



2024 Title IX Regulations: Policy Implications and Practical Application

11th Annual NACCOP Conference

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A NOTE ON TRAINING



**This is not legal advice,
consult your lawyer!**



TITLE IX, EDUCATION AMENDMENTS OF 1972, 20 U.S.C. § 1681

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.

OVERVIEW OF THE 2024 TITLE IX REGULATIONS





Sex Discrimination

Sex-Based Harassment

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

Sex Discrimination

- Sex stereotypes
- Sex characteristics
- Pregnancy or related conditions
- Sexual orientation
- Gender identity

Applies in . . .

Admission, Employment, Educational Programs, and Activities



MISCONCEPTIONS





IMPLEMENTATION DATE: AUGUST 1, 2024





TECHNICAL ASSISTANCE FROM THE DEPARTMENT

Office for Civil Rights (To assist with compliance)

<https://ocrcas.ed.gov/contact-ocr>

Student Privacy Policy Office (FEPPRA Questions)

<https://studentprivacy.ed.gov/?src=fpco>

FIRST AMENDMENT

§ 106.6(d) Constitutional protections.
Nothing in this part requires a recipient to:
(1) Restrict any rights that would otherwise
be protected from government action by the
First Amendment of the U.S. Constitution



34 C.F.R. § 106 – SUBPARTS

Subpart A: Introduction (106.1 – 106.9)

Subpart B: Coverage (106.11 – 106.18)

Subpart C: Admission and Recruitment (106.21 – 106.24)

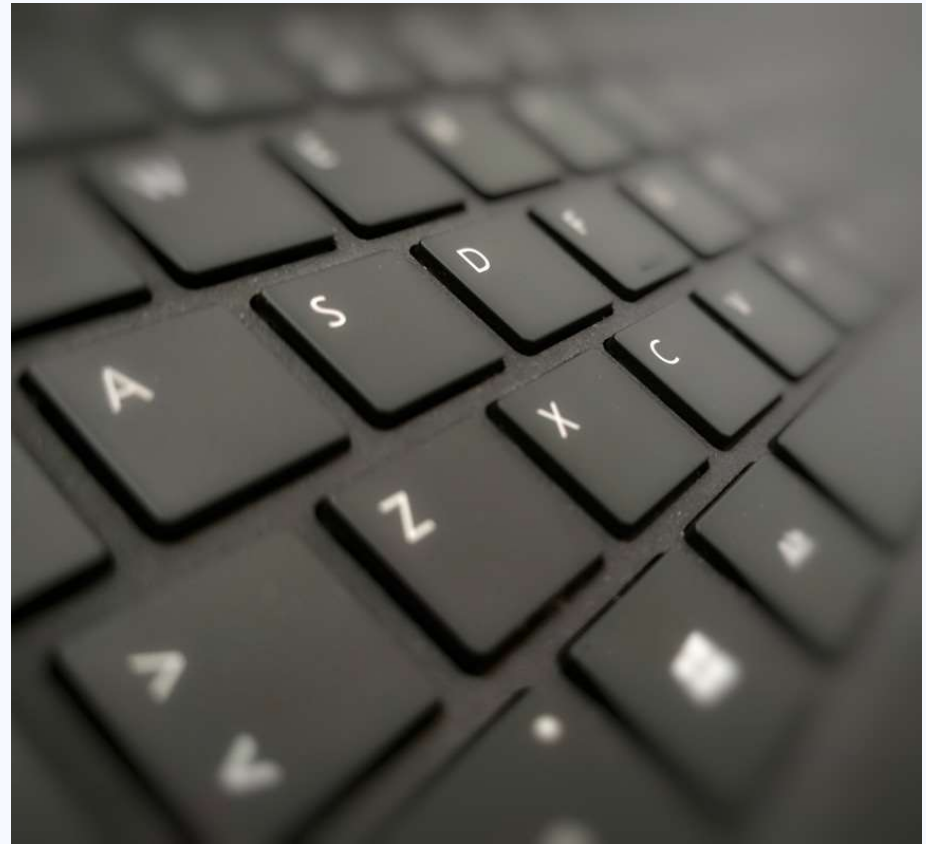
Subpart D: Education Programs/Activities (106.31 – 106.46)

Subpart E: Employment (106.51 – 106.62)

Subpart F: Retaliation (106.71 – 106.72)

Subpart G: Procedures (106.81 – 106.82)

DEFINITIONS





§ 106.2 - DEFINITIONS

| | | |
|---------------------------|---------------------------------|---------------------------|
| Admission | Applicant | Party |
| Postsecondary institution | Pregnancy or related conditions | Program or activity |
| Recipient | Student | Student with a disability |



§ 106.2 - DEFINITIONS

Complaint

Complainant

Confidential
employee

Disciplinary
sanctions

Peer
retaliation

Sex-based
Harassment

Relevant

Remedies

Respondent

Retaliation

Supportive
measures



NOT DEFINED

Credibility

Consent

Employee

Sex
Discrimination

Sexual assault
(but link)



§ 106.2 – DEFINITIONS: PARTIES

Complainant

- A student or employee, or
- Non-student/employee who was participating/attempting to participate at the time of the alleged sex discrimination

Respondent

- A person who is alleged to have violated the recipient's prohibition on sex discrimination

Party

- A complainant or respondent

SEX-BASED HARASSMENT DEFINITIONS





§ 106.2 – SEX-BASED HARASSMENT

Sex-based harassment prohibited by this part is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in § 106.10, that is:

1. Quid pro quo

2. Hostile Environment

3. Specific offenses



QUID PRO QUO HARASSMENT

“An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient’s education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct.”

§ 106.2

QUID PRO QUO NOTES



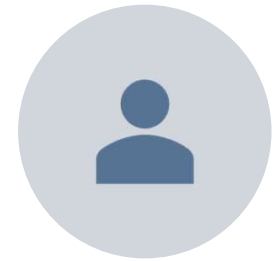
Unwelcome



Explicit and
implicit



Aid, benefit, or
service



Employee, agent,
or other person

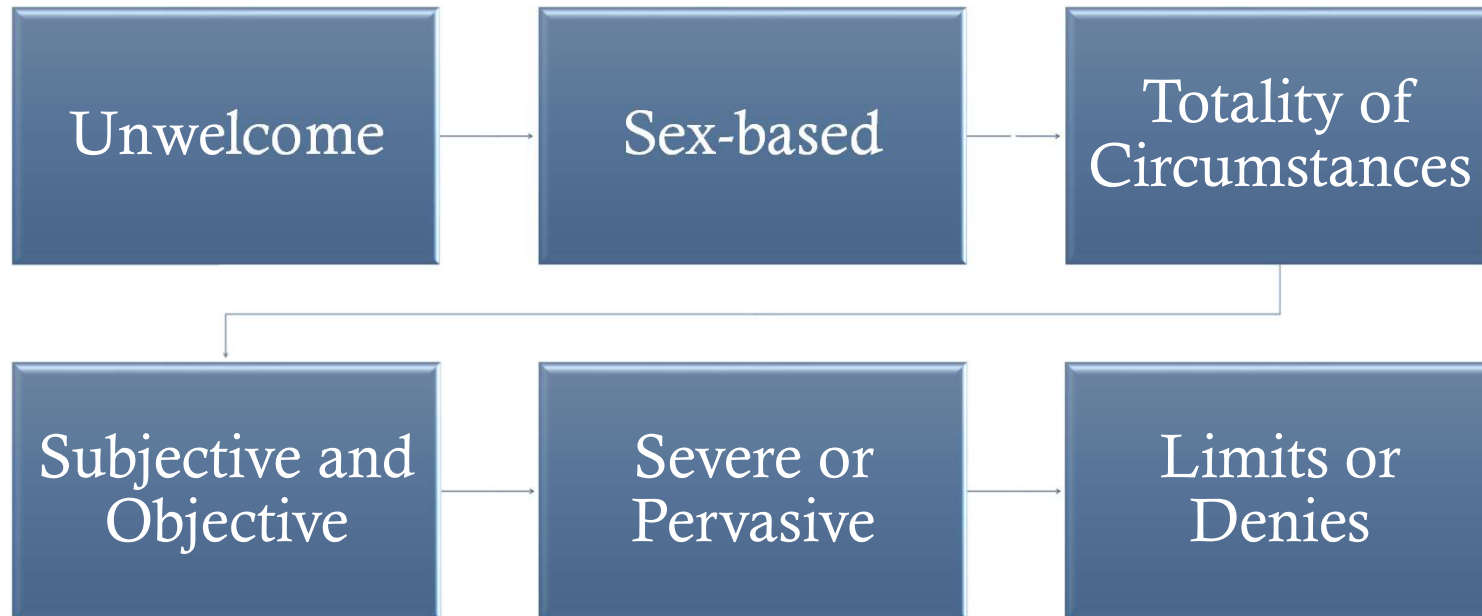
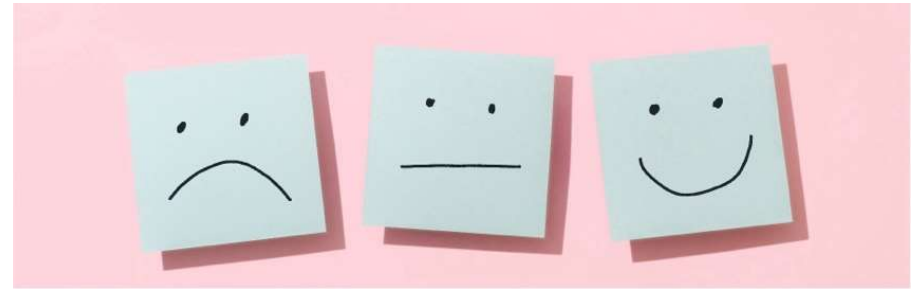


HOSTILE ENVIRONMENT HARASSMENT

“Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:...”

§ 106.2

UNPACKING HOSTILE ENVIRONMENT





HOSTILE ENVIRONMENT “FACT-SPECIFIC INQUIRY”



Degree affected educational access



Type, frequency, duration



Parties’ ages, roles, previous interactions, other factors



Location and context in which occurred



Other sex-based harassment in educational setting

HOSTILE ENVIRONMENT NOTES



Jurisdiction



Beyond Sexual Harassment



SPECIFIC OFFENSES

Sexual assault

Dating violence

Domestic
violence

Stalking

§ 106.2



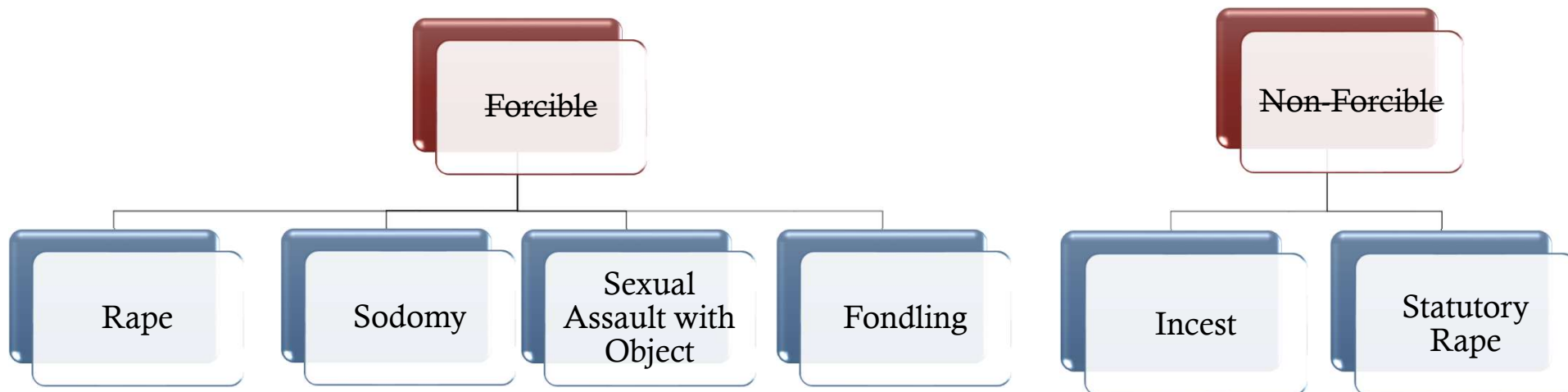
SEXUAL ASSAULT

“Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation”

§ 106.2



SEXUAL ASSAULT





NON-CONSENSUAL SEXUAL PENETRATION

Rape - (Except Statutory Rape) The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

Sodomy - Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

Sexual Assault With An Object - To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

FBI, Uniform Crime Reporting Program: National Incident-Based Reporting System (2018)



NON-CONSENSUAL SEXUAL TOUCHING

Fondling - The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

FBI, Uniform Crime Reporting Program: National Incident-Based Reporting System (2018)



INCEST AND STATUTORY RAPE

Incest - Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

Statutory Rape - Nonforcible sexual intercourse with a person who is under the statutory age of consent

FBI, Uniform Crime Reporting Program: National Incident-Based Reporting System (2018)



DATING VIOLENCE

Dating violence means violence committed by a person:

- (A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (1) The length of the relationship;
 - (2) The type of relationship; and
 - (3) The frequency of interaction between the persons involved in the relationship

§ 106.2



DOMESTIC VIOLENCE

Domestic violence meaning felony or misdemeanor crimes committed by a person who:

- (A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;
- (B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (C) Shares a child in common with the victim; or
- (D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction

§ 106.2



STALKING

Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- (A) Fear for the person’s safety or the safety of others; or
- (B) Suffer substantial emotional distress.

§ 106.2

NOTE ON CONSENT

The Assistant Secretary will not require a recipient to adopt a particular definition of consent, where that term is applicable with respect to sex-based harassment.

§ 106.2

TITLE IX COORDINATOR AND NOTICE OF POLICIES





§ 106.8(a)(1)-(a)(2) – DESIGNATION OF COORDINATOR

| | |
|-----------|---|
| Designate | “Designate and authorize” at least one employee |
| Delegate | May delegate “specific duties” |
| But... | One person must retain “ultimate oversight” |

§ 106.8(b)(1) – NONDISCRIMINATION POLICY



§ 106.8(b)(2) – GRIEVANCE PROCEDURES





§ 106.8(c) – NOTIFICATION OF NONDISCRIMINATION


Who [§ 106.8(c)]

- Students
- Parents, guardians, legal reps (K-12)
- Employees
- Applicants for admission or employment
- Unions and professional organizations

What [§ 106.8(c)(1)(i)]

- Does not discriminate
- Inquiries to Title IX or OCR
- Name **or** title, office, email, telephone
- How to locate policy and procedures
- How to report or make a complaint

§ 106.8(c)(2) – PUBLICATIONS



“We prohibit sex discrimination... individuals may report concerns to Title IX Coordinator. For the full notice see our website...”

- Website
- Each handbook, catalog, announcement, bulletin and application form for recruitment
- One sentence option
- Cannot say people are treated differently on the basis of sex

§ 106.8(d)(1) ALL EMPLOYEE TRAINING REQUIREMENTS

*“promptly upon hiring or
change of position that alters
duties under Title IX and
annually thereafter”*



ALL EMPLOYEE TRAINING



Prohibit Sex
Discrimination



Prohibited Conduct



Duty to provide contact
info to pregnant students



Duty to report or
provide contact info



§106.8(d)(2)-(4) – TRAINING PERSONS WHO ARE RESPONSIBLE FOR IMPLEMENTING PROCEDURES

- Title IX Coordinator and Designees
- Investigators
- Decisionmakers (including appeals of determination and dismissal)
- Informal Resolution Facilitator
- Person with authority to modify/terminate Supportive Measures
- Others?



§106.8(e) – STUDENTS WITH DISABILITIES

- An individual with a disability, as defined in the Rehabilitation Act of 1973 or a child with a disability, as defined in the Individuals with Disabilities Education Act
- The Title IX Coordinator may consult, as appropriate, with the individual or office designated to support students with disabilities to determine compliance with disability law.

TITLE IX'S COVERAGE OF SEX DISCRIMINATION





§ 106.10 – SCOPE

“Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.”



§ 106.11 – APPLICATION

- Sex discrimination in education program or activity
- Sex-based hostile environment even when some contributing conduct occurred off campus
- Could be broadened by “disciplinary authority”



§ 106.12 – EDUCATIONAL INSTITUTIONS CONTROLLED BY RELIGIOUS ORGANIZATIONS

May submit in writing seeking assurance of the exemption

Must identify the provision and explain how it conflicts with a specific tenet

Not required to seek assurance

May raise its exemption at any time



§ 106.31(a)(2) – EDUCATION PROGRAMS OR ACTIVITIES

- (1) *Except as provided elsewhere...no person, on the basis of sex...*
- (2) *in the limited circumstances...this part permits different treatment ...on the basis of sex, ...must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, except as permitted Adopting a policy or engaging in a practice that prevents a person from participating...consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.*

“EXCEPT AS PERMITTED BY...”



Religious exemption

Military and merchant marine educational institutions

Fraternities and sororities

YMCA/YWCA/Girl Scouts/Boy Scouts/Camp Fire Girls

Voluntary youth service organization

Undergraduate private admissions

Sex-separate housing

Sex-separate athletic teams

§ 106.31(a)(2) & § 106.31(a)(3)

PERMISSIBLE DIFFERENT TREATMENT CAN'T CAUSE MORE THAN "DE MINIMIS HARM"





§ 106.40 – PARENTAL, FAMILY, OR MARITAL STATUS; PREGNANCY OR RELATED CONDITIONS (STUDENTS)

No policies, practices, or procedures treating a student's current, potential, or past parental, family, or marital status differently
§ 106.40(a)

No discrimination against students on the basis of pregnancy or related conditions
§ 106.40(b)(1)

Responsibility to provide Title IX Coordinator's contact and other information
§ 106.40(b)(2)



§ 106.40(b)(3) – SPECIFIC ACTIONS

Information about the institution's obligations

Reasonable modifications

Provide voluntary access to separate and comparable portion of program or activity

Voluntary leaves of absence

Lactation space

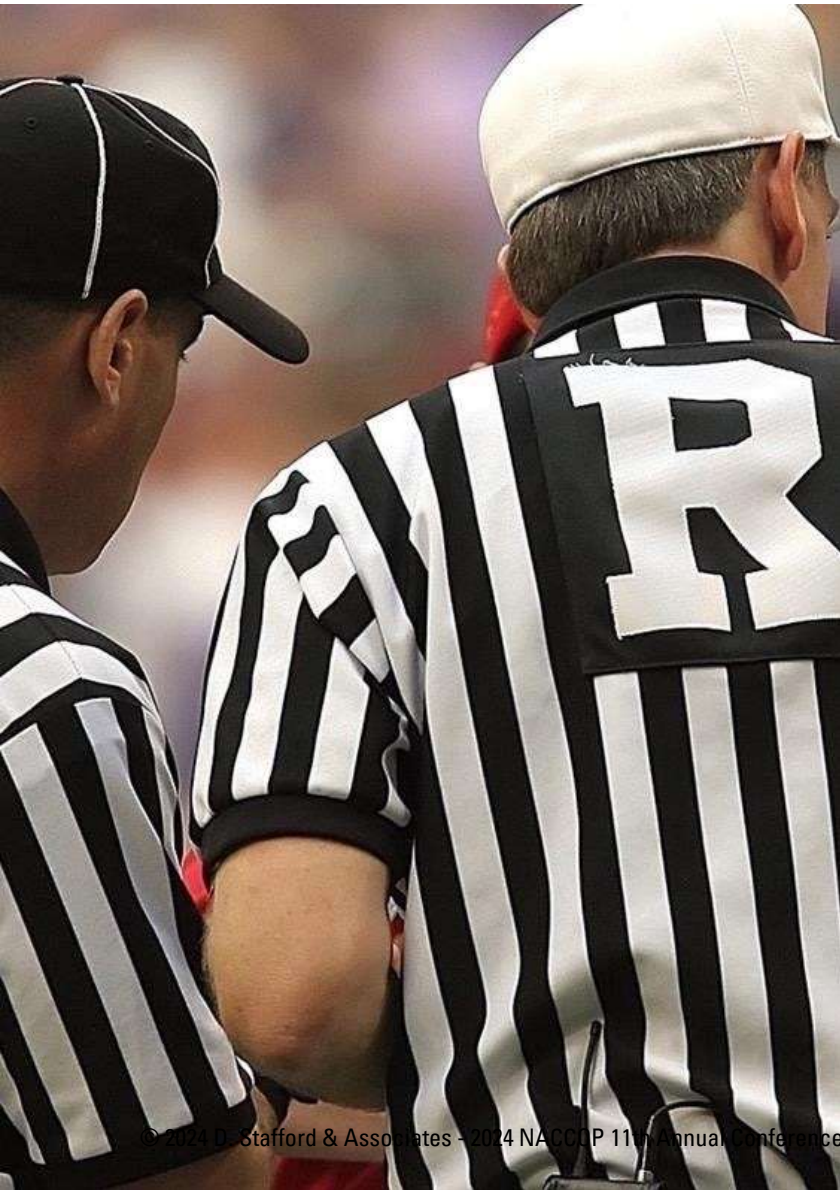
Limitation on supporting documentation



§ 106.40(b)(4-5) – COMPARABLE TREATMENT AND CERTIFICATIONS

Must treat in the same manner and under the same policies as any other temporary medical conditions

Must not require a certification from a healthcare provider or any other person that the student is physically able to participate



§ 106.41(a) – ATHLETICS

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

§ 106.44 RESPONSE TO SEX DISCRIMINATION





§ 106.44 – RESPONSE

- § 106.44(a) General
- § 106.44(b) Barriers to reporting
- § 106.44(c) Notification requirements
- § 106.44(d) Confidential employee requirements
- § 106.44(e) Public awareness events
- § 106.44(f) Title IX Coordinator requirements
- § 106.44(g) Supportive measures
- § 106.44(h) Emergency removal
- § 106.44(i) Administrative leave
- § 106.44(j) Prohibited disclosures of PII
- § 106.44(k) Discretion to offer informal resolution

§ 106.44(a) – GENERAL (RESPONSE)

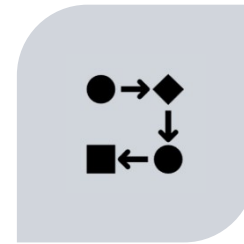
If knowledge of conduct that reasonably may constitute sex discrimination



Promptly



Effectively



Compliantly



§ 106.44(c)(2)(ii) – NOTIFICATION REQUIREMENT

(A) Notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX...

OR

(A) Provide the contact information of the Title IX Coordinator and information about how to make a complaint of sex discrimination...



REPORTING REQUIREMENTS

2001 Guidance

Responsible Employees: Employee with authority to take action; given the duty of reporting misconduct; or student would reasonably believe has this authority

2020 Regulations

Officials with Authority to institute corrective measures

2024 Regulations

Employees with authority to take corrective action or responsibility for administrative leadership, teaching, or advising. (BUT ALL NON-CONFIDENTIAL MUST DO SOMETHING!)



§ 106.44(c)(2) – NOTIFICATION REQUIREMENTS

| Type of Employee | Notify Title IX | Provide Title IX contact and how make complaint |
|---|---------------------------------------|---|
| Confidential Employee | No | Yes (and more!) |
| Category 1: Employee with ability to institute corrective measures OR responsible for administrative leadership, teaching, or advising | Yes | |
| Category 2: All other employees | Either or (SCHOOL DECIDES) | |

STUDENT EMPLOYEE REPORTING REQUIREMENTS

“A postsecondary institution must reasonably determine and specify whether and under what circumstances a person who is both a student and an employee is subject to [the reporting requirements]...”

§ 106.44(c)(3)





§ 106.2 – CONFIDENTIAL EMPLOYEES DEFINED



Privileged
(in role)



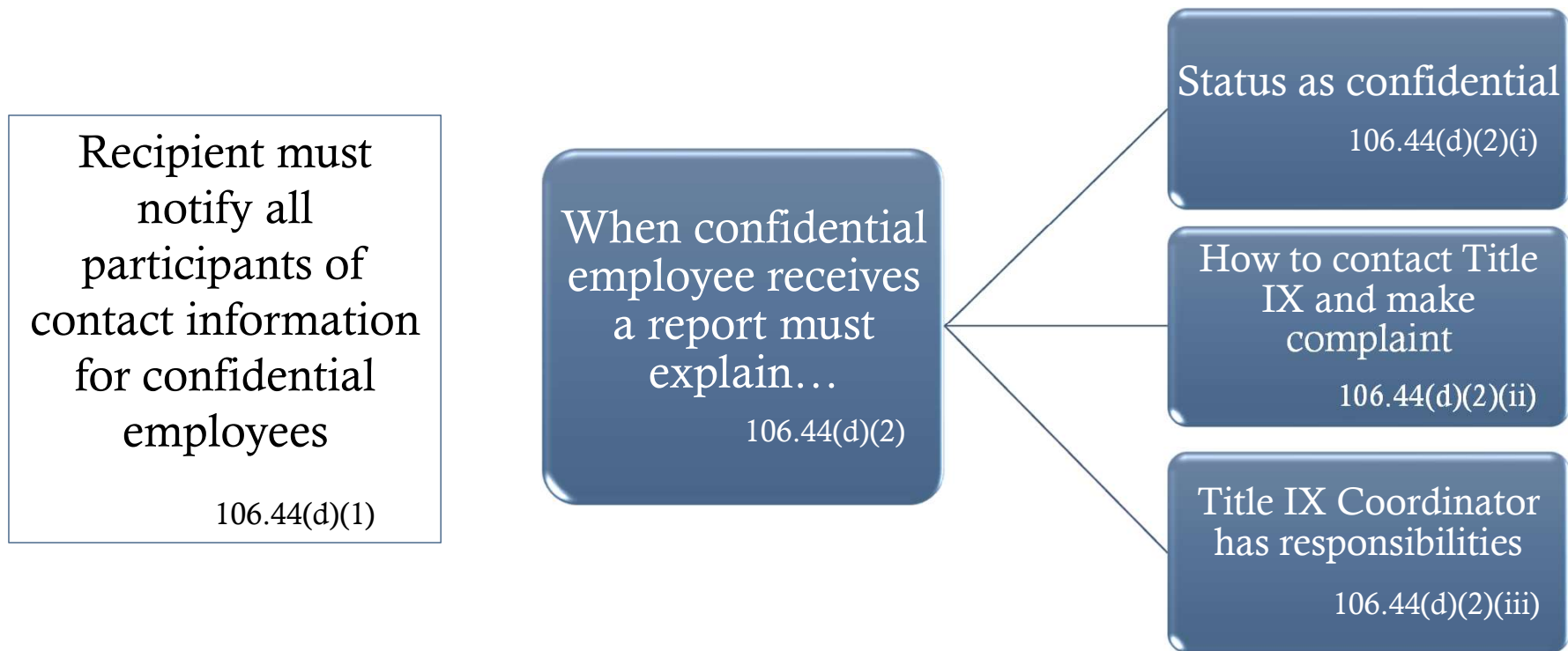
Designated
(when providing services)



Human-subjects research
on sex discrimination

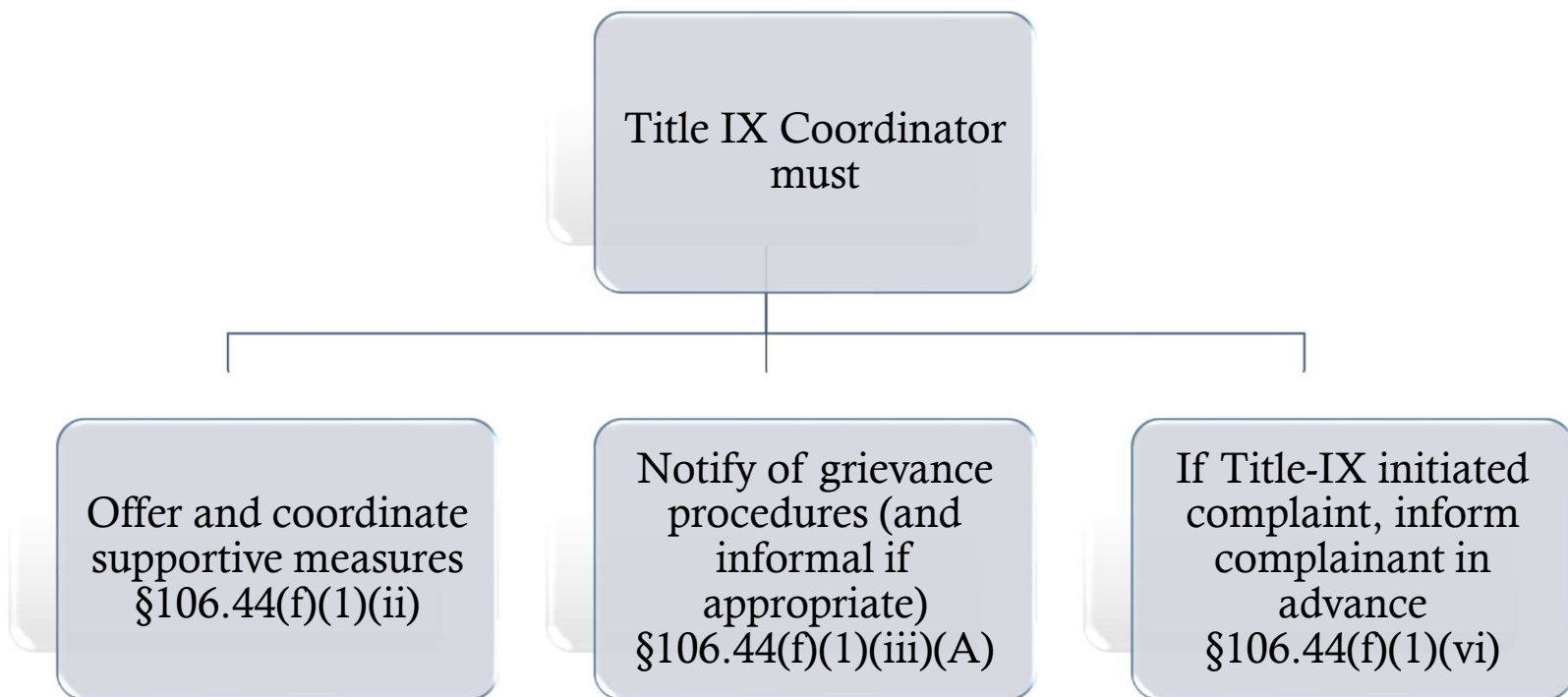


§ 106.44(d) – CONFIDENTIAL EMPLOYEE REQUIREMENTS



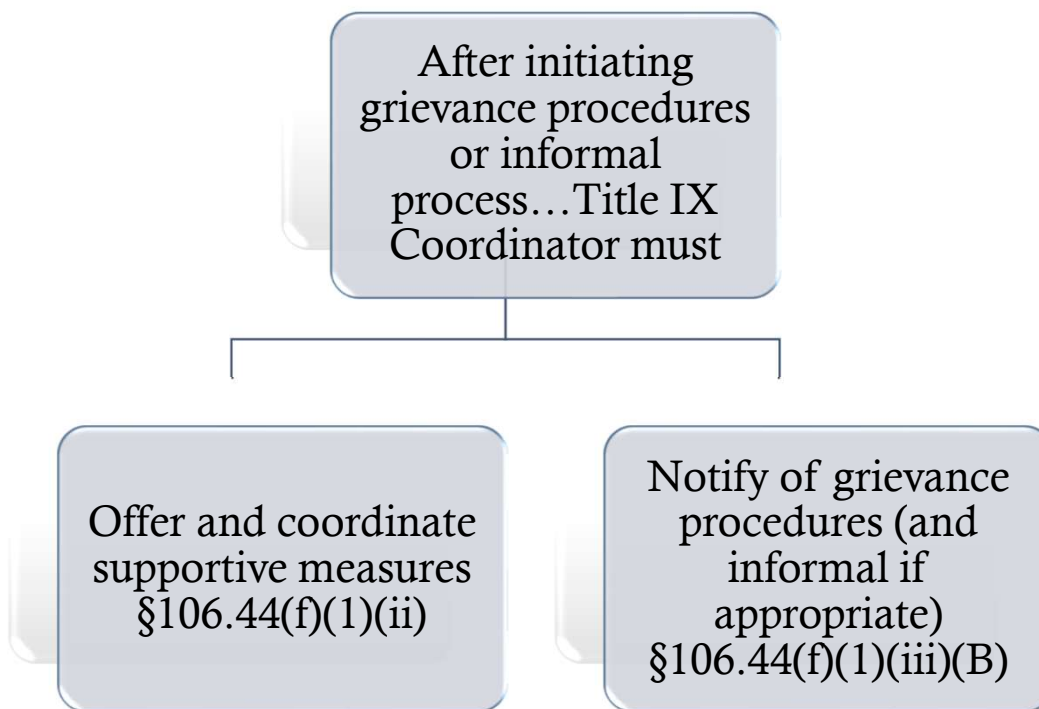


TITLE IX COORDINATOR OUTREACH DUTIES TO COMPLAINANT





TITLE IX COORDINATOR OUTREACH DUTIES TO RESPONDENT



§ 106.44(f)(1) – Title IX Coordinator Requirements



Treat both parties equitably
106.44(f)(1)(i)



If requested, initiate
grievance procedures or
informal process
106.44(f)(1)(iv)



Determine if need to initiate
grievance procedures in
absence of complaint
106.44(f)(1)(v)



Take other appropriate
prompt and effective steps
106.44(f)(1)(vii)



§ 106.44(f)(1)(v) – TITLE IX-INITIATED COMPLAINTS

In the absence of a complaint or the withdrawal of any or all of the allegations in a complaint, and in the absence or termination of an informal resolution process, determine whether to initiate a complaint of sex discrimination

(A) To make this fact-specific determination, the Title IX Coordinator must consider, at a minimum, the following factors:



EIGHT FACTORS TO CONSIDER

Complainant's
request

Safety
concerns

Risk of
additional acts

Severity of
allegation

Age and
relationship

Scope and
pattern

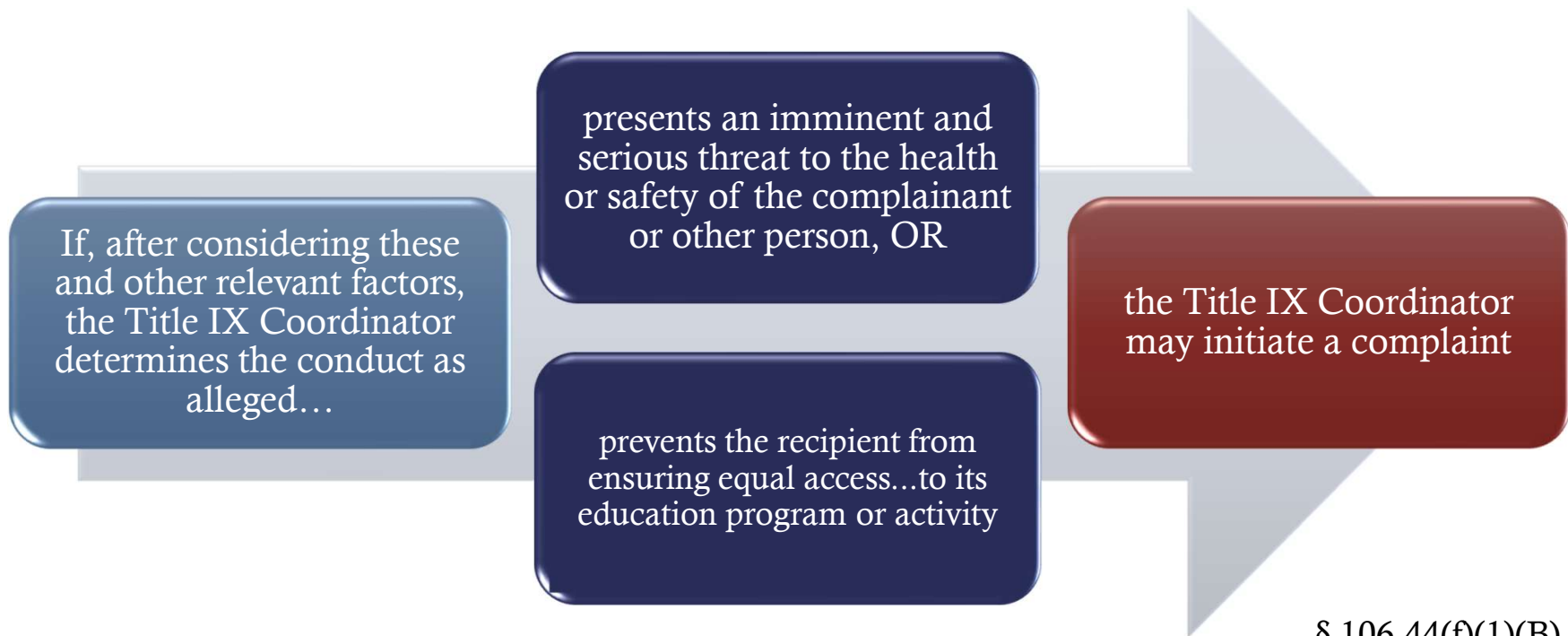
Evidence

Alternatives to
resolve

§ 106.44(f)(1)(v)(A)



THRESHOLD DETERMINATION



§ 106.44(f)(1)(B)



§ 106.2 – SUPPORTIVE MEASURES DEFINITION

Individualized

Offered as appropriate

Reasonably available

Without unreasonably burdening

Not for punitive or disciplinary reasons

Without fee or charge

Complainant or respondent



SUPPORTIVE MEASURE GOALS

Restore or preserve
party access to
program or activity

Provide support
during process

§ 106.2



§ 106.44(g)(1) – SUPPORTIVE MEASURE EXAMPLES

Counseling

Extensions of deadlines and other course-related adjustments

Campus escort services

Increased security and monitoring of certain areas of the campus

Restrictions on contact applied to one or more parties

Leaves of absence

Changes in class, work, housing, extracurricular or other

Training and education



106.44(g)(2) – SUPPORTIVE MEASURES EXPLAINED

- Must not unreasonably burden either party
 - Must be designed to
 - protect safety of parties or
 - safety of educational environment or
 - Provide support during grievance procedures or informal process
 - Must not be imposed for punitive or disciplinary reasons
-

OTHER CONSIDERATIONS FOR SUPPORTIVE MEASURES

§106.44(g)(3) May modify, terminate, or continue at conclusion of grievance procedures or informal process.

§106.44(g)(4) Must provide timely opportunity to challenge supportive measure decision

§106.44(g)(5) Must not disclose unless need to provide measure, restore/preserve access or exception applies

§106.44(g)(6)(ii) Title IX may consult with disability office when implementing

LEAVE OPTIONS



Emergency removal



Administrative leave



§ 106.44(h) – EMERGENCY REMOVAL



Imminent and serious threat to the health or safety of any persons



Arises from the allegations



Provide notice and opportunity to challenge immediately following the removal



Cannot modify any rights under IDEA, Section 504, or the ADA

§ 106.44(k) – INFORMAL RESOLUTION



Allowed for
employee/student
in postsecondary



Discretion to offer
or decline



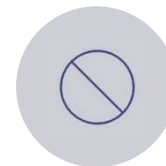
Voluntary for
parties



Provide notice



Facilitator must
not be investigator
or decisionmaker



Can include
restrictions



§ 106.44(k)(3) – INFORMAL NOTICE

Allegations

Requirements

Right to withdraw

Cannot initiate or
resume grievance
procedures once
final

Potential terms

Information that
will be maintained

ADDITIONAL RESPONSE REQUIREMENTS



Monitor for Barriers
to reporting
§ 106.44(b)(1)



Take steps to Remove
Barriers
§ 106.44(b)(1)



Response to
disclosures at Public
Awareness Events
§ 106.44(e)



Prohibited
Disclosures of PII
§ 106.44(j)

§ 106.45 GRIEVANCE PROCEDURES FOR SEX DISCRIMINATION





§ 106.45 – GRIEVANCE PROCEDURES

- § 106.45(a)(1) General
- § 106.45(a)(2) Complaint
- § 106.45(b) Basic requirements for grievance procedures
- § 106.45(c) Notice of allegations
- § 106.45(d) Dismissal of a complaint
- § 106.45(e) Consolidation of complaints
- § 106.45(f) Complaint investigation
- § 106.45(g) Questioning parties and witnesses
- § 106.45(h) Determination whether sex discrimination occurred
- § 106.45(i) Appeals
- § 106.45(j) Additional provisions
- § 106.45(k) Informal resolution
- § 106.45(l) Provisions limited to sex-based harassment complaints



§ 106.45(a)(2) – COMPLAINT

Sex discrimination other than sex-based harassment

- Complainant
- Parent or other
- Title IX Coordinator
- Any student or employee
- Other person participating

Sex-based harassment

- Complainant
- Parent or other legal representative
- Title IX Coordinator



§ 106.45(b) – BASIC REQUIREMENTS FOR GRIEVANCE PROCEDURES

Treat complainants and respondents equitably

Free of bias and conflict of interest

Presumption of not responsible

Reasonably prompt timeframes with extensions for good cause

Reasonable steps to protect privacy

Objective evaluation of all evidence that is relevant

Exclude certain evidence as impermissible

Articulate consistent principles for applying grievance procedures



TITLE IX PERSONNEL

The decisionmaker may be the same person as the Title IX Coordinator or investigator.

§ 106.459b)(2)



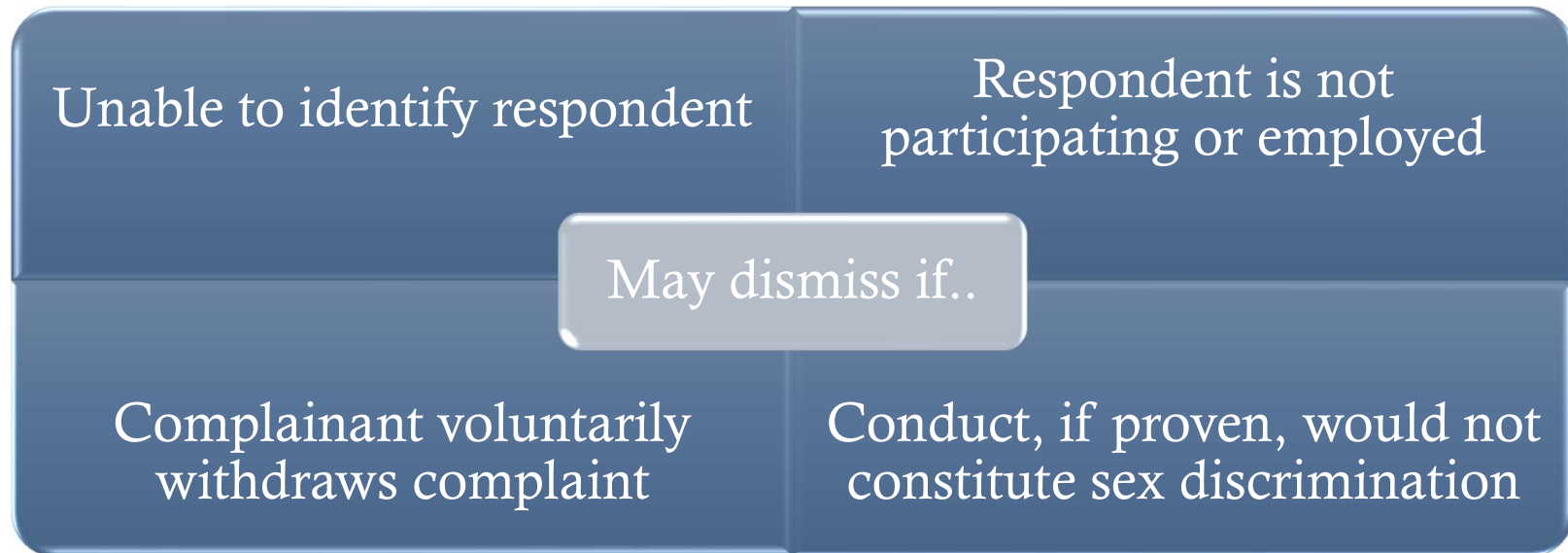
§ 106.45(c)(2) – Additional Allegations



If decided to investigate additional allegations, must provide notice of to parties whose identities are known.



§ 106.45(d)(1)(i-iv) – DISMISSAL OF A COMPLAINT





DUTIES BEFORE DISMISSAL

Unable to identify the respondent

- Reasonable steps to identify respondent

Complainant withdraws allegation(s)

- Must consider initiating the complaint

Allegation if proven not discrimination?

- Prior to dismissing, must clarify with the complainant

ADDITIONAL DISMISSAL NOTES



Notice



Appeal



Support



Stop



§ 106.45(e) – CONSOLIDATION OF COMPLAINTS

Multiple
respondents

More than one
complainant
against one or
more respondent

One party
against another
party

§ 106.45(b)(7) – RELEVANT AND NOT OTHERWISE IMPERMISSIBLE EVIDENCE



Privileged information



Physician/psychologist
records



Complainant's sexual
interest or prior sexual
conduct



PROTECTING THE PRIVACY OF PERSONS

§ 106.44(j)

- Must not disclose personally identifiable information obtained except...
 - With prior written consent
 - To carry out the purposes of this part

§ 106.45(b)(5)

- Take reasonable steps to protect the privacy of the parties and witnesses
- Steps cannot restrict the ability of the parties to:
 - Obtain and present evidence, including by speaking to witnesses
 - Consult with their family members, confidential resources, or advisors
 - Otherwise prepare for or participate in the grievance procedures



PROTECTING THE PRIVACY OF INFORMATION

§ 106.44(k)(3)

- Before the initiation of an informal process, provide notice that explains...
 - What information will maintain
 - How the institution could disclose for use in grievance procedures

§ 106.45(f)(4)(iii)

- Take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence solely through the grievance procedures

§ 106.46(e)(6)(iii)

- Parties' and their advisors' unauthorized disclosure



MINIMUM REQUIREMENTS UNDER § 106.45





§ 106.45(f) – COMPLAINT INVESTIGATION



ADMISSIBILITY OF WITNESSES

Always admissible



Fact Witness

§ 106.45(f)(2)

Discretionary admissibility



Expert

§ 106.46(e)(4)



Character

Preamble

§ 106.45(f)(4) – Access to evidence



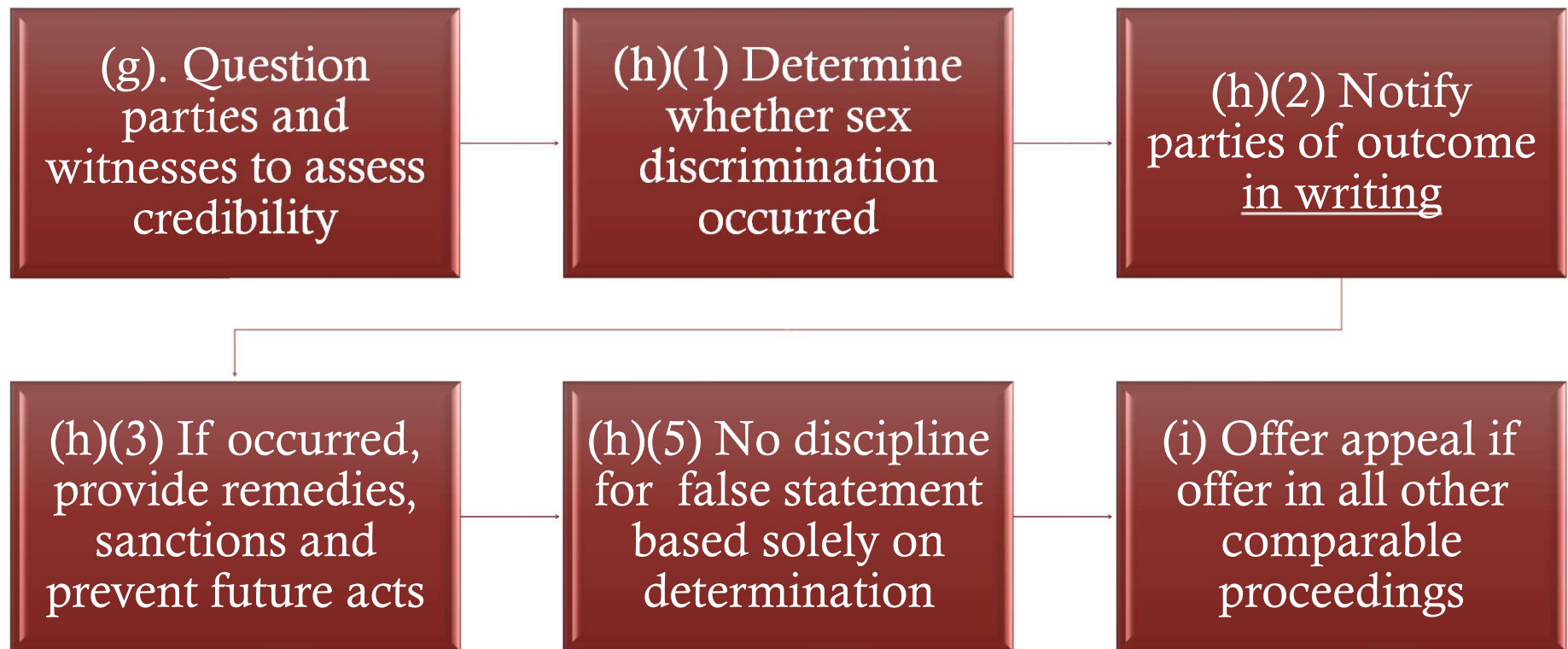
Evidence Option



Description Option



§ 106.45(g)-(h) – DECISIONMAKERS





§ 106.45(h)(1) – STANDARD OF PROOF

Preponderance of
the evidence



Unless use clear and
convincing in all
other proceedings
then MAY



WRITTEN DETERMINATION

Notify the parties in writing of the determination whether sex discrimination occurred under Title IX or this part including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable

§ 106.45(h)(2)



FINAL POLICY NOTES ON § 106.45

Written Policy/Procedures

Single-investigator model is an option

Informal resolution option before or after complaint

If harassment - range of supportive measures

If harassment - list of sanctions

§ 106.46 GRIEVANCE PROCEDURES SEX-BASED HARASSMENT INVOLVING STUDENTS





§ 106.46 – SEX-BASED HARASSMENT INVOLVING STUDENTS

§ 106.46(a) General

§ 106.46(b) Student employees

§ 106.46(c) Written notice of allegations

§ 106.46(d) Dismissal of a complaint

§ 106.46(e) Complaint investigation

§ 106.46(f) Questioning parties and witnesses

§ 106.46(g) Live hearing procedures

§ 106.46(h) Written determination

§ 106.46(i) Appeals

§ 106.46(j) Informal resolution



§ 106.46(b) – STUDENT EMPLOYEES

“When a complainant or a respondent is both a student and an employee...must make a fact-specific inquiry to determine whether the requirements of this section apply.”



TWO GRIEVANCE PROCEDURES

Procedure A (106.45)

- Sex discrimination
- Employee on employee sex-based harassment
- K-12 complaints
- Retaliation

Procedure B (106.46)

- Sex-based harassment involving student complainants or student respondents at postsecondary institutions



COMPARING NOTICE

| | §106.45(c) not required to be in writing | §106.46(c) required to be in writing |
|---|---|---|
| Grievance Procedures | YES | YES |
| “Sufficient information” (parties, conduct, date, location) | YES | YES |
| Statement that retaliation prohibited | YES | YES |
| Access to relevant evidence | YES | YES |
| Respondent is presumed not responsible | | YES |
| Right to advisor of choice | | YES |
| Prohibition on false statements | | YES |



§ 106.46 TWEAKS

**AMENDED
NOTICE:**
Must be in writing
§106.46(c)(2)

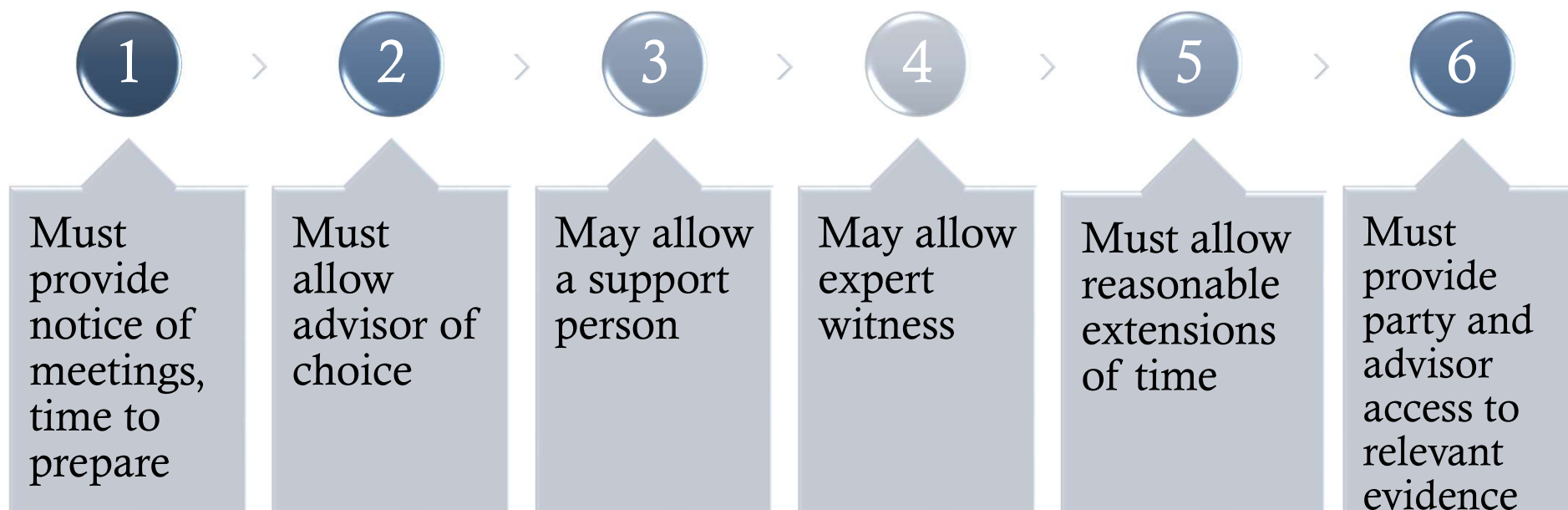
NOTICE:
May reasonably delay
providing notice if
safety concern
§106.46(c)(3)

DISMISSAL:
Written simultaneous
notice of dismissal of
a complaint
§106.46(d)(1)

DISMISSAL:
Obtain complainant's
voluntary withdrawal
in writing
§106.46(d)(2)



§ 106.46(e) COMPLAINT INVESTIGATION



ADVISOR OF CHOICE



May be but is not required to be an attorney
106.46(e)(2)



May accompany to any meeting or proceeding
106.46(e)(2)



Institution may restrict participation
106.46(e)(2)



Receives access to relevant evidence
106.46(f)(ii)(B)



May conduct cross-examination at hearing if allowed
106.46(1)(f)(ii)(B)

§ 106.46(e)(6)(i) – Access to evidence



Evidence Option



Investigative Report Option



REVIEW AND RESPOND TO EVIDENCE

A postsecondary institution must provide the parties with a reasonable opportunity to review and respond to the evidence or the investigative report...

§ 106.46(e)(6)(ii)

ASSESSING CREDIBILITY





§ 106.46(f)(1) – PROCESS FOR QUESTIONING PARTIES AND WITNESSES

Decisionmaker
Questions

Party-proposed
Questions

FORMATS FOR CREDIBILITY ASSESSMENT



Individual meetings
§106.46(f)(1)(i)



Hearing with
decisionmaker asking
proposed questions
§106.46(f)(1)(ii)(A)



Hearing with cross-
examination by advisors
§106.46(f)(1)(ii)(B)

§ 106.46(f)(1)(i) – INDIVIDUAL MEETINGS

- Must hold individual meetings with the complainant, respondent, and any witnesses
 - The investigator or decisionmaker may ask relevant and permissible questions
 - Each party may propose relevant and permissible questions to be asked by the investigator or decisionmaker
 - Provide each party with the recording or transcript with an opportunity to propose follow-up questions
 - There could be several rounds of meetings
-



§ 106.46(f)(1)(ii) – HEARING OPTION

- The decisionmaker may ask relevant and permissible questions
- Each party may propose relevant and permissible questions to be asked by the decisionmaker
- No questions may be asked directly by a party
- If the institution uses advisor-conducted questioning and a party does not have an advisor, the institution must provide one without charge (cannot be a confidential employee)

LIVE HEARING

The decisionmaker must determine whether a proposed question is relevant ... prior to the question being posed and must explain any decision to exclude a question as not relevant or otherwise impermissible.

... must not permit questions that are unclear or harassing

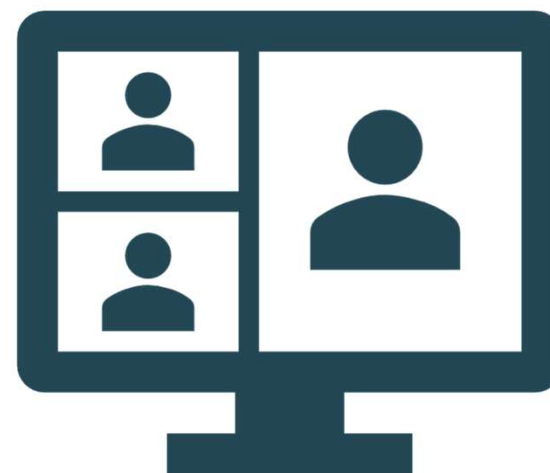
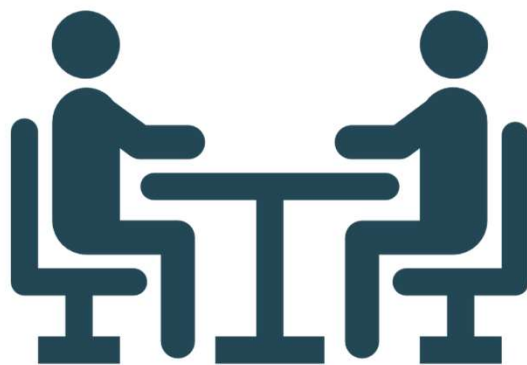
... must give a party an opportunity to clarify or revise a question that ... is unclear or harassing

... may also adopt and apply other reasonable rules regarding decorum, provided they apply equally to the parties.

§ 106.46(f)(3)



§ 106.46(g) – LIVE HEARING PROCEDURES





REFUSAL TO RESPOND TO QUESTIONS

A decisionmaker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The decisionmaker must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

§ 106.46(f)(4)



§ 106.46(g) – LIVE HEARING PROCEDURES



Audio



Video



Transcript



SANCTIONS AND REMEDIES



Disciplinary Sanctions
*“consequences ...following a
determination”*



Remedies
“Restore or preserve access”

§ 106.2



§ 106.46(h) – DETERMINATION REGARDING RESPONSIBILITY

Description of alleged sex-based harassment

Policies and procedures used to evaluate allegations

Evaluation of evidence and determination

Disciplinary sanctions or remedies if sex-based harassment occurred

Appeal procedures



§ 106.46(i) – APPEALS

Must offer the parties an appeal from a determination whether sex-based harassment occurred and from a ... dismissal of a complaint or any allegation therein, on the following bases:

Procedural irregularity that would change the determination of whether sex-based harassment occurred

New evidence that would change the outcome of the matter and that was not reasonably available at the time the determination of whether sex-based harassment occurred or dismissal was made

Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that would change the outcome



§ 106.47 – ASSISTANT SECRETARY REVIEW OF SEX-BASED HARASSMENT COMPLAINTS

The Assistant Secretary will not deem a recipient to have violated this part solely because the Assistant Secretary would have reached a different determination in a particular complaint alleging sex-based harassment than a recipient reached under § 106.45, and if applicable § 106.46, based on the Assistant Secretary's independent weighing of the evidence.

SUBPART E: EMPLOYMENT





§106.51-61 – EMPLOYMENT

§ 106.7 Effect of employment opportunities

§ 106.51 Employment

§ 106.52 Employment criteria

§ 106.53 Recruitment

§ 106.54 Compensation

§ 106.55 Job classification and structure

§ 106.56 Fringe benefits

§ 106.57 Marital or parental status

§ 106.58 Effect of other laws

§ 106.59 Advertising

§ 106.60 Pre-employment inquiries

§ 106.61 Sex as a bona-fide occupational qualification



§ 106.57 – PARENTAL, FAMILY, OR MARITAL STATUS; PREGNANCY OR RELATED CONDITIONS (EMPLOYMENT)

No policies, practices, procedures, or take any employment action concerning parental, family or marital status

No policies, practices, procedures, or take any employment action based on head of household or principal wage earner

Must not discriminate on the basis of current, potential, or past pregnancy or related conditions

Comparable treatment to other temporary medical conditions

Voluntary leaves of absence

Lactation time and space



§ 106.60 – PRE-EMPLOYMENT INQUIRIES

- Must not make a pre-employment inquiry as to marital status, including whether an applicant is “Miss or Mrs.”
- May ask an applicant to self-identify their sex, but only if this is asked of all applicants and if the response is not used as a basis for discrimination

SUBPART F: RETALIATION





§ 106.2 – RETALIATION DEFINITION

Retaliation means intimidation, threats, coercion, or discrimination against any person for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part...

WHO CAN RETALIATE?



Recipient



Student



Employee



Other



§ 106.2 – PEER RETALIATION

Peer retaliation means retaliation by a student against another student.



§ 106.71 – RETALIATION

A recipient must prohibit retaliation, including peer retaliation, in its education program or activity. When a recipient has information about conduct that reasonably may constitute retaliation ... the recipient is obligated to comply with § 106.44. Upon receiving a complaint alleging retaliation, a recipient must initiate its grievance procedures under § 106.45, or, ... an informal resolution



RETALIATION NOTES

Interference
clause

Participation
clause

Employee
participation

Consolidated
complaints

False
statements and
retaliation

Adverse
Action

§106.8(f) – RECORDKEEPING (7 YEARS)



Process and Outcome for
Complaints



Actions taken for
Reports



Materials upon request
for training



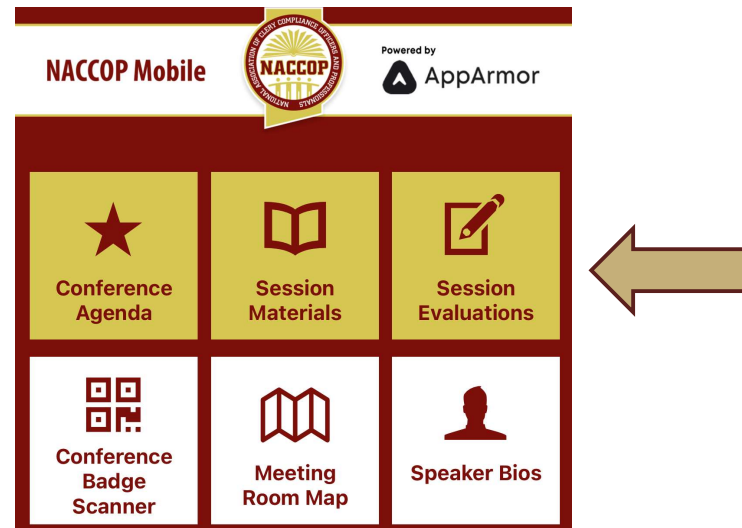
POLICY CONSIDERATIONS

- Student conduct codes
- Employee handbooks
- Non-discrimination policies and procedures
- Incidents occurring before August 1, 2024



Session Evaluation

1. Select the “Session Evaluations” button in the NACCOP Mobile App



2. Or, visit <https://www.surveymonkey.com/r/2024-NACCOP-Sessions> to evaluate this session.