defer to recommendations made by the investigator in the investigative report."

Role of the Decision-maker

Question 8: Do the Title IX regulations specify who can and cannot serve as a recipient's decision-maker?

Answer 8: At page 30370 of the Preamble to the Title IX regulations, the Department states: "The Department notes that the final regulations leave significant flexibility to recipients, including whether the Title IX Coordinator can also serve as the investigator, whether to use a panel of decision-makers or a single decision-maker, and whether to use the recipient's own employees or outsource investigative and adjudicative functions to professionals outside the recipient's employ." Thus, a decision-maker may be the recipient's employee or, at the recipient's discretion, may be a non-employee such as a consultant or contractor. The decision-maker, however, "cannot be the same person(s) as the Title IX Coordinator or the investigator(s)." 34 C.F.R. § 106.45(b)(7).

At 30251-30252 of the Preamble to the regulations, the Department states:

> The final regulations leave recipients flexibility to use their own employees, or to outsource Title IX investigation and adjudication functions, and the Department encourages recipients to pursue alternatives to the inherent difficulties that arise when a recipient's own employees are expected to perform these functions free from conflicts of interest and bias. The Department notes that several commenters favorably described regional center models that could involve recipients coordinating with each other to outsource Title IX grievance proceedings to experts free from potential conflicts of interest stemming from affiliation with the recipient. The Department declines to require recipients to use outside, unaffiliated Title IX personnel because the Department does not conclude that such prescription is necessary to effectuate the purposes of the final regulations; although recipients may face challenges with respect to ensuring that personnel serve free from conflicts of interest and bias, recipients can comply with the final regulations by using the recipient's own employees.

Training

Question 9: If a recipient uses non-employee contractors or consultants to provide the training required for Title IX personnel (described in 34 C.F.R. § 106.45(b)(1)(iii)) such that the recipient does not own or control the training materials, is the recipient required to post the training materials on its website?

Answer 9: Yes. Under 34 C.F.R. § 106.45(b)(10)(i)(D), the training materials referred to in 34 C.F.R. § 106.45(b)(1)(iii) must be made publicly available on a recipient's website, or, if the recipient does

not have a website, such materials must be made available upon request for inspection by members of the public.

In the Preamble to the Title IX regulations, the Department acknowledges that a recipient may hire outside consultants to provide training for the recipient's Title IX personnel, and that the materials may be owned by the outside consultant and not by the recipient itself. In such a circumstance, the Department notes, a recipient would need to secure permission from the consultant to publish the training materials, or alternatively, the recipient could create its own training materials over which the recipient has ownership and control. (Preamble at 30412.) OCR provided additional technical assistance regarding the requirement to post training materials in an OCR Blog post available here.

Question 10: If a recipient participates in a consortium or delegates investigative or adjudicative functions to a regional center, does it still need to post its training materials?

Answer 10: Yes. Notably, the Title IX regulations do permit schools to delegate certain functions to a regional center, or to join a consortium of schools in order to implement the regulations. In these instances, recipients are permitted to publish written grievance procedures that satisfy the regulations, as well as their training materials, by way of hosting these documents on a shared website, so long as they are publicly available under the terms of 34 C.F.R.§ 106.45(b)(10)(i)(D).

For more information about consortia or regional centers, please see this OCR webinar.

Question 11: Can the Department recommend any specific Title IX Coordinator and investigator training?

Answer 11: As stated in the Preamble to the Title IX regulations at 30257:

> [T]he Department encourages recipients to pursue training from sources that rely on qualified, experienced professionals likely to result in best practices for effective, impartial investigations. The Department does not certify, endorse, or otherwise approve or disapprove of particular organizations (whether for profit or non-profit) or individuals that provide Title IX-related training and consulting services to recipients. Whether or not a recipient has complied with § 106.45(b)(1)(iii) is not determined by the source of the training materials or training presentations utilized by a recipient.

Investigative Reports

Question 12: Do the Title IX regulations require the recipient to provide a copy of the investigative report to the decision-maker? If so, at what point in the process should this transmission occur?

Answer 12: The Title IX regulations require the recipient to send a copy of the investigative report to the parties and their advisors (if any) at least ten days prior to the date of a hearing (if a hearing is required or otherwise provided) or other time of determination regarding responsibility, but do not prescribe how or when the investigative report should be given to the decision-maker. Because the

purpose of this requirement, found at 34 C.F.R. § 106.45(b)(5)(vii), is to ensure that the parties are prepared for a hearing or, if no hearing is required or otherwise provided, that the parties have the opportunity to have their views of the evidence considered by the decision-maker, the decision-maker will need to have the investigative report and the parties' responses to same, prior to reaching a determination regarding responsibility, but the timing and manner of transmitting the investigative report to the decision-maker is within the recipient's discretion. *See* Preamble at 30309.

Time Frames

Question 13: Where the Title IX regulations refer to specific time frames, how are "days" calculated?

Answer 13: The time frames referred to in the Title IX regulations (such as the 10-day time period in 34 C.F.R. § 106.45(b)(5)(vi)) may be measured by calendar days, business days, school days, or any other reasonable method that works best with the school's administrative operations. In the Preamble to the regulations, at 30188, for example, the Department states: "The Department appreciates the commenter's request for clarification as to how to calculate 'days' with respect to various time frames referenced in the proposed regulations and appreciates the opportunity to clarify that because the Department does not require a specific method for calculating 'days,' recipients retain the flexibility to adopt the method that works best for the recipient's operations; for example, a recipient could use calendar days, school days, or business days, or a method the recipient already uses in other aspects of its operations." *See also* Preamble at 30098 FN 464; 30306; 30311; and 30433.

Sending Written Determinations

Question 14: The Title IX regulations require that the written determination regarding responsibility be provided to the parties simultaneously. Can the Department clarify what "simultaneous" means in this provision?

Answer 14: The Title IX regulations, at 34 C.F.R. § 106.45(b)(7)(iii), state: "The recipient must provide the written determination to the parties simultaneously." The regulations do not further define "simultaneous," which should be given its plain and ordinary meaning, e.g., occurring at the same time.

Evidence

Question 15: After the parties have been given the opportunity to respond to the investigative report in compliance with 34 C.F.R. § 106.45(b)(5)(vii), is the final investigative report admitted as evidence for consideration by the decision-maker? If so, are the written comments that the parties made in response to the investigative report also admitted as evidence?

Answer 15: The investigative report must contain a summary of relevant evidence gathered during the investigation of a formal complaint of sexual harassment, and prior to a hearing (if a hearing is required or otherwise provided) or other time of determination regarding responsibility, the recipient

must send the investigative report to the parties and their advisors of choice (if any) with an opportunity for the parties to respond to the investigative report. 34 C.F.R. § 106.45(b)(5)(vii).

The Title IX regulations do not deem the investigative report itself, or a party's written response to it, as relevant evidence that a decision-maker must consider, and the decision-maker has an independent obligation to evaluate the relevance of available evidence, including evidence summarized in the investigative report, and to consider all other relevant evidence. The decision-maker may not, however, consider evidence that the regulations preclude the decision-maker from considering. (For instance, the regulations preclude a recipient from using in a Title IX grievance process information protected by a legally recognized privilege, a party's treatment records, or (as to postsecondary institutions) a party or witness's statements, unless the party or witness has submitted to cross-examination. 34 C.F.R. §§ 106.45(b)(1)(x), 106.45(b)(5), 106.45(b)(6)(i).)

Question 16: Do Title IX regulations addressing a complainant's sexual predisposition and prior sexual behavior govern the inclusion of such information in the investigative report?

Answer 16: Yes. The Title IX regulations, at 34 C.F.R. § 106.45(b)(6)(i)-(ii), state that a complainant's sexual predisposition is "not relevant," and that a complainant's prior sexual behavior is "not relevant," unless the questions or evidence meet one of two limited exceptions. The investigative report required under 34 C.F.R. § 106.45(b)(5)(vii) requires a summary of "relevant" evidence. In the Preamble at 30304, the Department explains: ". . . all evidence summarized in the investigative report under § 106.45(b)(5)(vii) must be 'relevant' such that evidence about a complainant's sexual predisposition would never be included in the investigative report and evidence about a complainant's prior sexual behavior would only be included if it meets one of the two narrow exceptions stated in § 106.45(b)(6)(i)-(ii) (deeming all questions and evidence about a complainant's sexual predisposition 'not relevant,' and all questions and evidence about a complainant's prior sexual behavior 'not relevant' with two limited exceptions)."

Question 17: The Title IX regulations do not require elementary and secondary schools to hold live hearings, but must an elementary or secondary school allow the parties to cross-examine other parties and witnesses prior to the decision-maker reaching a determination regarding responsibility?

Answer 17: The Title IX regulations, at 34 C.F.R. § 106.45(b)(6), require postsecondary institutions to hold a live hearing with cross-examination conducted by the parties' advisors, while making hearings optional for elementary and secondary schools (and other recipients that are not postsecondary institutions), so long as the parties have equal opportunity to submit written, relevant questions for the other parties and witnesses to answer before a determination regarding responsibility is reached.

Cross-Examination

Question 18: If a party refuses to participate in cross-examination at the postsecondary level, will the refusal be held against them?

Answer 18: The Title IX regulations state: "If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that *the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions*." 34 C.F.R. § 106.45(b)(6)(i) (emphasis added).

Advisors

Question 19: If a postsecondary institution must provide a party with an advisor pursuant to 34 C.F.R. § 106.45(b)(6)(i) (i.e., because the party appeared at the live hearing without an advisor of choice), can the provided advisor be an employee of the institution or must such an advisor be independent of the institution?

Answer 19: The Title IX regulations do not preclude a postsecondary institution from providing an advisor who is an employee of the institution to serve as a party's advisor for purposes of cross-examination, if the party does not have an advisor.

Question 20: If the respondent does not find a suitable advisor and only wants to be represented by an attorney, does the postsecondary institution have to pay for the party's attorney?

Answer 20: No. The postsecondary institution is not required to pay for a party's attorney. The Title IX regulations state: "If a party does not have an advisor present at the live hearing, *the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney*, to conduct cross-examination on behalf of that party." 34 C.F.R. § 106.45(b)(6)(i) (emphasis added).

Sanctions

Question 21: Are recipients allowed to place holds (for example, on a transcript, registration, or graduation) on a respondent's account while a formal complaint process is pending, or is such action considered an impermissible sanction prior to a final determination regarding responsibility?

Answer 21: The Title IX regulations prohibit a recipient from imposing "any disciplinary sanctions or other actions that are not supportive measures as defined in 34 C.F.R. § 106.30, against a respondent" without following the 34 C.F.R. § 106.45 grievance process. 34 C.F.R. §§106.44(a), 106.45(b)(1)(i). Even a temporary "hold" on a transcript, registration, or graduation will generally be considered to be disciplinary, punitive, and/or unreasonably burdensome, and appropriate supportive measures cannot be disciplinary, punitive, or unreasonably burdensome. In the Preamble to the regulations at, e.g., 30182, the Department stated: "Removal from sports teams (and similar exclusions from school-related activities) also require a fact-specific analysis, but whether the burden is 'unreasonable' does not depend on whether the respondent still has access to academic programs; whether a supportive measure meets the § 106.30(a) definition also includes analyzing whether a respondent's access to the array of educational opportunities and benefits offered by the recipient is unreasonably burdened. Changing a class schedule, for example, may more often be deemed an

acceptable, reasonable burden than restricting a respondent from participating on a sports team, holding a student government position, participating in an extracurricular activity, and so forth."

Appeals

Question 22: If a complainant or respondent are no longer students, and are not attempting to participate in the recipient's education programs or activities, do they still have a right to appeal under the Title IX regulations, or does the withdrawal terminate their right to appeal?

Answer 22: The Title IX regulations grant complainants and respondents equal rights to appeal, and to participate in any filed appeal, pursuant to 34 C.F.R. § 106.45(b)(8). The regulations do not condition those rights on whether a complainant or respondent is enrolled or employed by the recipient, participating in the recipient's education programs or activities, or otherwise has an affiliation or relationship to the recipient.

Informal Resolution

Question 23: Can a postsecondary institution decide not to go forward with a hearing on a formal complaint of sexual harassment if the complainant and respondent both knowingly and voluntarily waive the right to a hearing?

Answer 23: Yes, but only if the provisions governing informal resolutions are followed. The Title IX regulations provide that under certain conditions, a recipient can facilitate, and the parties may engage in, informal resolution of the formal complaint of sexual harassment. When the recipient and the parties opt to resolve a formal complaint through informal resolution, a hearing is not required (nor is the recipient obligated to continue its investigation into the allegations). To comply with the Title IX regulations concerning informal resolutions, the parties must receive the written notice, voluntarily decide to attempt an informal resolution process, and have the right to withdraw from the informal process and resume the formal grievance process, pursuant to 34 C.F.R. § 106.45(b)(9).

The Department has also created a website to aid schools, students, and other stakeholders to better understand the new Title IX regulations.

If you have questions for OCR, want additional information or technical assistance, or believe that a school is violating Federal civil rights law, visit OCR's website at www.ed.gov/ocr, or the Department's Title IX page at www.ed.gov/titleix. You may contact OCR at (800) 421-3481 (TDD: 800-877-8339), ocr@ed.gov, OCR's Outreach, Prevention, Education and Non-discrimination (OPEN) Center at OPEN@ed.gov, or e-mail the OPEN Center with additional questions about the Title IX regulations at T9questions@ed.gov. You may also fill out a complaint form online at https://www2.ed.gov/about/offices/list/ocr/complaintintro.html.

NEW YORK LABOR LAW 201-g

NEW YORK STATE SEXUAL HARASSMENT PREVENTION[1]

MINIMUM POLICY STANDARDS[2], MODEL POLICY[3],

MODEL PUBLIC NOTICE[4], AND MODEL COMPLAINT FORM[5]

SEPTEMBER 2023

1. https://www.ny.gov/combating-sexual-harassment-workplace/sexual-harassment-prevention-model-policy-and-training
2. https://www.ny.gov/sites/default/files/atoms/files/MinimumStandardsforSexualHarassmentPreventionPolicies.pdf
3. https://www.ny.gov/sites/default/files/2024-08/SexualHarassmentModelPolicyUpdated.pdf
4. https://www.ny.gov/sites/default/files/atoms/files/sexualharassmentpreventionposter_English_handfill.pdf
5. https://www.ny.gov/sites/default/files/2023-04/CombatHarassmentComplaintForm.docx

Minimum Standards for Sexual Harassment Prevention Policies

Every employer in the State of New York is required to adopt a sexual harassment prevention policy pursuant to Section 201-g of the Labor Law. An employer that does not adopt the model policy must ensure that the policy that they adopt meets or exceeds the following minimum standards. The policy must:

i) prohibit sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights;

ii) provide examples of prohibited conduct that would constitute unlawful sexual harassment;

iii) include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws;

iv) include a complaint form;

v) include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties;

vi) inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially;

vii) clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue; and

viii) clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful.

Employers must provide each employee with a copy of its policy in writing. Employers should provide employees with the policy in the language spoken by their employees.

* * *

The adoption of a policy does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.

Sexual Harassment Policy for All Employers in New York State

This model policy is a template that can be used by employers to meet the New York State Labor Law requirements for a sexual harassment prevention policy. Employers are encouraged to tailor this policy to their individual needs, though as the minimum standard, no section in this policy should be omitted. The list of examples provided in this model policy is not meant to be exhaustive.

Purpose and Goals

[*Employer Name*] is committed to maintaining a workplace free from harassment and discrimination. Sexual harassment is a form of workplace discrimination that subjects an employee to inferior conditions of employment due to their gender, gender identity, gender expression (perceived or actual), and/or sexual orientation. Sexual harassment is often viewed simply as a form of gender-based discrimination, but *[Employer name]* recognizes that discrimination can be related to or affected by other identities beyond gender. Under the New York State Human Rights Law, it is illegal to discriminate based on sex, sexual orientation, gender identity or expression, age, race, creed, color, national origin, military status, disability, pre-disposing genetic characteristics, familial status, marital status, criminal history, or status as a victim of domestic violence. Our different identities impact our understanding of the world and how others perceive us. For example, an individual's race, ability, or immigration status may impact their experience with gender discrimination in the workplace. While this policy is focused on sexual harassment and gender discrimination, the methods for reporting and investigating discrimination based on other protected identities are the same. The purpose of this policy is to teach employees to recognize discrimination, including discrimination due to an individual's intersecting identities, and provide the tools to take action when it occurs. All employees, managers, and supervisors are required to work in a manner designed to prevent sexual harassment and discrimination in the workplace. This policy is one component of [*Employer Name's*] commitment to a discrimination-free work environment.

Goals of this Policy:

Sexual harassment and discrimination are against the law. After reading this policy, employees will understand their right to a workplace free from harassment. Employees will also learn what harassment and discrimination look like, what actions they can take to prevent and report harassment, and how they are protected from retaliation after taking action. The policy will also explain the investigation process into any claims of harassment. Employees are encouraged to report sexual harassment or discrimination by filing a complaint internally with [*Employer Name*]. Employees can also file a complaint with a government agency or in court under federal, state, or local antidiscrimination laws. To file an employment complaint with the New York State Division of Human Rights, please visit https://dhr.ny.gov/complaint. To file a complaint with the United States Equal Employment Opportunity Commission, please visit https://www.eeoc.gov/filing-charge-discrimination.

Adoption of this policy does not constitute a defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.

Sexual Harassment and Discrimination Prevention Policy:

1. [*Employer Name's*] policy applies to all employees, applicants for employment, and interns, whether paid or unpaid. The policy also applies to additional covered individuals. It applies to anyone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services in our workplace. These individuals include persons commonly referred to as independent contractors, gig workers, and temporary workers. Also included are persons providing equipment repair, cleaning services, or any other services through a contract with [*Employer Name*]. For the remainder of this policy, we will use the term "covered individual" to refer to these individuals who are not direct employees of the company.

2. Sexual harassment is unacceptable. Any employee or covered individual who engages in sexual harassment, discrimination, or retaliation will be subject to action, including appropriate discipline for employees. In New York, harassment does not need to be severe or pervasive to be illegal. Employees and covered individuals should not feel discouraged from reporting harassment because they do not believe it is bad enough, or conversely because they do not want to see a colleague fired over less severe behavior. Just as harassment can happen in different degrees, potential discipline for engaging in sexual harassment will depend on the degree of harassment and might include education and counseling. It may lead to suspension or termination when appropriate.

3. Retaliation is prohibited. Any employee or covered individual that reports an incident of sexual harassment or discrimination, provides information, or otherwise assists in any investigation of a sexual harassment or discrimination complaint is protected from retaliation. No one should fear reporting sexual harassment if they believe it has occurred. So long as a person reasonably believes that they have witnessed or experienced such behavior, they are protected from retaliation. Any employee of [*Employer Name*] who retaliates against anyone involved in a sexual harassment or discrimination investigation will face disciplinary action, up to and including termination. All employees and covered individuals working in the workplace who believe they have been subject to such retaliation should inform a supervisor, manager, or [*name of appropriate person*]. All employees and covered individuals who believe they have been a target of such retaliation may also seek relief from government agencies, as explained below in the section on Legal Protections.

4. Discrimination of any kind, including sexual harassment, is a violation of our policies, is unlawful, and may subject [*Employer Name*] to liability for the harm experienced by targets of discrimination. Harassers may also be individually subject to liability and employers or supervisors who fail to report or act on harassment may be liable for aiding and abetting such behavior. Employees at every level who engage in harassment or discrimination, including managers and supervisors who engage in harassment or discrimination or who allow such behavior to continue, will be penalized for such misconduct.

5. [*Employer Name*] will conduct a prompt and thorough investigation that is fair to all parties. An investigation will happen whenever management receives a complaint about discrimination or sexual harassment, or when it otherwise knows of possible discrimination or sexual harassment occurring. [*Employer Name*] will keep the investigation confidential to the extent possible. If an investigation ends with the finding that discrimination or sexual harassment occurred, [*Employer Name*] will act as required. In addition to any required discipline, [*Employer Name*] will also take steps to ensure a safe work environment for the employee(s) who experienced the discrimination

or harassment. All employees, including managers and supervisors, are required to cooperate with any internal investigation of discrimination or sexual harassment.

6. All employees and covered individuals are encouraged to report any harassment or behaviors that violate this policy. All employees will have access to a complaint form to report harassment and file complaints. Use of this form is not required. For anyone who would rather make a complaint verbally, or by email, these complaints will be treated with equal priority. An employee or covered individual who prefers not to report harassment to their manager or employer may instead report harassment to the New York State Division of Human Rights and/or the United States Equal Employment Opportunity Commission. Complaints may be made to both the employer and a government agency.

   Managers and supervisors are **required** to report any complaint that they receive, or any harassment that they observe or become aware of, to [*person or office designated*].

7. This policy applies to all employees and covered individuals, such as contractors, subcontractors, vendors, consultants, or anyone providing services in the workplace, and all must follow and uphold this policy. This policy must be provided to all employees in person or digitally through email upon hiring and will be posted prominently in all work locations. For those offices operating remotely, in addition to sending the policy through email, it will also be available on the organization's shared network.

What Is Sexual Harassment?

Sexual harassment is a form of gender-based discrimination that is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender. Sexual harassment is not limited to sexual contact, touching, or expressions of a sexually suggestive nature. Sexual harassment includes all forms of gender discrimination including gender role stereotyping and treating employees differently because of their gender.

Understanding gender diversity is essential to recognizing sexual harassment because discrimination based on sex stereotypes, gender expression and perceived identity are all forms of sexual harassment. The gender spectrum is nuanced, but the three most common ways people identify are cisgender, transgender, and non-binary. A cisgender person is someone whose gender aligns with the sex they were assigned at birth. Generally, this gender will align with the binary of male or female. A transgender person is someone whose gender is different than the sex they were assigned at birth. A non-binary person does not identify exclusively as a man or a woman. They might identify as both, somewhere in between, or completely outside the gender binary. Some may identify as transgender, but not all do. Respecting an individual's gender identity is a necessary first step in establishing a safe workplace.

Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment does not need to be severe or pervasive to be illegal. It can be any harassing behavior that rises above petty slights or trivial inconveniences. Every instance of harassment is unique to those experiencing it, and there is no single boundary between petty slights and harassing behavior. However, the Human Rights Law specifies that whether harassing conduct is considered petty or trivial is to be viewed from the standpoint of a reasonable victim of discrimination with the same protected characteristics. Generally, any behavior in which an employee or covered individual is treated worse because of their gender (perceived or actual), sexual orientation, or gender expression is considered a

violation of [*Employer Name's*] policy. The intent of the behavior, for example, making a joke, does not neutralize a harassment claim. Not intending to harass is not a defense. The impact of the behavior on a person is what counts. Sexual harassment includes any unwelcome conduct which is either directed at an individual because of that individual's gender identity or expression (perceived or actual), or is of a sexual nature when:

- The purpose or effect of this behavior unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment. The impacted person does not need to be the intended target of the sexual harassment;

- Employment depends implicitly or explicitly on accepting such unwelcome behavior; or

- Decisions regarding an individual's employment are based on an individual's acceptance to or rejection of such behavior. Such decisions can include what shifts and how many hours an employee might work, project assignments, as well as salary and promotion decisions.

There are two main types of sexual harassment:

- Behaviors that contribute to a **hostile work environment** include, but are not limited to, words, signs, jokes, pranks, intimidation, or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex, gender identity, or gender expression. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory, or discriminatory statements which an employee finds offensive or objectionable, causes an employee discomfort or humiliation, or interferes with the employee's job performance.

- Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions, or privileges of employment. This is also called **quid pro quo** harassment.

Any employee or covered individual who feels harassed is encouraged to report the behavior so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be discrimination and is covered by this policy.

Examples of Sexual Harassment

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited. **This list is just a sample of behaviors and should not be considered exhaustive**. Any employee who believes they have experienced sexual harassment, even if it does not appear on this list, should feel encouraged to report it:

- Physical acts of a sexual nature, such as:
    - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body, or poking another employee's body; or
    - Rape, sexual battery, molestation, or attempts to commit these assaults, which may be considered criminal conduct outside the scope of this policy (please contact local law enforcement if you wish to pursue criminal charges).

- Unwanted sexual comments, advances, or propositions, such as:
    - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion, or other job benefits;

        - This can include sexual advances/pressure placed on a service industry employee by customers or clients, especially those industries where hospitality and tips are essential to the customer/employee relationship;
    - Subtle or obvious pressure for unwelcome sexual activities; or
    - Repeated requests for dates or romantic gestures, including gift-giving.

- Sexually oriented gestures, noises, remarks or jokes, or questions and comments about a person's sexuality, sexual experience, or romantic history which create a hostile work environment. This is not limited to interactions in person. Remarks made over virtual platforms and in messaging apps when employees are working remotely can create a similarly hostile work environment.

- Sex stereotyping, which occurs when someone's conduct or personality traits are judged based on other people's ideas or perceptions about how individuals of a particular sex should act or look:
    - Remarks regarding an employee's gender expression, such as wearing a garment typically associated with a different gender identity; or
    - Asking employees to take on traditionally gendered roles, such as asking a woman to serve meeting refreshments when it is not part of, or appropriate to, her job duties.

- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
    - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace;
    - This also extends to the virtual or remote workspace and can include having such materials visible in the background of one's home during a virtual meeting.

- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity, or gender expression, such as:
    - Interfering with, destroying, or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
    - Sabotaging an individual's work;
    - Bullying, yelling, or name-calling;
    - Intentional misuse of an individual's preferred pronouns; or
    - Creating different expectations for individuals based on their perceived identities:
        - Dress codes that place more emphasis on women's attire;
        - Leaving parents/caregivers out of meetings.

Who Can be a Target of Sexual Harassment?

Sexual harassment can occur between any individuals, regardless of their sex or gender. Harassment does not have to be between members of the opposite sex or gender. New York Law protects employees and all covered individuals described earlier in the policy. **Harassers can be anyone in the workplace**. A supervisor, a supervisee, or a coworker can all be harassers. Anyone else in the workplace can also be harassers including an independent contractor, contract worker, vendor, client, customer, patient, constituent, or visitor.

Sexual harassment does not happen in a vacuum and discrimination experienced by an employee can be impacted by biases and identities beyond an individual's gender. For example:

- Placing different demands or expectations on black women employees than white women employees can be both racial and gender discrimination;
- An individual's immigration status may lead to perceptions of vulnerability and increased concerns around illegal retaliation for reporting sexual harassment; or
- Past experiences as a survivor of domestic or sexual violence may lead an individual to feel re-traumatized by someone's behaviors in the workplace.

Individuals bring personal history with them to the workplace that might impact how they interact with certain behavior. It is especially important for all employees to be aware of how words or actions might impact someone with a different experience than their own in the interest of creating a safe and equitable workplace.

Where Can Sexual Harassment Occur?

Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer or industry sponsored events or parties. Calls, texts, emails, and social media usage by employees or covered individuals can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices, or during non-work hours.

Sexual harassment can occur when employees are working remotely from home as well. Any behaviors outlined above that leave an employee feeling uncomfortable, humiliated, or unable to meet their job requirements constitute harassment even if the employee or covered individual is at home when the harassment occurs. Harassment can happen on virtual meeting platforms, in messaging apps, and after working hours between personal cell phones.

Retaliation

Retaliation is unlawful and is any action by an employer or supervisor that punishes an individual upon learning of a harassment claim, that seeks to discourage a worker or covered individual from making a formal complaint or supporting a sexual harassment or discrimination claim, or that punishes those who have come forward. These actions need not be job-related or occur in the workplace to constitute unlawful retaliation. For example, threats of physical violence outside of work hours or disparaging someone on social media would be covered as retaliation under this policy.

Examples of retaliation may include, but are not limited to:

- Demotion, termination, denying accommodations, reduced hours, or the assignment of less desirable shifts;
- Publicly releasing personnel files;
- Refusing to provide a reference or providing an unwarranted negative reference;
- Labeling an employee as "difficult" and excluding them from projects to avoid "drama";
- Undermining an individual's immigration status; or
- Reducing work responsibilities, passing over for a promotion, or moving an individual's desk to a less desirable office location.

Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in "protected activity." Protected activity occurs when a person has:

- Made a complaint of sexual harassment or discrimination, either internally or with any government agency;
- Testified or assisted in a proceeding involving sexual harassment or discrimination under the Human Rights Law or any other anti-discrimination law;
- Opposed sexual harassment or discrimination by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of suspected harassment;
- Reported that another employee has been sexually harassed or discriminated against; or
- Encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

Reporting Sexual Harassment

Everyone must work toward preventing sexual harassment, but leadership matters. Supervisors and managers have a special responsibility to make sure employees feel safe at work and that workplaces are free from harassment and discrimination. Any employee or covered individual is encouraged to report harassing or discriminatory behavior to a supervisor, manager or [*person or office designated*]. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager, or [*person or office designated*].

Reports of sexual harassment may be made verbally or in writing. A written complaint form is attached to this policy if an employee would like to use it, but the complaint form is not required. Employees who are reporting sexual harassment on behalf of other employees may use the complaint form and should note that it is on another employee's behalf. A verbal or otherwise written complaint (such as an email) on behalf of oneself or another employee is also acceptable.

Employees and covered individuals who believe they have been a target of sexual harassment may at any time seek assistance in additional available forums, as explained below in the section on Legal Protections.

Supervisory Responsibilities

Supervisors and managers have a responsibility to prevent sexual harassment and discrimination. All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing or discriminatory behavior, or for any reason suspect that sexual harassment or discrimination is occurring, are required to report such suspected sexual harassment to [*person or office designated*]. Managers and supervisors should not be passive and wait for an employee to make a claim of harassment. If they observe such behavior, they must act.

Supervisors and managers can be disciplined if they engage in sexually harassing or discriminatory behavior themselves. Supervisors and managers can also be disciplined for failing to report suspected sexual harassment or allowing sexual harassment to continue after they know about it.

Supervisors and managers will also be subject to discipline for engaging in any retaliation.

While supervisors and managers have a responsibility to report harassment and discrimination, supervisors and managers must be mindful of the impact that harassment and a subsequent investigation has on victims. Being identified as a possible victim of harassment and questioned about harassment and discrimination can be intimidating, uncomfortable and re-traumatizing for individuals. Supervisors and managers must accommodate the needs of individuals who have experienced harassment to ensure the workplace is safe, supportive, and free from retaliation for them during and after any investigation.

Bystander Intervention

Any employee witnessing harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to harassment is **required** to report it. There are five standard methods of bystander intervention that can be used when anyone witnesses harassment or discrimination and wants to help.

1. A bystander can interrupt the harassment by engaging with the individual being harassed and distracting them from the harassing behavior;
2. A bystander who feels unsafe interrupting on their own can ask a third party to help intervene in the harassment;
3. A bystander can record or take notes on the harassment incident to benefit a future investigation;
4. A bystander might check in with the person who has been harassed after the incident, see how they are feeling and let them know the behavior was not ok; and
5. If a bystander feels safe, they can confront the harassers and name the behavior as inappropriate. When confronting harassment, physically assaulting an individual is never an appropriate response.

Though not exhaustive, and dependent on the circumstances, the guidelines above can serve as a brief guide of how to react when witnessing harassment in the workplace. Any employee witnessing harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to harassment is required to report it.

Complaints and Investigations of Sexual Harassment

All complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. An investigation of any complaint, information, or knowledge of suspected sexual harassment will be prompt, thorough, and started and completed as soon as possible. The investigation will be kept confidential to the extent possible. All individuals involved, including those making a harassment claim, witnesses, and alleged harassers deserve a fair and impartial investigation.

Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. [*Employer Name*] will take disciplinary action against anyone engaging in retaliation against employees who file complaints, support another's complaint, or participate in harassment investigations.

[*Employer Name*] recognizes that participating in a harassment investigation can be uncomfortable and has the potential to retraumatize an employee. Those receiving claims and leading investigations will handle complaints and questions with sensitivity toward those participating.

While the process may vary from case to case, investigations will be done in accordance with the following steps. Upon receipt of a complaint, [*person or office designated*]:

1. Will conduct a prompt review of the allegations, assess the appropriate scope of the investigation, and take any interim actions (for example, instructing the individual(s) about whom the complaint was made to refrain from communications with the individual(s) who reported the harassment), as appropriate. If complaint is verbal, request that the individual completes the complaint form in writing. If the person reporting prefers not to fill out the form, [*person or office designated*] will prepare a complaint form or equivalent documentation based on the verbal reporting;

2. Will take steps to obtain, review, and preserve documents sufficient to assess the allegations, including documents, emails or phone records that may be relevant to the investigation. [*Person or office delegated*] will consider and implement appropriate document request, review, and preservation measures, including for electronic communications;

3. Will seek to interview all parties involved, including any relevant witnesses;

4. Will create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
    a. A list of all documents reviewed, along with a detailed summary of relevant documents;
    b. A list of names of those interviewed, along with a detailed summary of their statements;
    c. A timeline of events;
    d. A summary of any prior relevant incidents disclosed in the investigation, reported or unreported; and
    e. The basis for the decision and final resolution of the complaint, together with any corrective action(s).

5. Will keep the written documentation and associated documents in a secure and confidential location;

6. Will promptly notify the individual(s) who reported the harassment and the individual(s) about whom the complaint was made that the investigation has been completed and implement any corrective actions identified in the written document; and

7. Will inform the individual(s) who reported of the right to file a complaint or charge externally as outlined in the next section.

Legal Protections and External Remedies

Sexual harassment is not only prohibited by [*Employer Name*], but it is also prohibited by state, federal, and, where applicable, local law.

The internal process outlined in the policy above is one way for employees to report sexual harassment. Employees and covered individuals may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may also seek the legal advice of an attorney.

New York State Division of Human Rights:

The New York State Human Rights Law (HRL), N.Y. Executive Law, art. 15, § 290 *et seq.*, applies to all employers in New York State and protects employees and covered individuals, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the New York State Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints of sexual harassment filed with DHR may be submitted any time **within three years** of the harassment. If an individual does not file a complaint with DHR, they can bring a lawsuit directly in state court under the Human Rights Law, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to [*Employer Name*] does not extend your time to file with DHR or in court. The three years are counted from the date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases receive a public hearing before an administrative law judge. If sexual harassment is found at the hearing, DHR has the power to award relief. Relief varies but it may include requiring your employer to take action to stop the harassment, or repair the damage caused by the harassment, including paying of monetary damages, punitive damages, attorney's fees, and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: www.dhr.ny.gov.

Go to dhr.ny.gov/complaint for more information about filing a complaint with DHR. The website has a digital complaint process that can be completed on your computer or mobile device from start to finish. The website has a complaint form that can be downloaded, filled out, and mailed to DHR as well as a form that can be submitted online. The website also contains contact information for DHR's regional offices across New York State.

Call the DHR sexual harassment hotline at **1(800) HARASS3** for more information about filing a sexual harassment complaint. This hotline can also provide you with a referral to a volunteer attorney experienced in sexual harassment matters who can provide you with limited free assistance and counsel over the phone.

The United States Equal Employment Opportunity Commission:

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act, 42 U.S.C. § 2000e *et seq.* An individual can file a complaint with the EEOC anytime within 300 days from the most recent incident of harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint and determine whether there is reasonable cause to believe that discrimination has occurred. If the EEOC determines that the law may have been violated, the EEOC will try to reach a voluntary settlement with the employer. If the EEOC cannot reach a settlement, the EEOC (or the Department of Justice in certain cases) will decide whether to file a lawsuit. The EEOC will issue a Notice of Right to Sue permitting

workers to file a lawsuit in federal court if the EEOC closes the charge, is unable to determine if federal employment discrimination laws may have been violated, or believes that unlawful discrimination occurred by does not file a lawsuit.

Individuals may obtain relief in mediation, settlement or conciliation. In addition, federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

If an individual filed an administrative complaint with the New York State Division of Human Rights, DHR will automatically file the complaint with the EEOC to preserve the right to proceed in federal court.

Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment or discrimination with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 22 Reade Street, 1st Floor, New York, New York; call 311 or (212) 306-7450; or visit www.nyc.gov/html/cchr/html/home/home.shtml.

Contact the Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement, or coerced sex acts, the conduct may constitute a crime. Those wishing to pursue criminal charges are encouraged to contact their local police department.

Conclusion

The policy outlined above is aimed at providing employees at [*Employer Name*] and covered individuals an understanding of their right to a discrimination and harassment free workplace. All employees should feel safe at work. Though the focus of this policy is on sexual harassment and gender discrimination, the New York State Human Rights law protects against discrimination in several protected classes including sex, sexual orientation, gender identity or expression, age, race, creed, color, national origin, military status, disability, pre-disposing genetic characteristics, familial status, marital status, criminal history, or domestic violence survivor status. The prevention policies outlined above should be considered applicable to all protected classes.

Sexual Harassment Prevention Notice

NEW YORK STATE | Combating Sexual Harassment

Sexual harassment is against the law.

All employees have a legal right to a workplace free from sexual harassment, and [_____] is committed to maintaining a workplace free from sexual harassment.

Per New York State Law, [_____] has a sexual harassment prevention policy in place that protects you. This policy applies to all employees, paid or unpaid interns and non-employees in our workplace, regardless of immigration status. You are receiving this notice, as required by law, either at the time of hiring or during your annual sexual harassment prevention training.

If you believe you have been subjected to or witnessed sexual harassment, you are encouraged to report the harassment to a supervisor, manager or [_____] so we can take action.

Our complete policy ☐ **is enclosed/attached** ☐ **may be found at the link below:**
_____

Our training materials ☐ **are enclosed/attached** ☐ **may be found at the link below:**
_____

Our Complaint Form ☐ **is enclosed/attached** ☐ **may be found at the link below:**
_____

If you have questions or to make a complaint, please contact:

[_____]

[_____]

For more information and additional resources, please visit:
www.ny.gov/programs/combating-sexual-harassment-workplace

Complaint Form for Reporting Sexual Harassment

NEW YORK STATE | Combating Sexual Harassment

[Name of employer]

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form to report alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment or gender discrimination, you are encouraged, but not required, to complete this form and submit it to [*person or office designated; contact information for designee or office; how the form can be submitted]*. No employee will be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, your employer should complete this form, provide you with a copy, and follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

For additional resources, visit: ny.gov/programs/combating-sexual-harassment-workplace

COMPLAINANT INFORMATION

Name:

Work Address: Work Phone:

Job Title: Email:

Select Preferred Communication Method: ☐Email ☐Phone ☐In person

SUPERVISORY INFORMATION

Immediate Supervisor's Name:

Title:

Work Phone: Work Address:

Adoption of this form does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.

COMPLAINT INFORMATION

1. Your complaint of sexual harassment is made about:

   Name: Title:

   Work Address: Work Phone:

   Relationship to you: ☐Supervisor ☐Supervisee ☐Co-Worker ☐Other (please specify)

2. Please describe what happened and include as many details as possible. You may use additional sheets of paper if necessary. If you have any relevant documents, please include them. .

3. Date(s) sexual harassment occurred:

   Is the sexual harassment continuing? ☐Yes ☐No

4. If possible, please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

The last question is optional, but may help the investigation.

5. Have you previously provided information (verbal or written) about related incidents? If yes, when and to whom did you provide information?

This is not required, but if you have retained legal counsel and would like us to work with them, please provide their contact information.

Signature: _____ *Date:* _____

Instructions for Employers

If you receive a complaint about alleged sexual harassment, follow your sexual harassment prevention policy.

An investigation involves:

- Speaking with the employee
- Speaking with the alleged harasser
- Interviewing witnesses
- Collecting and reviewing any related documents

While the process may vary from case to case, all allegations should be investigated promptly and resolved as quickly as possible. The investigation should be kept confidential to the extent possible.

Sexual harassment occurs on a spectrum and employers are encouraged to view all potential allegations with an open mind. Disciplinary action should meet the severity of the alleged actions.

Employers should document the findings of the investigation and basis for your decision along with any corrective actions taken. Notify the employee and the individual(s) against whom the report was made of the investigation's outcome and corrective actions taken. This may be done via email.

NEW YORK LABOR LAW 201-g

NEW YORK STATE SEXUAL HARASSMENT PREVENTION

FOR NEW YORK'S MODEL TRAINING DECKS AND SCRIPTS THAT COMPLY WITH NYS LABOR LAW

SEPTEMBER 2023

https://www.ny.gov/combating-sexual-harassment-workplace/sexual-harassment-prevention-model-policy-and-training