

GRAND RIVER | SOLUTIONS

2022 Draft Title IX Regulations

A Summary Session for Colleges
and Universities

June 28, 2022

About Us

Vision

We exist to help create safe and equitable work and educational environments.

Mission

Bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity

Meet Your Facilitators



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Overview of Topics

1

Scope Clarity (& Expansion)

2

Definitions

3

Procedural Updates

4

So Much More

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REMINDER

Continue to follow current policies and procedures consistent with the 2020 Final Rule and state law

Background

Released unofficially June 23, 2022 - Happy Anniversary!

July 8 FR publication would take us to ~Sept. 6 for the initial, mandatory comment period.

Expected to be published in the Federal Register July 8th.

Anticipating an Extension... TBD

2020 Final Rule

- Nov. 2018 Publication → May 2020 Final → August 2020 Effective
- 140,000+ Comments

DRAFT REGS
2022

(Proposed) Expanded Scope

- Sex-Based Harassment (Proposed § 106.2) includes Discrimination on the Basis of Sex (Proposed § 106.10)

SEX-BASED HARASSMENT

- Quid pro quo
- Hostile environment: "Severe *or* pervasive"
- Specific Offenses, including sexual assault, dating violence, domestic violence, and stalking

DISCRIMINATION ON THE BASIS OF SEX

- discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

(Proposed) Expanded Responsibility



LGBTQI+

- “sex stereotypes, sex characteristics,... sexual orientation, and gender identity.”
- separate rule making for athletic eligibility standards



Responding and Notification

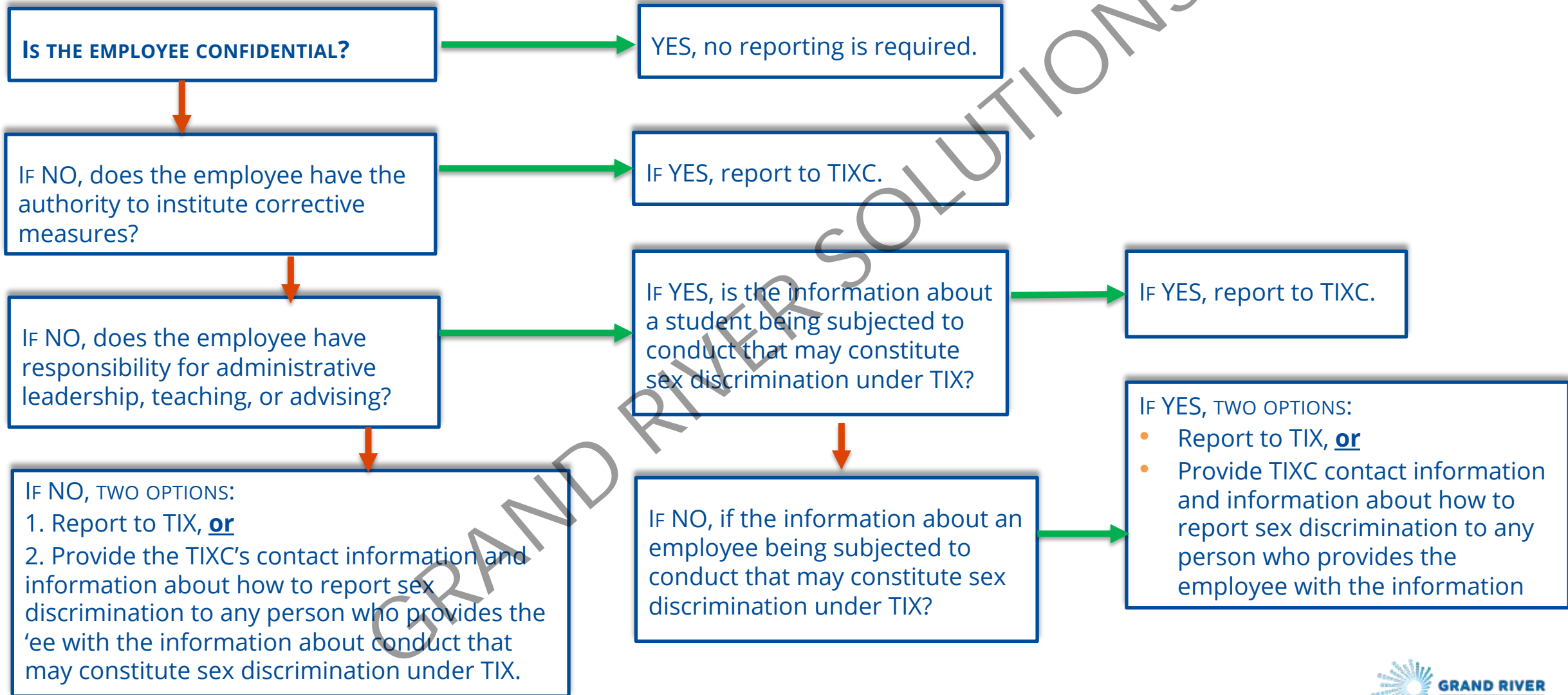
"actual knowledge"

- "[R]equire a recipient to take a prompt and effective action to end any prohibited sex discrimination that has occurred in its education program or activity, to prevent its recurrence, and remedy its effects."
(Proposed § 106.44(a))
- Supportive measures

Employees required to notify the TIXC (proposed § 106.44) are those who are **not** confidential, and:

- have responsibility for administrative leadership, teaching, or advising
- have authority to institute corrective measures
- All other employees who are not confidential employees*

Does an employee have to take any action because of what they learned about conduct that may constitute sex discrimination under TIX to the TIXC?



Geography and Jurisdiction

- Expanded scope
(Proposed § 106.11)
- ~~“in the United States”~~
(Current § 106.44(a))



“It also requires a recipient to respond to a hostile environment based on sex within its education program or activity in the United States, **even if sex-based conduct contributing to the hostile environment occurred outside the recipient’s education program or activity or outside the United States.**” (Proposed § 106.11)

Definitions

Student

Complainant (includes 3rd Party Complainants)

Retaliation and Peer Retaliation

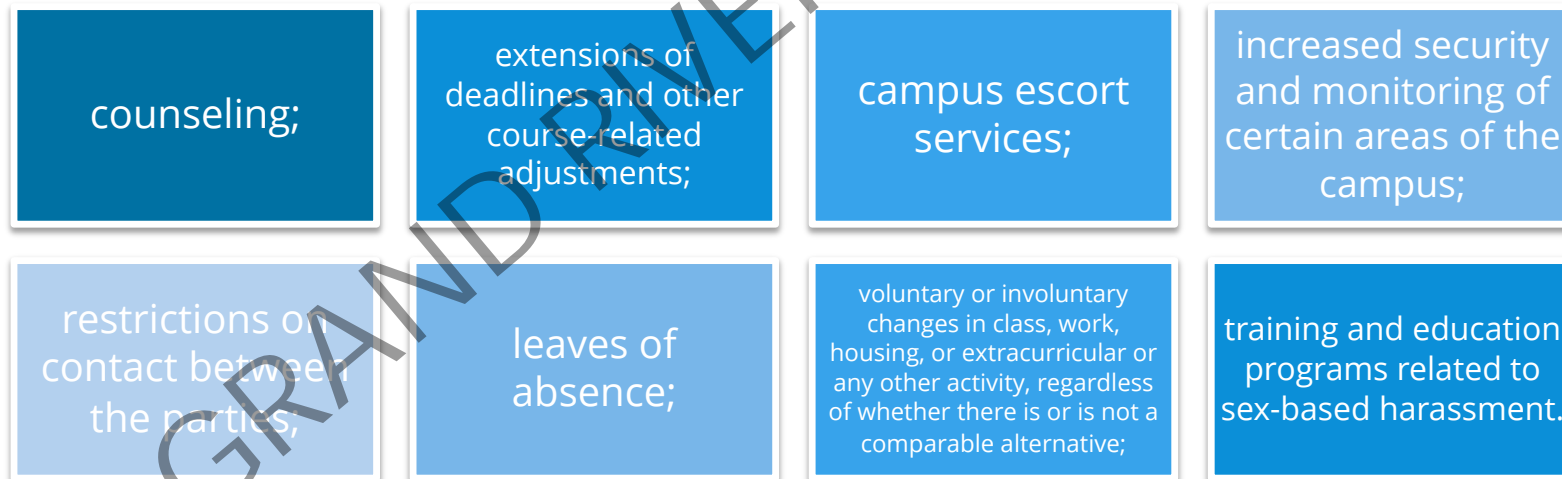
Pregnancy or related conditions

Confidential employee

DEFINITIONS

Supportive Measures

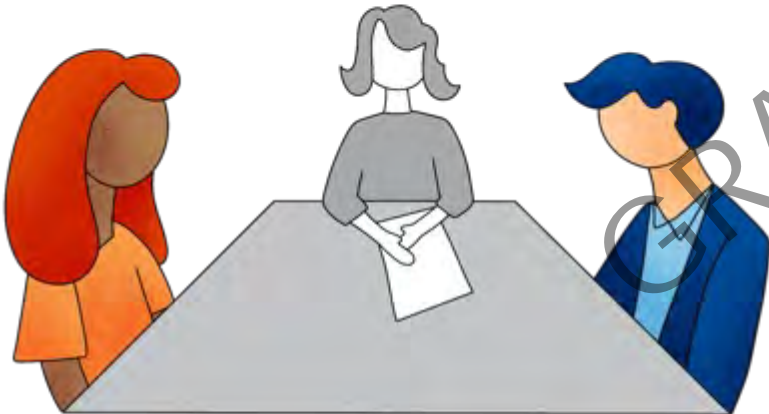
- Definition expanded from the 2020 Final Rule
- “Upon being notified of conduct that **may** constitute sex discrimination under Title IX, a Title IX Coordinator must offer supportive measures, as appropriate, to the complainant or respondent to the extent necessary to restore or preserve that party’s access to the recipient’s education program or activity” (Proposed § 106.44(g))
- Supportive measures may include but are not limited to:



Informal Resolution

When may
informal
resolution begin?

Other changes?



**INFORMAL
RESOLUTION**

Formal Resolution

PROCEDURES

Investigations,
Hearings, and the
Single-Investigator
Model

Cross-
examination?

Credibility analysis;
“Process for
evaluating
allegations and
assessing
credibility” (Proposed
§ 106.45(f)(1))

Standard of
evidence; The
preponderance of
the evidence
standard of proof,
unless* (Proposed §
106.45(h)(1))

Training

- SPECIFIC OBLIGATIONS TO TRAIN

Employees: Scope and obligations; responsible employee duties; pregnant/parenting

Investigators, decisionmakers, and other persons who are responsible for implementing the recipient's grievance procedures or have the authority to modify or terminate supportive measures

Facilitators of informal resolutions

TIXC and designees

Notice and COMMENT

The 60-day comment period begins the day the proposed rule is published in the Federal Register.



DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at <http://www.regulations.gov>. However, if you require an accommodation or cannot otherwise submit your comments via <http://www.regulations.gov>, please contact the program contact person listed under FOR FURTHER INFORMATION CONTACT. The Department will not

DO YOU WANT TO SUBMIT A COMMENT TO THE DEPARTMENT?

Join us for our comment writing session on Tuesday, July 12th to learn more.

Thank you!

Send Feedback



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