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## TITLE IX GUIDE

Title IX statute: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a); 34 C.F.R. § 106.8(d) (reiterating that sex discrimination must occur against a person who is in the United States for Title IX to apply).

### Key Title IX Regulations

Title IX regulatory purpose:<sup>1</sup> “[T]o eliminate . . . 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.” 34 C.F.R. § 106.1; 2021 Title IX Guidance (Question 2) (allowing schools to go beyond the minimum standards set by regulation).

- Title IX grievance process: Schools must develop policies and procedures that provide for a “prompt and equitable” grievance process to investigate and resolve Title IX complaints brought by students and employees. 34 C.F.R. § 106.8(c).

### Federal Agency Enforcement of Title IX

The U.S. Department of Education’s Office for Civil Rights (OCR) has primary enforcement authority over Title IX. 20 U.S.C. § 1682. Individuals seeking to enforce Title IX may file a complaint with OCR using its online form, <https://ocrcas.ed.gov/>,<sup>2</sup> or submitting a complaint to the appropriate OCR regional office: <https://www2.ed.gov/about/offices/list/ocr/addresses.html>.

- U.S. Department of Justice also enforces Title IX: <https://www.justice.gov/crt/fcs/complaint-process>.

Preservation of Rights: Efforts to comply with Title IX cannot violate the First Amendment, 34 C.F.R. § 106.6(d)(1),<sup>3</sup> the Due Process Clause, 34 C.F.R. § 106.6(d)(2), and any other Constitutional rights, 34 C.F.R. § 106.6(d)(3).<sup>4</sup>

- FERPA does not “obviate or alleviate” a school’s Title IX compliance requirements pursuant to 34 C.F.R. § 106.6(e).
- Schools must keep the names of those who make reports, file formal complaints, and those who are complainants, reported perpetrators, respondents, and witnesses confidential unless there is an exception under FERPA, 34 C.F.R. § 106.6(a), another law, or to comply with Title IX during the grievance process, 34 C.F.R. § 106.71(a).

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<sup>1</sup> The 2020 Title IX regulations are not retroactive. See U.S. DEP’T OF EDUC., QUESTIONS AND ANSWERS ON THE TITLE IX REGULATIONS ON SEXUAL HARASSMENT (2021) (hereinafter the 2021 Title IX Guidance) (Question 13) (referencing rescinded Title IX guidance as controlling), available at <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>.

<sup>2</sup> Learn more here: <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

<sup>3</sup> Exercising First Amendment rights may not be considered retaliation pursuant to 34 C.F.R. § 106.71(b)(1).

<sup>4</sup> Restriction of such rights is a form of deliberate indifference that violates Title IX pursuant to 34 C.F.R. § 106.44(a).

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Prohibited Sexual Misconduct

Title IX regulations cover the offenses listed below. Sex discrimination prohibited under Title IX also includes differential treatment based on sex, gender, sexual orientation, and gender identity, *see Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020), as well as discrimination based on marital, family, or parental status, 34 C.F.R. §§ 106.21, 106.40.<sup>5</sup> It can also address differential party treatment during the Title IX grievance process when unlawful, 34 C.F.R. § 106.45(a).

Sexual Harassment		
<i>Quid pro quo</i> sexual harassment	Hostile environment arising out of “severe, pervasive and objectively offensive” unwelcome sexual conduct that denies equal educational access	Clery Act crimes (sexual assault, stalking, domestic violence & dating violence)
34 C.F.R. § 106.30(a)(1); 2021 Title IX Guidance (Question 5)	34 C.F.R. § 106.30(a)(2); 2021 Title IX Guidance (Question 5)	34 C.F.R. § 106.30(a)(3) & 20 C.F.R. § 1092(f)(6)(A)

Retaliation
<p>“[I]ntimidation, threats, coercion or discrimination” by any school or person for “purpose of interfering with any rights or privilege secured by Title IX” including making a report or complaint, testifying, assisting, participating or refusing to participate “in an investigation, proceeding, or hearing,” 34 C.F.R. § 106.71(a) &amp; 2021 Title IX Guidance (Question 60).</p> <ul style="list-style-type: none"> <li>Includes misconduct arising out of the same set of facts giving rise to a report sex discrimination or sexual harassment, such as a code of conduct violation unrelated to sex discrimination or sexual harassment, <i>see</i> 34 C.F.R. § 106.71(a).</li> </ul> <p>Excludes code of conduct charge for false statements made in bad faith when the charge is <i>solely</i> based on the Title IX grievance process outcome, <i>see</i> 34 C.F.R. § 106.71(b)(2) &amp; 2021 Title IX Guidance (Question 63) (allowing such charges when “a school believes a student made a materially false statement in bad faith in the course of a Title IX grievance proceeding, it would not constitute retaliation for a school to charge that individual with a code-of-conduct violation.”).</p>

<sup>5</sup> 2021 Title IX Guidance (Question 64) (reminding schools that the “grievance process required for formal sexual harassment complaints does not apply to complaints alleging discrimination based on pregnancy, different treatment based on sex, or other forms of sex discrimination.”) (Emphasis added).



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Sexual Assault	Stalking
<p>“[R]ape, fondling, incest, or statutory rape” 20 C.F.R. § 1092(f)(6)(A)(v) &amp; 34 C.F.R. § 668.46(a) (defining sexual assault); 2021 Title IX Guidance (Question 5)</p>	<p>“[C]ourse of conduct directed at a specific person that would cause a reasonable person to — (A) Fear for the person’s safety or the safety of others; or (B) Suffer substantial emotional distress.” 20 C.F.R. § 1092(f)(6)(A)(i) (citing 42 U.S.C. § 13925(a)); 34 C.F.R. § 668.46(a)(i)</p>
<p><u>Fondling</u>: “The touching of the private body parts of another person for the purpose of sexual gratification, forcibly or against that person’s will . . . or . . . where the victim is incapable of giving consent because of . . . youth or . . . temporary or permanent mental or physical incapacity.” 34 C.F.R. Pt. 99, App. A.</p>	<p><u>Course of conduct</u>: “two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.” 34 C.F.R. § 668.46(a)(ii)(A) (defining stalking).</p> <ul style="list-style-type: none"> <li>Covers cyberstalking. 2021 Title IX Guidance (Question 5).</li> </ul>
<p><u>Rape</u>: “Penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.”</p>	<p><u>Reasonable person</u>: “reasonable person under similar circumstances and with similar identities to the victim.” 34 C.F.R. § 668.46(a)(ii)(B) (defining stalking).</p>
<p><u>Incest</u>: “Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.” 34 C.F.R. Pt. 99, App. A.</p>	<p><u>Substantial emotional distress</u>: “significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.” 34 C.F.R. § 668.46(a)(ii)(C).</p>
<p><u>Statutory rape</u>: “Nonforcible sexual intercourse with a person who is under the statutory age of consent.” 34 C.F.R. Pt. 99, App. A.</p>	

Domestic Violence	Dating Violence
<p>“A felony or misdemeanor crime of violence committed” by current or former spouse or intimate partner, a person with whom the victim shares a child, a person who is or has cohabitated, or a person similarly situated to a spouse under the domestic or family violence laws of the jurisdiction, or any other person against an adult or youth victim who is protected under the domestic or family violence laws of the jurisdiction. 20 C.F.R. § 1092(f)(6)(A)(i) (citing 42 U.S.C. § 13925(a)) &amp; 34 C.F.R. § 668.46(a)(i) (defining domestic violence).</p>	<p>“Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim” that “includes, but is not limited to, sexual or physical abuse or the threat of such abuse.” 20 C.F.R. § 1092(f)(6)(A)(i) (citing 42 U.S.C. § 13925(a)) &amp; 34 C.F.R. § 668.46(a) (defining dating violence).</p>

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### Title IX Reports

Title IX Coordinator must receive sex discrimination and sexual harassment reports from *any person*, 34 C.F.R. § 106.8(a); 2021 Title IX Guidance (Question 16) (“There is no requirement that the [reporting] person be participating in or attempting to participate in a school program or activity to report sexual harassment.”).

- Parents/guardians may act on behalf of a minor party (i.e., act as a complainant or respondent), 34 C.F.R. § 106.6(g).

All elementary and secondary school employees are required to report incidents of sex discrimination to the Title IX Coordinator (a.k.a. “responsible employees”), *see* 2021 Title IX Guidance (Question 14).

- Notice occurs when a school receives information about conduct that “*could* constitute sexual harassment” even if the school is not certain that the harassment occurred, *see* 2021 Title IX Guidance (Question 18).
- Responsible employees should report to the Title IX Coordinator upon receipt of any “oral report of sexual harassment by a complainant or anyone else, a written report, through personal observation, through a newspaper article, through an anonymous report, or through various other means.” 2021 Title IX Guidance (Question 14).<sup>6</sup>

Pursuant to 34 C.F.R. § 106.44(a),<sup>7</sup> upon a sexual harassment report, a Title IX Coordinator must: (1) “promptly contact the complainant to discuss . . . supportive measures;” (2) “consider the complainant’s wishes with respect to supportive measures;” (3) “inform complainant of the availability of supportive measures with or without the filing of a formal complaint;” (4) “explain to the complainant the process for filing a formal complaint;” and (5) coordinate the “effective implementation of supportive measures” for the parties.

#### Supportive Measures

“[N]on-disciplinary, non-punitive individualized services” provided “without fee or charge” that are “appropriate” and “reasonably available” to the parties and aim to “restore or preserve equal access” to the institution’s “educational program or activity without unreasonably burdening the other party” with consideration for the “safety of all parties,” an institution’s “educational environment,” and deterring sexual misconduct.<sup>8</sup>

- Schools must ensure equitable treatment of the parties, 34 C.F.R. § 106.44(a).
- Complainants may receive supportive measures even if Title IX does not apply, 2021 Title IX Guidance (Question 9).

<sup>6</sup> OCR will not find a violation where a post-secondary employee fails to report an incident to the Title IX Coordinator. *See* 2021 Title IX Guidance (Question 19).

<sup>7</sup> *See also* 2021 Title IX Guidance (Questions 20, 26 & 32).

<sup>8</sup> During the COVID-19 pandemic, OCR expects schools to “remote counseling, or similar teletherapy option, as a supportive measure to students who are unable to access on-campus counseling services.” 2021 Title IX Guidance (Question 34).



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Protective Measures
<p>Title IX authorizes schools to impose interim safety measures of “administrative leave” for employees, 34 C.F.R. § 106.44(d), and “emergency removal” for students, 34 C.F.R. § 106.44(c) and 2021 Title IX Guidance (Question 35) (reminding schools to comply with any applicable disability-related law in doing so).</p> <ul style="list-style-type: none"> <li>Emergency removes require schools to conduct an “individualized safety and risk analysis” to determine if there is “an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment” to justify removal with notice and an opportunity to challenge the decision “immediately following the removal.”</li> </ul>

Schools must keep records “of any kind” for Title IX grievance procedure seven years, and that includes records about supportive measures “taken in response to a report or formal complaint of sexual harassment,” as well as document that it took action to preserve equal educational access (a.k.a. was not deliberately indifferent), 34 C.F.R. § 106.45(b)(10)(ii).

- Schools must also document why no supportive measures were given, if applicable, 34 C.F.R. § 106.45(b)(10)(ii).

Formal Written Title IX Complaints

A “formal complaint” must be written and signed a complainant or Title IX Coordinator, 34 C.F.R. § 106.30(a); *see* 2021 Title IX Guidance (Question 22) (finding a complainant’s email with a typed name as a signature sufficient).

- According to 34 C.F.R. § 106.30, despite any Title IX Coordinator’s signature appearing on a complaint, the Title IX Coordinator is not acting as a complainant or other party during the grievance process governed by 34 C.F.R. § 106.45.

Formal v. Informal Title IX Grievance Process

Schools must provide a “prompt and equitable” grievance process for student and employee sex discrimination, retaliation, or sexual harassment complaints, 34 C.F.R. § 106.8(c) & 34 C.F.R. § 106.71(a).

Informal Process	Formal Process
<ul style="list-style-type: none"> <li>Schools are not required to offer informal resolution options. <i>See</i> 2021 Title IX Guidance (Question 58).</li> <li>When offered, to access the informal resolution process, a formal complaint is required, 34 C.F.R. § 106.45(b)(9).</li> <li>No informal resolution option is allowed under Title IX for employee-on-student matters, 34 C.F.R. § 106.45(b)(9)(iii).</li> </ul>	<ul style="list-style-type: none"> <li>Upon receiving a formal complaint, schools must provide written notice to the parties, 34 C.F.R. § 106.45(b)(2)(i), including information about any available informal resolution options, 34 C.F.R. § 106.45(b)(2)(i)(A) &amp; 34 C.F.R. § 106.45(b)(9)(i).</li> <li><u>A formal complaint notice must:</u></li> </ul>



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<ul style="list-style-type: none"><li>○ Schools must issue a notice with information about the (i) complaint allegations, (ii) how and when the parties may choose an informal rather than formal process, as well as when the informal process precludes a party from reverting the complaint back to the formal process, (iii) consequences available through the formal and informal resolution process, and (iv) how records will be maintained by the school about the process, 34 C.F.R. § 106.45(b)(9)(i).</li><li>○ School must keep records “of any kind” for <u>seven years</u>, and that includes informal resolution records, 34 C.F.R. § 106.45(b)(10)(i). Recordkeeping may include transcripts, as well as audio or audiovisual recordings, which will be made available to the parties for inspection and review, 34 C.F.R. § 106.45(b)(6)(i) &amp; 34 C.F.R. § 106.45(b)(10)(i)(A).</li><li>○ The parties may access the informal resolution options prior to the school making a final determination through the formal Title IX grievance process, 34 C.F.R. § 106.45(b)(9).</li><li>○ Parties must provide voluntary written consent to participate in any informal resolution process, which may be withdrawn to allow the formal grievance process to proceed prior to conclusion of the informal process, 34 C.F.R. § 106.45(b)(9)(ii) &amp; 2021 Title IX Guidance (Question 59).</li><li>○ Schools may <u>not</u> (1) require parties to waive their rights to an investigation or adjudication of sexual harassment through the formal complaint process as a condition of employment, enrollment, or the exercise of any right, or (2) otherwise require parties to use an informal resolution process, 34 C.F.R. § 106.45(b)(9).</li></ul>	<ul style="list-style-type: none"><li>● include information that respondents are not presumed responsible, 34 C.F.R. § 106.45(b)(2)(i)(B), until a finding of responsibility after a formal complaint process, 34 C.F.R. § 106.45(b)(1)(iv); however, schools may <u>not</u> assume that complainants are lying or that the sexual harassment did not occur, <i>see</i> 2021 Title IX Guidance (Question 36).</li><li>● include “sufficient details known at the time” about the allegations, including the names of the parties involved, date(s), and location(s) of incident(s), if known, 34 C.F.R. § 106.45(b)(2)(i)(B).</li><li>● be issued with “sufficient time to [for a party to] prepare a response before any initial interview,” 34 C.F.R. § 106.45(b)(2)(i)(B).</li><li>● include any available code of conduct prohibition against making false statements, 34 C.F.R. § 106.45(b)(2)(i)(B).</li><li>● be updated with additional allegations should any arise during the investigation against <i>either party</i>, 34 C.F.R. § 106.45(b)(2)(ii).</li><li>● include the right for parties to have an “advisor of choice,” who may be an attorney, 34 C.F.R. § 106.45(b)(2)(i)(B).</li><li>○ Schools may <u>not</u> restrict the parties involved in a Title IX grievance process from discussing the “allegations under investigation,” or gathering/presenting relevant evidence during the process, 34 C.F.R. § 106.45(b)(5)(iii).</li></ul>
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### Title IX Investigations

Formal complaints must be investigated, 34 C.F.R. § 106.45(b)(3)(i) & 34 C.F.R. § 106.45(b)(5), and evaluate whether the complainant suffered denied equal educational access occurred, schools must use the standard of a “reasonable person in the complainant’s position . . . compared to a similarly situated person who is not suffering the alleged sexual harassment.” 2021 Title IX Guidance (Question 8).

Parties must have the equal opportunity to “inspect and review any evidence obtained . . . related to the allegations raised” in the formal complaint, including information the school “does not intent to rely” upon when reaching a determination, such as “inculpatory and exculpatory evidence from the parties or another source,” 34 C.F.R. § 106.45(b)(5)(vi).

- review evidence in electronic or hard copy format 10 days before any report and during any hearing, 34 C.F.R. § 106.45(b)(5)(vi).
- be able to “meaningfully respond to the evidence prior to conclusion of the investigation,” 34 C.F.R. § 106.45(b)(5)(vi).
- inspect and review evidence with their advisor under 34 C.F.R. § 106.45(b)(5)(vi).

Parties must have the equal opportunity to present expert or fact witnesses, 34 C.F.R. § 106.45(b)(5)(ii).

Schools must have reasonably prompt timeframes, 2021 Title IX Guidance (Question 37).

- Schools may extend timelines for “good cause” but “must balance the interests of promptness, fairness to the parties, and accuracy of adjudications,” as well as “promptly notify all parties of the reason for the delay and the estimated length of the delay, in addition to important updates about the investigation,” *see* 2021 Title IX Guidance (Questions 30 & 37)
- Schools must use technology to ensure “timely and equitable” response, 2021 Title IX Guidance (Question 30).

During the investigation, schools must: (1) Bear the burden of proof regarding the “gathering [of] evidence sufficient to reach a determination regarding responsibility,” 34 C.F.R. § 106.45(b)(5)(i), and must objectively evaluate all evidence, including inculpatory and exculpatory, and ensure credibility determinations are not dependent on the status of a party or witness, 34 C.F.R. § 106.45(b)(1)(ii); (2) Give parties written notice of the date, time, location, participants, and purpose of any meeting with sufficient time to prepare, 34 C.F.R. § 106.45(b)(5)(v).

During the investigation, schools cannot: (1) “require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege” unless such a privilege is waived, 34 C.F.R. § 106.45(b)(1)(x); (2) “access, consider, disclose, or otherwise use a party’s records . . . made and maintained in connection with treatment absent a party’s voluntary, written consent to do so,” 34 C.F.R. § 106.45(b)(5)(i) & 2021 Title IX Guidance (Question 48) (requiring schools to follow applicable federal, state and local laws); (3) Restrict the presence of an advisor, 34 C.F.R. § 106.45(b)(5)(iv), but they can restrict the participation of an advisor if done equally for both parties’ advisors, 34 C.F.R. § 106.45(b)(5)(iv).

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### Title IX Adjudication

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Parties have the right to a “fairly summarized” investigative report at least 10 days before any adjudication to review and respond to it with assistance from their advisors, 34 C.F.R. § 106.45(b)(5)(vii) & 34 C.F.R. § 106.45(b)(2)(i)(B). Schools may consolidate complaints regarding sexual harassment into a single hearing when arising “out of the same facts or circumstances,” 34 C.F.R. § 106.45(b)(4).

Upon receipt of the final investigative report, but before any determination is made, the parties must have the opportunity (i) to “submit written, relevant questions that a party wants asked of any party or witness,” (ii) to receive the answers to those questions, and (iii) to have “additional, limited follow up questions,” 34 C.F.R. § 106.45(b)(6)(ii) & 2021 Title IX Guidance (Question 40).

- Exclusion of any questions must be explained to the proposing party, 34 C.F.R. § 106.45(b)(6)(ii), and such can occur whenever questions are irrelevant, repetitive, or duplicative, *see* 2021 Title IX Guidance (Question 40).

Adjudicator(s) may not:

- be the same person as the investigator or the Title IX Coordinator, 34 C.F.R. § 106.45(b)(7)(i).
- rely upon a statement by any witness or party unless the same subjects themselves to cross-examination,<sup>9</sup> 34 C.F.R. § 106.45(b)(6)(i); *see also* 2021 Title IX Guidance (Question 42) (stating such persons have the right to abstain).
  - Statements are distinguishable from other forms of written evidence that may still be considered, *see* 2021 Title IX Guidance (Questions 52-54) (distinguishing between a statement and other written evidence)
  - A person who refuses to answer a decisionmaker’s questions may still have their statement relied upon by a decisionmaker in reaching a determination if that person subjects themselves to cross-examination (Question 55).
- make an adverse inference *solely* from the absence of a party or witness during a hearing, or the refusal of a party or witness to subject themselves to cross-examination or other questioning, 34 C.F.R. § 106.45(b)(6)(i).

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<sup>9</sup> This includes “police reports, medical reports and other documents and records may not be relied on to the extent they contain the statements of a party or witness who has not submitted to cross-examination.” 2021 Title IX Guidance (Question 51).



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### Title IX Outcomes

Schools must provide simultaneous written notification to the parties about the results and when they become final (at either the determination phase, or if an appeal is filed, at the end of the appeal window), 34 C.F.R. § 106.45(b)(7)(iii). Determinations must:

- be made in writing and apply the school’s standard of evidence, 34 C.F.R. § 106.45(b)(7)(i).<sup>10</sup>
- contain the complaint allegations, 34 C.F.R. § 106.45(b)(7)(ii)(A).
- include a procedural history summary from the formal written complaint to the determination, including information about party notifications, interviews, fact gathering, and any live hearing, 34 C.F.R. § 106.45(b)(7)(ii)(B).
- contain findings of facts supporting the determination, 34 C.F.R. § 106.45(b)(7)(ii)(C).
- apply the school’s code of conduct to the facts, 34 C.F.R. § 106.45(b)(7)(ii)(D).
- include the results and the rationale for each allegation along with the determination made, along with any sanction imposed, or remedies for the complainant, 34 C.F.R. § 106.45(b)(7)(ii)(E); 2021 Title IX Guidance (leaving schools discretion).
- cover appellate procedures and grounds, 34 C.F.R. § 106.45(b)(7)(ii)(F) & 34 C.F.R. § 106.45(b)(8)(ii).

Upon a finding of responsibility, a school must provide a complainant with remedies to “restore or preserve equal access” to “educational program or activity,” 34 C.F.R. § 106.45(b)(7)(ii)(E), including discipline against the respondent, 34 C.F.R. § 106.45(b)(1)(i).

- The Title IX Coordinator is “responsible for effective implementation of any remedies,” 34 C.F.R. § 106.45(b)(7)(iv).

### Title IX Appeals

Determinations: Schools must allow a party to appeal the outcome on the following grounds: (A) procedural irregularity effecting the outcome; (B) new evidence not reasonably available at the time of determination that “could affect the outcome,” and (C) any conflict of interest by Title IX officials, 34 C.F.R. § 106.45(b)(8)(i)(A)-(C), as well as (D) additional grounds when applying *equally* to the parties, 34 C.F.R. § 106.45(b)(8)(ii).

Appellate procedures must ensure parties are notified in writing when an appeal is filed, 34 C.F.R. § 106.45(b)(8)(iii)(A), have a “reasonable, equal opportunity to submit a written statement in support of, or challenging the outcome,” 34 C.F.R. § 106.45(b)(8)(iii)(D), have a new decisionmaker without any conflict of interest or bias assigned to decide the appeal, which cannot be the Title IX Coordinator, investigator(s), and/or adjudicator(s) originally involved, 34 C.F.R. § 106.45(b)(8)(iii)(B) & (C), and receive a written appellate decision with rationale of the decisionmaker, 34 C.F.R. § 106.45(b)(8)(iii)(D), simultaneously provided to parties, 34 C.F.R. § 106.45(b)(8)(iii)(E).

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<sup>10</sup> 2021 Title IX Guidance (Questions 56 & 57) (allowing either preponderance of the evidence, meaning “more likely than not to be true,” or clear and convincing evidence, meaning “‘highly probable’ that the facts are true while noting it must be the same for students and employees to encourage re-negotiation of collective bargaining agreements as appropriate to ensure compliance). Schools should be cautious about ensuring an equitable process per 34 C.F.R. § 106.8(c).