



DEPARTMENT OF EDUCATION

34 CFR Part 106

RIN 1870-AA26

Recodification of Title IX Rules

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary of Education publishes a final rule to repeal the U.S. Department of Education's (Department) 2024 final rule amending the Title IX regulations and restoring the regulatory text that existed prior to the 2024 rulemaking. The Department takes this action because the 2024 final rule has been vacated and is not enforceable nationwide. The Department has not enforced the 2024 final rule for over a year and a half; the regulatory text that existed before promulgation of the 2024 final rule, which is in force, should be recodified in the Code of Federal Regulations (CFR). For this reason, the Department repeals the 2024 final rule to update the CFR.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Department takes this final action to repeal the Department's 2024 final rule, *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89 FR 33474-33896 (Apr. 29, 2024) (2024 Rule), and to restore the regulatory text that existed prior to promulgation of the 2024 Rule. As

explained further below, enforcement of the 2024 Rule was preliminarily enjoined by eight different courts between June 13, 2024, and August 22, 2024, and vacated in full in final appealable orders in two different courts on January 9, 2025, and February 19, 2025.¹ On January 31, 2025, the Department announced it would enforce the regulations that existed prior to the promulgation of the 2024 Rule,² and, in fact, has not enforced the 2024 Rule in over a year and a half. With this final rule, the regulations currently in force—those that existed prior to the promulgation of the 2024 Rule—will be returned to the CFR to provide clarity and transparency, allowing recipients of Federal financial assistance, students, and parents to know what rules apply by simply reading the CFR.

The Department makes four minor changes to the regulatory text as it existed prior to promulgation of the 2024 Rule. First, the Department does not reinstate a single sentence that appeared in the prior version of 34 CFR 106.45(b)(6)(i) (2021) that was vacated by *Victim Rts. L. Ctr. v. Cardona*, 552 F. Supp. 3d 104, 132-34 (D. Mass. 2021); *Victim Rts. L. Ctr. v. Cardona*, No. 20-cv-11104, 2021 WL 3516475 (D. Mass. Aug. 10, 2021) (order). That vacatur is final.

Second, the Department does not reinstate Appendix A to 34 CFR part 106 (2021), which was previously removed by a final rule published by the Department earlier this year, *Rescinding Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational*

¹ See below for a fuller discussion, including citations.

² The January 31, 2025, announcement was later superseded by guidance dated February 4, 2025. Craig Trainor, Acting Assistant Secretary for Civil Rights, Dear Colleague Letter (Feb. 4, 2025), <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf> (“[The Department] will enforce Title IX under the provisions of the 2020 Title IX Rule, rather than the 2024 Title IX Rule.” (footnotes omitted)); see also Press Release, U.S. Dep’t of Educ., U.S. Department of Education to Enforce 2020 Title IX Rule Protecting Women (Jan. 31, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-enforce-2020-title-ix-rule-protecting-women>.

Education Programs, 91 FR 46285–94 (July 23, 2026). That final rule rescinded Appendix B to 34 CFR part 100, and the two cross-references to that appendix. 91 FR 46294. One of those rescinded cross-references was Appendix A to 34 CFR part 106 (2021). *Id.* Reinstating Appendix A as part of this final rule would be pointless because it contains no substantive information. It is a mere cross-reference to provisions that no longer exist.

Third, the Department does not reinstate 34 CFR 106.41(d) (2021), which provided recipients an “adjustment period” of either one year or three years to come into compliance with the remainder of 34 CFR 106.41. The remainder of 34 CFR 106.41 has not been amended since it was transferred from the Department of Health, Education, and Welfare (HEW) to the Department in 1980. See 45 FR 30962. Reinstating 34 CFR 106.41(d) (2021) could create the impression that recipients will now have another year or three to come into compliance with 34 CFR 106.41, which is absolutely not the Department’s intent. The adjustment period created by 34 CFR 106.41(d) expired over four decades ago. That subsection is obsolete and tied to the effective date of the regulation, rather than a fixed date; reinstating it could create confusion or new substantive rights and, accordingly, the Department does not reinstate it.

Fourth, the Department does not reinstate 34 CFR 106.3(c)–(d) (2021). 34 CFR 106.3(c) required recipients to assess their policies and make appropriate changes “within one year of the effective date of this part.” That one-year deadline passed about 45 years ago. 34 CFR 106.3(d) required recipients to maintain records from their reviews conducted under subsection 106.3(c) for at least three years, to be provided to the Assistant Secretary for Civil Rights on request. That three-year deadline passed approximately four decades ago. Reinstating these subsections could create the impression that recipients are all required to go through the review and record-keeping process a second time. Thus, reinstating the prior language would actually constitute a

substantive change, or at least create the appearance of one. The Department does not intend to reimpose the requirements of 34 CFR 106.3(c)–(d) (2021) and therefore does not reinstate those sections in this final rule.

II. Discussion

a. The 2020 Rule

Title IX of the Education Amendments of 1972 prohibits sex discrimination “under any education program or activity receiving Federal financial assistance.” 20 U.S.C. 1681(a). The Department’s implementing regulations are codified at 34 CFR part 106 and have governed Title IX compliance since 1975.³

The Department made considerable amendments to the Title IX regulations in a final rule promulgated on May 19, 2020, and effective on August 14, 2020.

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 FR 30026-30579 (May 19, 2020) (2020 Rule). The Department had previously published a notice of proposed rulemaking on November 29, 2018, announcing the proposed rule and generating more than 124,000 public comments. 83 FR 61462 (Nov. 29, 2018); 85 FR 30031, 30055. The Department carefully considered those comments and made resulting changes to the proposed rule, which were explained in careful detail in the final rule. 85 FR 30031, 30053, 30055-30572. The 2020 Rule was effective on August 14, 2020, and remained in force at least until the 2024 Rule became effective (in those jurisdictions where in fact it became effective (see discussion below)).

The Title IX regulations were modified just once between promulgation of the 2020 Rule and promulgation of the 2024 Rule. On September 23, 2020, the Department

³ The Title IX implementing regulations were initially promulgated in 1975 by HEW at 45 CFR Part 86. Following the creation of the Department of Education in 1980, the regulations were transferred to the Department and recodified, without substantive change, 34 CFR Part 106. See 20 U.S.C. 3441(a)(3); 45 CFR 30802, 30955-65 (May 9, 1980).

promulgated a final rule, effective on November 23, 2020, which amended 34 CFR 106.12 by adding subsections (c) and (d). 85 FR 59916, 59916, 59980-81 (Sept. 23, 2020). 34 CFR 106.12(c) clarifies which institutions are eligible for exemption from the Title IX regulations due to being “controlled by a religious organization,” the religious tenets of which are inconsistent with Title IX. *See id.*; 34 CFR 106.12(a). 34 CFR 106.12(d) adds a severability provision to the remainder of section 106.12. Neither subsection had any impact on the operation of the 2020 Rule, except as to religious institutions that sought exemption from it. 34 CFR 106.12(c)-(d) were not altered at all by the 2024 Rule. *See* 89 FR 33886. They are likewise not impacted by this final rule.

The 2020 Rule was the subject of multiple post-issuance legal challenges. All but one failed, with that one only succeeding in small part. Among the unsuccessful actions were *Pennsylvania v. DeVos*, 480 F. Supp. 3d 47 (D.D.C. 2020) (denying motion for preliminary injunction), and *New York v. United States Dep’t of Educ.*, 477 F. Supp. 3d 279 (S.D.N.Y. 2020) (same). The one legal challenge that was partially successful was *Victim Rights Law Center. v. Cardona*, in which the district court vacated the portion of 106.45(b)(6)(i) that prohibited consideration of statements not subject to cross-examination, finding that prohibition to be “arbitrary and capricious in violation of section 706(2)(A) of the Administrative Procedure Act[.]” 552 F. Supp. at 132-34; 2021 WL 3516475, at *1.

At issue was a single sentence in the 2020 Rule’s regulatory text, which spans nearly seven

pages in the Federal Register. 85 FR 30572–79. That single sentence reads as follows:

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.

85 FR 30577. The district court reasoned that the Department had failed to consider the consequences of that sentence when read together with other challenged provisions and that, so read together, this sentence would render hearings conducted pursuant to 34 CFR 106.45 (2021) to be “a remarkably hollow gesture.” *Victim Rts. L. Ctr.*, 552 F. Supp. at 132. The same court, however, sustained the remainder of the 2020 Rule. *Id.* at 138 (“For these reasons, the Court finds and rules and, thus declares, that with the exception of section 106.45(b)(6)(i)’s prohibition on all statements not subject to cross-examination, the Final Rule does not violate the APA or the Fifth Amendment.”).

b. The 2024 Rule

The 2024 Rule was promulgated on April 29, 2024, with a declared effective date of August 1, 2024. 89 FR 33474. It was challenged in court almost immediately in ten different cases. In eight of those ten cases,⁴ the Department was preliminarily enjoined from enforcing the 2024 Rule in 26 states and in several individual schools or school districts in the remaining jurisdictions: (1) Memorandum Ruling at 39-40, *Louisiana v. Dep’t of Educ.*, No. 24-cv-563 (W.D. La. June 13, 2024) (enjoining enforcement in Louisiana, Mississippi, Montana, and Idaho); (2) Memorandum Opinion and Order at 93, *Tennessee v. Cardona*, No. 24-cv-72 (E.D. Ky. June 17, 2024) (enjoining enforcement in Tennessee, Kentucky, Ohio, Indiana, Virginia, and West Virginia); (3) Memorandum and Order at 53, *Kansas v. Dep’t of Educ.*, No. 24-cv-4041 (D. Kan. July 2, 2024)

⁴ Litigation in the other two cases terminated before any decision on the merits. *Oklahoma State Department of Education v. United States*, was dismissed without prejudice in January 2025 under Fed. R. Civ. P. 4(m) due to failure of service. Order, *Okla. St. Dep’t of Educ. v. United States*, No. 24-cv-459 (W.D. Okla. Jan. 16, 2025). *Great Education Initiative v. Department of Education* was dismissed with prejudice, without any finding on the merits, because the parties “had reached an agreement to resolve all of the claims in this matter” on July 28, 2025. *Great Educ. Initiative v. Dep’t of Educ.*, No. 24-cv-12710 (E.D. Mich. July 29, 2025), ECF No. 37.

(enjoining enforcement in Kansas, Alaska, Utah, Wyoming, and some individual schools); (4) Memorandum Opinion and Order at 32, *Texas v. United States*, No. 24-cv-86-Z (N.D. Tex. July 11, 2024) (enjoining enforcement in Texas); (5) Memorandum Opinion & Order at 14-15, *Carroll Indep. Sch. Dist. v. Dep't of Educ.*, No. 24-cv-461 (N.D. Tex. July 11, 2024) (enjoining enforcement against a single school district in Texas); (6) Memorandum and Order at 55-56, *Arkansas v. Dep't of Educ.*, No. 24-cv-636 (E.D. Mo. July 24, 2024) (enjoining enforcement in Arkansas, Missouri, Iowa, Nebraska, North Dakota, and South Dakota); (7) Order at 28-29, *Oklahoma v. Cardona*, No. 24-cv-461 (W.D. Okla. July 31, 2024) (enjoining enforcement in Oklahoma); and (8) Order at 23, *Alabama v. U.S. Sec'y of Educ.*, No. 24-12444 (11th Cir. Aug. 22, 2024) (enjoining enforcement in Alabama, Florida, Georgia, and South Carolina).

The Department sought a stay pending appeal in a number of these cases. The requests in *Louisiana* and *Tennessee* were ultimately denied by the Supreme Court on August 16, 2024. The Court explained:

[A]ll Members of the Court today accept that the plaintiffs were entitled to preliminary injunctive relief as to three provisions of the rule, including the central provision that newly defines sex discrimination to include discrimination on the basis of sexual orientation and gender identity. But the [Department] argues (and the dissent agrees) that those provisions should be severed and that the other provisions of the new rule should still be permitted to take effect in the interim period while the [Department]'s appeals of the preliminary injunctions are pending in the Courts of Appeals. The lower courts concluded otherwise because the new definition of sex discrimination is intertwined with and affects many other provisions of the new rule. Those courts therefore concluded, at least at this preliminary stage, that the allegedly unlawful provisions are not readily severable from the remaining provisions. The lower courts also pointed out the difficulty that schools would face in determining how to apply the rule for a temporary period with some provisions in effect and some enjoined.

Dep't of Educ. v. Louisiana, 603 U.S. 866, 867-68 (2024) (per curiam). The Court concluded that the Department failed to provide a “sufficient basis to disturb the lower courts’ interim conclusions” on the proper scope of the injunctions. Accordingly, the

Department remained enjoined from enforcing any part of the 2024 Rule in each of the 26 states and in several schools and districts in other states. See *id.* at 868.

Because the stated effective date of the 2024 Rule was August 1, 2024, and seven of the preliminary injunctions were entered before August 1, 2024, the 2024 Rule was *never* enforceable in 22 states. It was enforceable in four states (Alabama, Florida, Georgia, and South Carolina) from August 1 until preliminary injunction was entered just a few weeks later.

In two separate cases, final judgment was entered against the Department. In both instances, the 2024 Rule was vacated in full. Judgment, *Tennessee v. Cardona*, No. 24-cv-72 (E.D. Ky. Jan. 9, 2025); Final Judgment, *Carroll Indep. Sch. Dist. v. Dep't of Educ.*, No. 24-cv-461 (N.D. Tex. Feb. 19, 2025). (Each of the other six cases in which enforcement of the 2024 Rule was preliminarily enjoined were subsequently terminated.⁵)

The *Tennessee* vacatur rested on four independent grounds, finding that the 2024 Rule: (1) exceeds the Department's statutory authority under 20 USC 1681 by redefining "sex" to encompass gender identity and other categories; (2) violates the First Amendment by compelling speech and chilling protected expression through its expanded harassment standard; (3) violates the Spending Clause because it (a) induced unconstitutional action and (b) conditioned Federal funding on compliance with nondiscrimination provisions on the basis of gender identity, without prior "clear notice"

⁵ (1) Notice of Voluntary Dismissal, *Louisiana v. Dep't of Educ.*, No. 24-cv-563 (W.D. La. June 8, 2026); (2) Joint Stipulation to Dismiss, *Kansas v. Dep't of Educ.*, No. 24-cv-4041 (D. Kan. June 11, 2026); (3) Order, *Arkansas v. Dep't of Educ.*, No. 24-cv-636 (E.D. Mo. June 11, 2026) (issued following notice of voluntary dismissal on June 9, 2026); (4) Notice, *Oklahoma v. Cardona*, No. 24-cv-461 (W.D. Okla. July 31, 2024) (administratively terminating the action pending subsequent filing by the parties; there have been no filings reopening the case); (5) Notice of Voluntary Dismissal, *Alabama v. Cardona*, No. 24-cv-533 (N.D. Ala. May 29, 2026); and (6) Notice, *Texas v. United States*, 24-cv-86-Z (N.D. Tex. (Aug. 5, 2026) (issued following the parties' Joint Stipulation of Dismissal Without Prejudice on August 3, 2026).

by Congress in Title IX (and, indeed, “not contemplated by the text of the statute”); and (4) violates the Administrative Procedure Act (APA) for being “arbitrary and capricious” in failing to “provide a reasoned explanation for departing from [the Department’s] longstanding interpretation of Title IX.” *Tennessee v. Cardona*, 762 F. Supp. 3d 615, 622-28 (E.D. Ky. 2025), as amended (Jan. 10, 2025). A subsequent appeal from this ruling was dismissed with prejudice in May 2026, following the parties’ joint stipulation pursuant to Fed. R. App. P. 42(b)(1). Joint Stipulation to Dismiss Appeal, *Tennessee v. McMahon*, Nos. 25-5205, 25-5206 (6th Cir. May 8, 2026). The district court’s vacatur was thus final.

The *Carroll Indep. Sch. Dist.* vacatur likewise rested on two similar independent grounds, finding that the 2024 Rule: (1) violates the APA for being “arbitrary and capricious” in that it (a) “turns Title IX on its head” by defining a prohibition of discrimination “on the basis of sex” to include discrimination based on “gender identity,” (b) holds recipients responsible for harm that is more than de minimis, and (c) “eviscerates the statute and renders it largely meaningless” by undermining the distinction made by Title IX between males and females; and (2) violates the First Amendment by compelling speech and chilling protected expression through its expanded harassment standard. *Carroll Indep. Sch. Dist. v. Dep’t of Educ.*, No. 24-cv-461, 2025 WL 1782572, at *3-*4 (N.D. Tex. Feb. 19, 2025). A subsequent appeal from this ruling was dismissed in May 2026, following the parties’ joint stipulation pursuant to Fed. R. App. P. 42(b). Mandate, *Carroll Indep. Sch. Dist. v. Dep’t of Educ.*, No. 25-10651 (5th Cir. May 19, 2026). The district court’s vacatur was thus final.

Thus, the 2024 Rule was vacated in full on January 9, 2025, in final judgments that are no longer appealable. Those vacaturs have not been disturbed. To “vacate” a rule means “to annul; to cancel or rescind; to declare, to make, or to render, void; to defeat; to deprive of force; to make of no authority or validity; to set aside” that rule.

Action on Smoking & Health v. C.A.B., 713 F.2d 795, 797 (D.C. Cir. 1983). It has “the effect of reinstating the rules previously in force[.]” *Id.*; *Keystone-Conemaugh Projects LLC v. United States Env’t Prot. Agency*, 100 F.4th 434, 446 (3d Cir. 2024) (“When a court vacates an agency’s rule, it restores the status quo before the invalid rule took effect”). Accordingly, on January 31, 2025, the Department announced it would enforce the regulations that existed prior to the promulgation of the 2024 Rule,⁶ and, in fact, has not enforced the 2024 Rule in over a year and a half.

III. Need for rulemaking

This final action does not reopen debate on the 2020 Rule or the 2024 Rule. It does not assess the Department’s policy preferences as between those two rules. It does not choose between those two rules. Nor does it attempt to justify the policy decisions made in the 2020 Rule or criticize those made in the 2024 Rule. Instead, this final rule merely returns the CFR to its appearance prior to the promulgation of the 2024 Rule, with four minor exceptions addressed below.

a. The 2024 Rule is null and should be removed from the CFR

Although the 2024 Rule was vacated in full on January 9, 2025, and has not been enforced at any time after January 31, 2025, the CFR has yet to be updated. The CFR continues to publish Title IX’s implementing regulations as modified by the since-vacated 2024 Rule, creating ambiguity and a source of potential confusion for recipients, courts, parents and students, and the public writ-large. A formal amendment to the regulations is necessary to align the codified text with operative law.

⁶ The January 31, 2025, announcement was later superseded by guidance dated February 4, 2025. Craig Trainor, Acting Assistant Secretary for Civil Rights, Dear Colleague Letter (Feb. 4, 2025), <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf> (“[The Department] will enforce Title IX under the provisions of the 2020 Title IX Rule, rather than the 2024 Title IX Rule.” (footnotes omitted)); see also Press Release, U.S. Dep’t of Educ., U.S. Department of Education to Enforce 2020 Title IX Rule Protecting Women (Jan. 31, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-enforce-2020-title-ix-rule-protecting-women>.

Vacatur of an amendatory rule restores the prior regulatory text as a matter of law. *Action on Smoking & Health v. C.A.B.*, 713 F.2d 795, 797 (D.C. Cir. 1983) (“To ‘vacate,’ as the parties should well know, means ‘to annul; to cancel or rescind; to declare, to make, or to render, void; to defeat; to deprive of force; to make of no authority or validity; to set aside.’”) (“[T]he judgment of this court had the effect of reinstating the rules previously in force[.]”); *Keystone-Conemaugh Projects LLC v. United States Env’t Prot. Agency*, 100 F.4th 434, 446 (3d Cir. 2024) (“When a court vacates an agency’s rule, it restores the status quo before the invalid rule took effect”). The 2024 Rule is a nullity and the CFR should be updated to reflect that fact. This action thus updates the CFR.

b. Reliance interests

No substantial nationwide reliance interest in the framework developed by the 2024 Rule ever arose. The 2024 Rule was preliminarily enjoined across nearly half of the United States before it even took effect. It would ultimately be preliminarily enjoined in a majority of jurisdictions by the end of August 2024 and remained so enjoined until its vacatur in January 2025. Further, in the minority of jurisdictions in which the rule was not enjoined, it was operative for only a brief period (August 1, 2024, to January 9, 2025), and (at least as to many of those jurisdictions) not as to every student or every school. Recipients in those jurisdictions that made changes to their compliance protocols did so in full knowledge of active multistate litigation in which nearly every decision that reached the merits of the 2024 Rule or at least the question whether to enjoin the 2024 Rule—including a *per curiam* procedural decision by the Supreme Court—found the 2024 Rule materially deficient. The recipients were thus on notice that the 2024 Rule was, at the very least, at substantial risk. Since at least January 31, 2025, when the Department formally announced that it would no longer enforce the 2024 Rule, the recipients were on notice that the 2020 Rule, not the 2024 Rule,

governed. The recipients were already well familiar with the 2020 Rule, which was enforced in every jurisdiction for at least four years. The recipients have had over a year and a half to revert back to the framework under the 2020 Rule. Any remaining reliance interest in the 2024 Rule is minimal and is outweighed by the Department's need to have the CFR reflect the rules it is enforcing and the very significant (and closely related) interest that all recipients have in easy access to a clear statement of the regulations that govern them, codified explicitly in the CFR.

IV. Changes to 34 CFR Part 106

This rule revises 34 CFR part 106 to read as it appeared on April 28, 2024, the day before the 2024 Rule was promulgated, with several exceptions. First, it omits one sentence from 34 CFR 106.45(b)(6)(i) (2021), consistent with *Victim Rts. L. Ctr.*, 552 F. Supp. at 132-34; 2021 WL 3516475 at *1. Second, it does not reinstate Appendix A to 34 CFR part 106 (2021). Third, it does not reinstate 34 CFR 106.3(c)–(d), 106.41(d), which are obsolete and tied to the effective date of the regulation such that reinstating them might have altered their meaning.

Explanation of Changes

The Department amends each section that was amended by the 2024 Rule by replacing those entire sections with the text that appeared on April 28, 2024. The Department makes no edits or other changes to any of that text, with some minor exceptions described below.

Because the 2024 Rule did not amend Appendix A to 34 CFR part 106 (2021), and because Appendix A has since been removed by a different action, 91 FR 46294, this final rule makes no change regarding Appendix A (that is, this final rule does not reinstate Appendix A into part 106). Further, the Department notes that reinstating Appendix A as part of this final rule would be pointless because it contains no

substantive information. It is a mere cross-reference to Appendix B to 34 CFR Part 100 (2021), which no longer exists. 91 FR 46294.

Further, the Department does not reinstate 34 CFR 106.41(d) (2021), which provided recipients an “adjustment period” of either one year or three years to come into compliance with the remainder of 34 CFR 106.41. The remainder of 34 CFR 106.41 has not been amended since it was transferred from HEW to the Department in 1980. See 45 FR 30962. Reinstating 34 CFR 106.41(d) (2021) could create the impression that recipients will now have another year or three to come into compliance with 34 CFR 106.41, which is absolutely not the Department’s intent. The adjustment period created by 34 CFR 106.41(d) expired over four decades ago. That subsection is obsolete and tied to the effective date of the regulation, rather than a fixed date; reinstating it could create confusion or new substantive rights, accordingly, the Department does not reinstate it

Similarly, the Department does not reinstate 34 CFR 106.3(c)–(d) (2021). 34 CFR 106.3(c) required recipients to assess their policies and make appropriate changes “within one year of the effective date of this part.” That one-year deadline passed about 45 years ago. 34 CFR 106.3(d) required recipients to maintain records from their reviews conducted under subsection 106.3(c) for at least three years, to be provided to the Assistant Secretary for Civil Rights on request. That three-year deadline passed approximately four decades ago. Reinstating these subsections could create the impression that recipients are all required to go through the review and record-keeping process a second time. Thus, reinstating the prior language would actually constitute a substantive change, or at least create the appearance of one. The Department does not intend to reimpose the requirements of 34 CFR 106.3(c)–(d) (2021) and therefore does not reinstate those sections in this final rule.

The sections revised by this final rule, the same sections revised by the 2024 Rule (with two exceptions), are: 34 CFR 106.1; 106.2; 106.6; 106.8; 106.10; 106.11; 106.15; 106.16; 106.17; 106.18; 106.21; 106.30; 106.31; 106.40; 106.44; 106.45; 106.46; 106.47; 106.48; 106.51; 106.57; 106.60; 106.71; & 106.81. See 89 FR 33882–896 (also listing 34 CFR 106.3 and 106.41, which are not amended by this final rule, for reasons explained above).

The Department does not reinstate the following sentence from 34 CFR 106.45(b)(6)(i) (2021), as it appeared before promulgation of the 2024 Rule:

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.

See 85 FR 30577. As noted above, *Victim Rights Law Center* vacated the 2020 Rule's "prohibition on all statements not subject to cross-examination" appearing in 34 CFR 106.45(b)(6)(i). 552 F. Supp. at 132-34; 2021 WL 3516475 at *1. The court did not, however, specify how the Department and subsequent courts were to apply the remainder of section 106.45(b)(6)(i). Other than the sentence appearing in the block quote, no portion of section 106.45(b)(6)(i) (2021) is directly implicated by the district court's vacatur.

The Department has determined that the best course of action is to omit the entire sentence appearing in the block quote above, rather than to attempt to rewrite it in a manner that might have inadvertently altered its meaning or caused it to deviate from the authors' original intent. While the proviso in the second half of the sentence (starting with the words "provided, however") does not directly prohibit decision-makers from considering evidence that is not subject to cross-examination, the manner in which it appears—as a proviso on that prohibition—implies that the drafters deemed the two

clauses to be dependent on each other. Removing one without the other runs the risk of creating a scenario not contemplated by the drafters. Accordingly, the entire sentence is omitted from this final rule.

V. Regulatory Certifications

Exemption from Notice and Comment under the Administrative Procedure Act

1. Exemption under 5 U.S.C. 553(a)(2)

The Department issues this final rule without prior public notice and comment pursuant to the Administrative Procedure Act's exemption for rules "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." 5 U.S.C. 553(a)(2).

Title IX concerns nondiscrimination conditions for the receipt of Federal financial assistance, and, more particularly, for the receipt of various Federal grants or loans, "Federal personnel," and any other Federal agreement, arrangement, or other contract "which has as one of its purposes the provision of assistance" to any education program or activity pursuant to a law administered by the Department. 34 CFR 106.2 (both as currently codified in the CFR and as effective on April 28, 2024, the day before the 2024 Rule was promulgated). Recipients are required, as a condition on the approval of any request for Federal financial assistance and the subsequent extension of any Federal financial assistance, to provide the Department with an "assurance" of compliance with all requirements imposed by the Title IX regulations. 34 CFR 106.4; *see Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 217–18 (2022) (observing that Congress enacted a similar civil rights statute "[p]ursuant to its authority to 'fix the terms on which it shall disburse federal money'" (internal citation omitted)).

Section 553(a)(2) exempts from notice and comment rulemaking matters "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." The Department has carefully reviewed those broad categories

of exempt matters together with the definition of Federal financial assistance at 34 CFR 106.2, the specific requirements of 34 CFR 106.4, and the types of Federal financial assistance provided by the Department. Based on this review, the Department has concluded that all of the types of Federal financial assistance provided by the Department that are implicated in this final rule are within the categories of exempt activities listed in 5 U.S.C. 553(a)(2). This final rule is thus exempt from notice and comment rulemaking.

Similarly, the Department's reliance on 5 U.S.C. 553(a)(2) is consistent with the definition of Federal financial assistance provided by the Office of Management and Budget (OMB) under 2 CFR 200.1, which defines Federal financial assistance with the same categories as the Administrative Procedure Act's exception for rules "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." 5 U.S.C. 553(a)(2). With potentially limited exceptions not applicable to the Department, all the forms of Federal financial assistance set forth under 2 CFR 200.1 that the Department administers would fall under the "public property, loans, grants, benefits, or contracts" exception.

Courts have found that rules related to these forms of financial assistance are exempt from notice-and-comment rulemaking. *See, e.g., Cal. Dep't of Educ. v. Bennett*, 849 F.2d 1227, 1236 (9th Cir. 1988) (holding that Education Department rule concerning the return of Federal funds used for improper purposes did not require notice-and-comment rulemaking procedures); *Nat'l Wildlife Fed'n v. Snow*, 561 F.2d 227, 229 (D.C. Cir. 1976) (holding that a Federal Highway Administration rule governing the issuance of Federal funding for highways was exempt from notice-and-comment procedures); *Texas v. Becerra*, 577 F. Supp. 3d 527, 547 (N.D. Tex. 2021) ("The APA specifically exempts matters relating to 'grants,' and Head Start is a federal grant program.").

This rule relates to the public property, loans, grants, benefits and contracts that constitute Federal financial assistance because it restates and reclarifies the rules in force that govern compliance determinations under Title IX and that form the basis of the assurances that recipients must make under 34 CFR 106.4. The ‘relating to’ standard is a broad one, easily satisfied by this rule. See *Cummings*, 596 U.S. at 217–18 (observing that Congress enacted a similar civil rights statute “[p]ursuant to its authority to ‘fix the terms on which it shall disburse federal money’” (citation omitted)). As one court explained, “Section 553(a)(2) cuts a wide swath” and “a broad domain is preserved for its operation.” *Humana of S.C., Inc. v. Califano*, 590 F.2d 1070, 1082 (D.C. Cir. 1978). “[T]o the extent that any one of the enumerated categories is clearly and directly involved in the regulatory effort at issue, the Act’s procedural compulsions are suspended.” *Id.* (internal quotation marks omitted). The rule is therefore exempt under 5 U.S.C. 553(a)(2). See *Education Programs or Activities Receiving or Benefitting From Federal Financial Assistance*, 82 FR 46655 (Oct. 6, 2017) (invoking exception to amend Title IX regulations to “promote consistency in the enforcement of Title IX for [Department of Agriculture] financial assistance recipients”); *Preserving Community and Neighborhood Choice*, 85 FR 47899 (Aug. 7, 2020) (invoking exception to repeal Housing and Urban Development rule regarding Federal grantees); *Participation by Minority Business Enterprise in Department of Transportation Programs*, 53 FR 18285 (May 23, 1988) (invoking exception to expand coverage of Department of Transportation regulation regarding Federal Aviation Administration’s airport financial assistance program); *Nondiscrimination on the Basis of Handicap in Federally Assisted Programs: Suspension of Guidelines With Respect to Mass Transportation*, 46 FR 40687 (Aug. 11, 1981) (invoking exception to suspend Department of Justice guidelines regarding the prohibition of disability discrimination in transportation programs and activities receiving Federal financial assistance).

Thus, the Department issues this action without prior public notice and comment, under 5 U.S.C. 553(a)(2). Further, because the exception in section 553(a)(2) applies to section 553 as a whole, the Department issues this action without the delayed effective date typically required by 5 U.S.C. 553(d).

2. Exemption under 5 U.S.C. 553(b)(B), 553(d)(3)

In the alternative, the Department finds good cause for issuing this action without prior public notice and comment, and without a delayed effective date, under 5 U.S.C. 553(b)(B) and 553(d)(3).

5 U.S.C. 553(b)(B) exempts regulatory actions from the notice and comment requirement when compliance with that requirement would be “impracticable, unnecessary, or contrary to the public interest.” The Department finds good cause to dispense with public notice and comment because such notice and comment would be both unnecessary and contrary to the public interest.

Public notice and comment is deemed “unnecessary” under section 553(b)(B) when “the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.” *Mack Trucks, Inc. v. E.P.A.*, 682 F.3d 87, 94 (D.C. Cir. 2012); *Nat. Res. Def. Council v. Nat’l Highway Traffic Safety Admin.*, 894 F.3d 95, 114 (2d Cir. 2018); *see also Metzenbaum v. FERC*, 675 F.2d 1282, 1291 (D.C. Cir. 1982) (per curiam) (holding that conducting notice and comment in exercising nondiscretionary actions would be a “futile gesture” and therefore “unnecessary” under 5 U.S.C. 553(b)(B)). This final rule fits that description. The Department here does nothing but remove from the CFR regulations that have been vacated (and have not been enforced for at least a year and a half) and replaces them with those regulations that are controlling. *See Retirement Security Rule: Definition of an Investment Advice Fiduciary: Notice of Court Vacatur*, 91 FR 13503, 13504-05 (Mar. 20, 2026) (“The Department has determined that there is good cause

for dispensing with public comments in this case, inasmuch as this final rule merely conforms the text in the CFR to reflect the mandate of the courts' decisions Because the Department is merely giving effect to the courts' orders, and is not exercising discretion with respect to this action, any notice and comment process would be unnecessary[.]”)

Aside from four minor changes described herein, the regulations that will exist after this final rule appear exactly as they did before the since-vacated 2024 Rule was promulgated. This action reflects no essential legal or policy determination by the Department, other than the fact that the 2024 Rule is not in force. The purpose of this final rule is simply to update the CFR.

For much the same reason, the Department finds that engaging in public notice and comment would be contrary to public interest. Notice and comment would considerably delay the Department's efforts to update the CFR. And no comment, no matter how persuasive, could plausibly persuade the Department to decline to remove the 2024 Rule from the CFR, which is “already mandated by the courts.” See *Retirement Security Rule: Definition of an Investment Advice Fiduciary: Notice of Court Vacatur*, 91 FR 13503, 13505 (Mar. 20, 2026). The public has an interest in public codification of the regulations that are in force. The 2024 Rule has been vacated in a final judgment no longer subject to appeal. It is null. It should be removed from the public codification forthwith; any further delay is contrary to the public interest.

The Department similarly finds good cause to issue this action without a delayed effective date, pursuant to 5 U.S.C. 553(d)(3). Delaying the effective date of this final rule would only prolong the ambiguity caused by the fact that the CFR is in need of an update. The text appearing in the CFR has not been in force for at least a year and a half. Delaying the effective date of this final rule would serve no legitimate purpose and is plainly not in the public interest.

Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws

EO 12250 delegates to the Attorney General the President's function of approving rules, regulations, and orders of general applicability under section 902 of the Civil Rights Act of 1964. The Department of Justice has reviewed and approved this rule.

Executive Orders 12866, Regulatory Planning and Review and 13563, Improving Regulation and Regulatory Review

EO 12866, 58 FR 51735 (Oct. 4, 1993), requires agencies to consider both the quantitative and qualitative costs and benefits of a rule and to adopt a regulation only if the rule justifies its costs. This rule has been drafted and reviewed in accordance with section 1(b) of EO 12866, as well as with EO 13563, 76 FR 3821 (Jan. 21, 2011), which supplements and explicitly affirms the principles of EO 12866. Section 2(c) of EO 13563 states that agencies may consider qualitative values that are either difficult or impossible to quantify, while section 3 directs agencies to harmonize their regulations to simplify their burden and to avoid inconsistent and overlapping requirements.

Under section 6(a) of E.O. 12866, the Office of Information and Regulatory Affairs (OIRA) within OMB determines whether a regulatory action is significant and, therefore, subject to OMB review. E.O. 12866 also requires agencies to submit "significant regulatory actions" to OIRA for review. OIRA has determined that this final rule is a "significant regulatory action" under section 3(f) of E.O. 12866. Accordingly, the Department submitted this final rule to OIRA for review under E.O. 12866.

As discussed in the preamble, this action is necessary to conform the CFR to the regulations that are currently in force and have been in force for at least a year and a half. It effects no change of current substantive law. The Department does not anticipate this action imposing any costs on any party.

Executive Order 14219, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative

EO 14219, 90 FR 10583 (Feb. 25, 2025), directs agencies to identify regulations that, among other things, are unconstitutional or are constitutionally suspect, based on unlawful delegations of legislative power, or that are based on anything but the best reading of the authorizing statute. As discussed above, regulations currently appearing in the CFR have been vacated by binding court order. This rule replaces those regulations with those that are in force and is thus issued in furtherance of EO 14219.

Executive Order 14192, Unleashing Prosperity Through Deregulation

Executive Order 14192, 90 FR 9065 (Feb. 6, 2025), establishes a regulatory budget process for agencies and requires them to offset new regulatory burdens or costs. This rule is not expected to impose any financial costs on any party, but will make it far easier for the public, regulated entities, and parents and children in the nation's schools to better understand which regulations govern compliance with Title IX and eliminates the confusion created by a CFR that is over a year and a half out of date. Such confusion has a tendency to cause over-compliance, with affected parties trying to comply with both the 2024 Rule and the regulations actually in force. Accordingly, the Department expects this rule to be a deregulatory action under EO 14192.

Executive Order 13132, Federalism

EO 13132, 64 FR 43255 (Aug. 10, 1999), prohibits an agency from publishing any rule that has federalism implications if the rule imposes substantial direct compliance costs on State and local governments and is not required by statute or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the EO. This rule will not have a substantial direct effect on the relationship between the Federal government and the States, on distribution of power and responsibilities among various levels of government, or on States'

policymaking discretion. This rule does not subject recipients to new obligations. As a result, and in accordance with section 6 of EO 13132, the Department has determined that these amendments to the Department's regulations do not have sufficient federalism implications to warrant preparation of a federalism summary impact statement as outlined in section 6(c)(2).

Executive Order 12988, Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and (b)(2) of EO 12988, 61 FR 4729 (Feb. 7, 1996), to specify provisions in clear language. Pursuant to section 3(b)(1)(I) of the EO, nothing in this final rule or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the programs that are the subject of this final rule is intended to create any legal or procedural rights enforceable against the United States.

Executive Order 14294, Overcriminalization in Federal Regulations

EO 14294, 90 FR 20363 (May 14, 2025), requires agencies promulgating regulations with offenses potentially subject to criminal enforcement to explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to each element of those offenses. This rule does not impose a criminal regulatory penalty and is thus exempt from EO 14294's requirements.

Paperwork Reduction Act, 44 U.S.C. §§ 3501–3520

Pursuant to the Paperwork Reduction Act, agencies must consider whether a rule will create additional burdens related to recordkeeping, paperwork, or information collection. This rule will not impose any additional burdens or requirements in these respects.

Regulatory Flexibility Act, 5 U.S.C. Chapter 6

The Regulatory Flexibility Act ("RFA"), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and

make available to the public a final regulatory flexibility analysis that describes the effect of a rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required “to publish a general notice of proposed rulemaking” prior to issuing the final rule. See 5 U.S.C. 604(a). Because this rule is being issued without a prior notice of proposed rulemaking, on the grounds set forth above, a regulatory flexibility analysis is not required under the RFA. Further, even if the RFA were applicable here, the Department would find that this rule will not have a significant economic impact on a substantial number of small entities because these regulatory changes do not impose any new substantive obligations on Federal funding recipients. All Federal funding recipients remain bound by the Title IX regulations that are already in force.

Unfunded Mandates Reform Act, 2 U.S.C. Chapter 25

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare assessments of any rule that would result in the annual expenditure of more than \$100 million by State, local, or Tribal governments, or the private sector. 2 U.S.C. 1503(2) exempts from the Act's coverage a proposed or final rule such as this one that “establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.” This rule is therefore not subject to the provisions of the Act.

Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this rule is not a “major rule” as defined by the Congressional Review Act, 5 U.S.C. 804(2).

List of Subjects for 34 CFR Part 106

Administrative practice and procedure, Civil rights, Education, Equal employment opportunity, Grant programs, Sex discrimination.

Signing Authority

This document of the U.S. Department of Education was signed on September 25, 2026, by Linda E. McMahon, U.S. Secretary of Education. That document with the original signature and date is maintained by the U.S. Department of Education. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned has been authorized to sign the document in electronic format for publication, as an official document of the U.S. Department of Education. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Tracey St. Pierre,
*Director, Office of the Executive Secretariat, Office of the
Secretary, U.S. Department of Education.*

For the reasons discussed in the preamble, the Secretary of Education amends part 106 of title 34 of the Code of Federal Regulations as set forth below:

**PART 106 – NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION
PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

1. The authority citation for part 106 continues to read as follows:

Authority: 20 U.S.C. 1681 *et seq.*, unless otherwise noted.

2. Section 106.1 is revised to read as follows:

§ 106.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93–568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate

section 844 of the Education Amendments of 1974, Pub. L. 93–380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

3. Section 106.2 is revised to read as follows:

§ 106.2 Definitions.

As used in this part, the term:

(a) *Title IX* means title IX of the Education Amendments of 1972, Pub. L. 92–318, as amended by section 3 of Pub. L. 93–568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

(b) *Department* means the Department of Education.

(c) *Secretary* means the Secretary of Education.

(d) *Assistant Secretary* means the Assistant Secretary for Civil Rights of the Department.

(e) *Reviewing Authority* means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.

(f) *Administrative law judge* means a person appointed by the reviewing authority to preside over a hearing held under this part.

(g) *Federal financial assistance* means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(h) *Program or activity* and *program* means all of the operations of —

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(ii) The entity of a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other post-secondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(i) *Recipient* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.

(j) *Applicant* means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(k) *Educational institution* means a local educational agency (LEA) as defined by section 1001(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (l), (m), (n), or (o) of this section.

(l) *Institution of graduate higher education* means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(m) *Institution of undergraduate higher education* means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(n) *Institution of professional education* means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary.

(o) *Institution of vocational education* means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or

institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(p) *Administratively separate unit* means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(q) *Admission* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(r) *Student* means a person who has gained admission.

(s) *Transition plan* means a plan subject to the approval of the Secretary pursuant to section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

4. Section 106.6 is amended by revising paragraphs (b), (e), and (g) and adding paragraph (h) to read as follows:

§ 106.6 Effect of other requirements and preservation of rights.

* * * * *

(b) *Effect of State or local law or other requirements.* The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

* * * * *

(e) *Effect of Section 444 of General Education Provisions Act (GEPA)/Family Educational Rights and Privacy Act (FERPA).* The obligation to comply with this part is

not obviated or alleviated by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99.

* * * * *

(g) *Exercise of rights by parents or guardians.* Nothing in this part may be read in derogation of any legal right of a parent or guardian to act on behalf of a “complainant,” “respondent,” “party,” or other individual, subject to paragraph (e) of this section, including but not limited to filing a formal complaint.

(h) *Preemptive effect.* To the extent of a conflict between State or local law and title IX as implemented by §§ 106.30, 106.44, and 106.45, the obligation to comply with §§ 106.30, 106.44, and 106.45 is not obviated or alleviated by any State or local law.

5. Section 106.8 is revised to read as follows:

§ 106.8 Designation of coordinator, dissemination of policy, and adoption of grievance procedures.

(a) *Designation of coordinator.* 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.” The recipient must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator pursuant to this paragraph. 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 electronic 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 electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

(b) *Dissemination of policy*—(1) *Notification of policy.* Each recipient must notify persons entitled to a notification under paragraph (a) of this section that the recipient does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by title IX and this part not to discriminate in such a manner. Such notification must state that the requirement not to discriminate in the education program or activity extends to admission (unless subpart C of this part does not apply) and employment, and that inquiries about the application of title IX and this part to such recipient may be referred to the recipient's Title IX Coordinator, to the Assistant Secretary, or both.

(2) *Publications.* (i) Each recipient must prominently display the contact information required to be listed for the Title IX Coordinator under paragraph (a) of this section and the policy described in paragraph (b)(1) of this section on its website, if any, and in each handbook or catalog that it makes available to persons entitled to a notification under paragraph (a) of this section.

(ii) A recipient must not use or distribute a publication stating that the recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by title IX or this part.

(c) *Adoption of grievance procedures.* A recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30. A recipient must provide to persons entitled to a notification under paragraph (a)

of this section notice of the recipient's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond.

(d) *Application outside the United States.* The requirements of paragraph (c) of this section apply only to sex discrimination occurring against a person in the United States.

§ 106.10 [Removed]

6. Remove § 106.10.

7. Section 106.11 is revised to read as follows:

§ 106.11 Application.

Except as provided in this subpart, this part 106 applies to every recipient and to the education program or activity operated by such recipient which receives Federal financial assistance.

8. Section 106.15 is amended by revising paragraph (b) to read as follows:

§ 106.15 Admissions.

* * * * *

(b) *Administratively separate units.* For the purposes only of this section, §§ 106.16 and 106.17, and subpart C, each administratively separate unit shall be deemed to be an educational institution.

* * * * *

9. Section 106.16 is revised to read as follows:

§ 106.16 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of subpart C unless it is carrying out a transition plan approved by the Secretary as described in § 106.17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

10. Section 106.17 is added to read as follows:

§ 106.17 Transition plans.

(a) *Submission of plans.* An institution to which § 106.16 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 106.16 applies shall result in treatment of applicants to or students of such recipient in violation of subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 106.16 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment which emphasizes the institution's commitment to enrolling students of the sex previously excluded.

11. Section 106.18 is added to read as follows:

§ 106.18 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

12. Section 106.21 is amended by revising paragraphs (a) and (c) to read as follows:

§ 106.21 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§ 106.16 and 106.17.

* * * * *

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is “Miss” or “Mrs.” A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

13. Section 106.30 is added to subpart D to read as follows:

§ 106.30 Definitions.

(a) As used in this part:

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient. "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in § 106.8(a).

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Consent. The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault, as referenced in this section.

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed. 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 § 106.8(a), and

by any additional method designated by the recipient. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through 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. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part or under § 106.45, and must comply with the requirements of this part, including § 106.45(b)(1)(iii).

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or

(3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are

designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

(b) As used in §§ 106.44 and 106.45:

Elementary and secondary school means a local educational agency (LEA), as defined in the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, a preschool, or a private elementary or secondary school.

Postsecondary institution means an institution of graduate higher education as defined in § 106.2(l), an institution of undergraduate higher education as defined in § 106.2(m), an institution of professional education as defined in § 106.2(n), or an institution of vocational education as defined in § 106.2(o).

14. Section 106.31 is amended by revising paragraph (a) to read as follows:

§ 106.31 Education programs or activities.

(a) *General.* Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which subpart C does not apply, or (2) an entity, not a recipient, to which subpart C would not apply if the entity were a recipient.

* * * * *

15. Section 106.40 is revised to read as follows:

§ 106.40 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the

part of the student as provided in paragraph (b)(1) of this section shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

16. Section 106.44 is revised to read as follows:

§ 106.44 Recipient's response to sexual harassment.

(a) *General response to sexual harassment.* A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. For the purposes of this section, §§ 106.30, and 106.45, "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. A recipient's

response must treat complainants and respondents equitably by offering supportive measures as defined in § 106.30 to a complainant, and by following a grievance process that complies with § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent. The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in § 106.30, 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. The Department may not deem a recipient to have satisfied the recipient's duty to not be deliberately indifferent under this part based on the recipient's restriction of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.

(b) *Response to a formal complaint.* (1) In response to a formal complaint, a recipient must follow a grievance process that complies with § 106.45. With or without a formal complaint, a recipient must comply with § 106.44(a).

(2) The Assistant Secretary will not deem a recipient's determination regarding responsibility to be evidence of deliberate indifference by the recipient, or otherwise evidence of discrimination under title IX by the recipient, solely because the Assistant Secretary would have reached a different determination based on an independent weighing of the evidence.

(c) *Emergency removal.* Nothing in this part precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies

removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

(d) *Administrative leave.* Nothing in this subpart precludes a recipient from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with § 106.45. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

17. Section 106.45 is revised to read as follows:

§ 106.45 Grievance process for formal complaints of sexual harassment.

(a) *Discrimination on the basis of sex.* A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX.

(b) *Grievance process.* For the purpose of addressing formal complaints of sexual harassment, a recipient's grievance process must comply with the requirements of this section. Any provisions, rules, or practices other than those required by this section that a recipient adopts as part of its grievance process for handling formal complaints of sexual harassment as defined in § 106.30, must apply equally to both parties.

(1) *Basic requirements for grievance process.* A recipient's grievance process must—

(i) Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are

not supportive measures as defined in § 106.30, against a respondent. Remedies must be designed to restore or preserve equal access to the recipient's education program or activity. Such remedies may include the same individualized services described in § 106.30 as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;

(ii) Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness;

(iii) Require that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in § 106.30, the scope of the recipient'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 recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in paragraph (b)(6) of this section. A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in paragraph (b)(5)(vii) of this section. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal

resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;

(iv) 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;

(v) Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;

(vi) Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility;

(vii) State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment;

(viii) Include the procedures and permissible bases for the complainant and respondent to appeal;

(ix) Describe the range of supportive measures available to complainants and respondents; and

(x) Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

(2) *Notice of allegations.* (i) Upon receipt of a formal complaint, a recipient must provide the following written notice to the parties who are known:

(A) Notice of the recipient's grievance process that complies with this section, including any informal resolution process.

(B) Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under § 106.30, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section. The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

(ii) If, in the course of an investigation, the recipient decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to paragraph (b)(2)(i)(B) of this section, the recipient must provide notice of the additional allegations to the parties whose identities are known.

(3) *Dismissal of a formal complaint.* (i) The recipient must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the recipient's education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX or this part; such a dismissal does not preclude action under another provision of the recipient's code of conduct.

(ii) The recipient may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

(iii) Upon a dismissal required or permitted pursuant to paragraph (b)(3)(i) or (b)(3)(ii) of this section, the recipient must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

(4) *Consolidation of formal complaints.* A recipient may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular "party," "complainant," or "respondent" include the plural, as applicable.

(5) *Investigation of a formal complaint.* When investigating a formal complaint and throughout the grievance process, a recipient must—

(i) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient and not on the parties provided that the recipient cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the recipient must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3);

(ii) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

(iii) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

(iv) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;

(v) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;

(vi) Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and

(vii) Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

(6) *Hearings.* (i) For postsecondary institutions, the recipient'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, notwithstanding the discretion of the recipient under paragraph (b)(5)(iv) of this section to otherwise restrict the extent to which advisors may participate in the proceedings. At the request of either

party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. 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(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. 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. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or 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. Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the recipient's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. Recipients must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

(ii) For recipients that are elementary and secondary 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 recipient has sent the investigative report to the parties pursuant to paragraph (b)(5)(vii) of this

section 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. With or without a hearing, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or 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. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

(7) *Determination regarding responsibility.* (i) The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the recipient must apply the standard of evidence described in paragraph (b)(1)(vii) of this section.

(ii) The written determination must include—

(A) Identification of the allegations potentially constituting sexual harassment as defined in § 106.30;

(B) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

(C) Findings of fact supporting the determination;

(D) Conclusions regarding the application of the recipient's code of conduct to the facts;

(E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and

(F) The recipient's procedures and permissible bases for the complainant and respondent to appeal.

(iii) The recipient must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

(iv) The Title IX Coordinator is responsible for effective implementation of any remedies.

(8) *Appeals.* (i) A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases:

(A) Procedural irregularity that affected the outcome of the matter;

(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(ii) A recipient may offer an appeal equally to both parties on additional bases.

(iii) As to all appeals, the recipient must:

(A) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

(B) Ensure that the decision-maker(s) for the 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;

(C) Ensure that the decision-maker(s) for the appeal complies with the standards set forth in paragraph (b)(1)(iii) of this section;

(D) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;

(E) Issue a written decision describing the result of the appeal and the rationale for the result; and

(F) Provide the written decision simultaneously to both parties.

(9) *Informal resolution.* A recipient 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 an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, a recipient may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient—

(i) Provides to the parties a written notice disclosing: The allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that 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, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

(ii) Obtains the parties' voluntary, written consent to the informal resolution process; and

(iii) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

(10) *Recordkeeping.* (i) A recipient must maintain for a period of seven years records of—

(A) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under paragraph (b)(6)(i) of this section, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;

(B) Any appeal and the result therefrom;

(C) Any informal resolution and the result therefrom; and

(D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

(ii) For each response required under §106.44, a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.

18. Section 106.46 is revised to read as follows:

§ 106.46 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

§ 106.47 [Removed]

19. Remove § 106.47.

§ 106.48 [Removed]

20. Remove § 106.48.

21. Section 106.51 is amended by revising paragraph (b)(6) to read as follows:

§ 106.51 Employment.

* * * * *

(b) * * *

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

* * * * *

22. Section 106.57 is revised to read as follows:

§ 106.57 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat

pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

23. Section 106.60 is revised to read as follows:

§ 106.60 Pre-employment inquires.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is “Miss or Mrs.”

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

24. Section 106.71 is revised to read as follows:

§ 106.71 Retaliation.

(a) *Retaliation prohibited.* No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with

any right or privilege secured by title IX or this part, constitutes retaliation. The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under §106.8(c).

(b) *Specific circumstances.* (1) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under paragraph (a) of this section.

(2) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited under paragraph (a) of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

25. Section 106.81 is revised to read as follows:

§ 106.81 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 34 CFR 100.6–100.11 and 34 CFR part 101. The definitions in §106.30 do not apply to 34 CFR 100.6–100.11 and 34 CFR part 101.