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How Schools Can Take Steps to Effectively Address Sexual Harassment While Complying with the Trump Title IX Rule

In 2020, the Trump administration's Department of Education ("the Department") finalized a [harmful Title IX rule](#) ("2020 Rule") that has significantly weakened protections against sexual harassment, including sexual assault, in schools.¹ A lawsuit by the National Women's Law Center on behalf of student survivors and victim advocates succeeded in striking a portion of the 2020 Rule, but the rest remains in place.² In July 2022, the Biden administration proposed a new Title IX rule regarding sex-based harassment, LGBTQI+ students' rights, and the rights of pregnant and parenting students, but the final version of this rule has yet to be released.³

This document suggests ways for schools to continue supporting sexual harassment victims while complying with the 2020 Rule, including practices suggested by the Department's own documents, like its [July 2021 Q&A](#).⁴ For example, the 2020 Rule does not apply to incidents that allegedly occurred before August 14, 2020. In such cases, schools must follow the Title IX requirements that were in place at the time of the alleged incident, even if a complaint was filed after August 14, 2020.⁵ In addition, the 2020 Rule does not apply to schools' enforcement of other provisions of their codes of conduct, such as a non-Title IX policy prohibiting conduct that falls outside of the 2020 Rule's definition of "sexual harassment." In such cases, schools can adopt a "non-Title IX sexual harassment" policy that is consistent with the Department's [2001](#), [2011](#), and [2014](#) Title IX guidances and that does not impose the survivor-hostile procedures required by the 2020 Rule.⁶

Note: The 2020 Rule does not address schools' responses to sex discrimination that does not constitute sexual harassment. Schools can continue to address sex discrimination that is not sexual in nature—e.g., pregnancy discrimination; anti-LGBTQI+ harassment or discrimination; other sex discrimination in admission, classes, or athletics—using a "prompt and equitable" procedure pursuant to § 106.8(c).⁷

1. DEFINITION OF SEXUAL HARASSMENT

THE 2020 RULE

Under the 2020 Rule, schools must address all “conduct on the basis of sex” that constitutes: (i) *quid pro quo* sexual harassment; (ii) “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 (iii) sexual assault, dating violence, domestic violence, or stalking.⁸ Schools must dismiss “Title IX complaints” that do not allege harassment meeting this definition.

HOW SCHOOLS CAN SUPPORT SURVIVORS

- Schools should make clear in their internal policies, trainings, and communications to students that complainants need not drop out of school, fail a class, or exhibit specific trauma symptoms to be “effectively denied equal access” to education.⁹ For example, a complainant is “effectively denied equal access” if they have difficulty concentrating in class, begin bed-wetting or crying at night, skip class to avoid a harasser, quit one school activity (but continue participating in other activities), or see a decline in their grades.¹⁰
- Schools have the flexibility to define “consent,” which affects what is considered “sexual assault.”¹¹ A school’s “consent” definition should make clear that consent is not implied by the fact that a respondent does not use physical force, by a failure of the complainant to “fight back,” by a complainant’s physical symptoms of arousal, or by a complainant’s prior sexual encounter with the respondent.

A SEPARATE “NON-TITLE IX” POLICY

If an incident does not meet the 2020 Rule’s definition of “sexual harassment,” the school can and should address it under a separate policy that defines sexual harassment as “unwelcome conduct of a sexual nature,” including “unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.”¹²

2. WHERE HARASSMENT OCCURS

THE 2020 RULE

Under the 2020 Rule, schools must address all incidents meeting the definition of sexual harassment that occur “in the United States” and in a school’s “education program or activity.”¹³ Schools must dismiss all other “Title IX complaints.”

Incidents occurring in an “education program or activity” include:

- Any on-campus incident;
- Any off-campus incident during a school-sponsored program or activity;
- Any online or digital incident using a school network or platform;
- Any off-campus incident in a building owned or controlled by an “officially recognized” student organization at a postsecondary school; or
- Any off-campus incident where the school has “substantial control” over the respondent and the incident.¹⁴

HOW SCHOOLS CAN SUPPORT SURVIVORS

A school should make clear to students and employees which off-campus and online contexts it believes it has “substantial control” over. For example, a school may have “substantial control” over some incidents that occur:

- In a private off-campus apartment;
- In a private hotel room that grows out of a school-sponsored activity;
- During a teacher’s visit to a student’s home; or
- Online using a personal device during a school-sponsored activity.¹⁵

A SEPARATE “NON-TITLE IX” POLICY

If an incident occurs outside the United States or outside of an “education program or activity,” schools can and should address it under a separate policy that requires the school to address all reports of sexual harassment—regardless of where the incident occurs (e.g., off-campus, online, during study abroad).¹⁶

3. WHEN HARASSMENT OCCURS

THE 2020 RULE

The 2020 Rule does not apply to incidents that allegedly occurred before August 14, 2020, or to Title IX proceedings that were completed before August 14, 2020. In such cases, schools must follow the Title IX requirements that were in place at the time of the alleged incident, even if a complaint was filed after August 14, 2020.¹⁷

4. NOTICE OF SEXUAL HARASSMENT

THE 2020 RULE

Under the 2020 Rule, schools must address sexual harassment if one of the following individuals has “actual knowledge” of the harassment: (i) a Title IX coordinator, (ii) any PK-12 employee, or (iii) any postsecondary employee with the “authority to institute corrective measures” (i.e., authority to discipline the harasser, remediate the situation for the victim, or do both). “Actual knowledge” refers to notice of conduct that “could” constitute sexual harassment and is not restricted to notice of facts that definitively indicate prohibited conduct.¹⁸ Schools are not prohibited from addressing harassment based on notice that does not meet this standard.

HOW SCHOOLS CAN SUPPORT SURVIVORS

- Schools should address any sexual harassment that an employee suspects is occurring even if that suspicion does not amount to “actual knowledge.”¹⁹
- Postsecondary schools can and should designate a wide range of school officials as having the “authority to institute corrective measures.”²⁰
- Schools should designate some employees as confidential employees to whom students can report sexual harassment without triggering “actual knowledge” by the school (e.g., counselors, therapists, other mental health providers, victim advocates).²¹
- Schools can and should train all employees and volunteers to identify and report sexual harassment to the Title IX coordinator and to respond effectively—even if these individuals’ awareness of harassment does not constitute “actual knowledge” on behalf of the school.²²

5. AN ADEQUATE RESPONSE

THE 2020 RULE

Under the 2020 Rule, schools must respond to any report of sexual harassment—regardless of whether there is a formal complaint—in a manner that is “prompt” and “not deliberately indifferent” (i.e., not “clearly unreasonable”).²³

HOW SCHOOLS CAN SUPPORT SURVIVORS

Schools should do more than the bare minimum required by the 2020 Rule. When a school has notice of sexual harassment or suspects that harassment has occurred, it can and should take immediate and effective steps to:

- Investigate the incident;
- End the harassment and prevent its recurrence; and
- Provide remedies to eliminate any hostile environment that was created.²⁴

6. SUPPORTIVE MEASURES

THE 2020 RULE

Under the 2020 Rule, schools must work with a sexual harassment complainant to provide “supportive measures,” without fee or cost and regardless of whether the complainant chooses to proceed with a formal complaint.²⁵ Note that supportive measures are required even if the complainant or respondent is no longer at the school (see #6), as long as the conduct meets the 2020 Rule’s definition of “sexual harassment,” occurred within the United States, and occurred within an “education program or activity” (see #1 and #2).²⁶

HOW SCHOOLS CAN SUPPORT SURVIVORS

Schools can and should adopt policies making clear that they will provide appropriate supportive measures to all complainants alleging harassment, regardless of whether it meets the 2020 Rule’s definition of “sexual harassment,” occurs within an “education program or activity,” occurs in the United States, or occurs on or after August 14, 2020 (see #1, #2, and #3) and regardless of whether any party has left the school (see #7). Schools also can and should continue providing supportive measures for a complainant even after a respondent is found not responsible.²⁷ Further, schools should clarify that cost-free supportive measures include course-related adjustments—e.g., extending a class deadline, retaking a class or exam, or adjusting a transcript.²⁸

While supportive measures for a complainant cannot be “disciplinary” or “punitive” or “unreasonably burden” a respondent, this does not mean that supportive measures cannot impose any burden on a respondent.²⁹ Schools should clarify that, for example, the following [supportive measures](#) are allowed under the 2020 Rule:

- Having an educational conversation with a respondent about their behavior, its impact on the complainant, and the school’s sexual harassment policies;
- Sending a respondent to the principal’s office;
- Changing a respondent’s seat, class, housing, or dining hall assignment;
- Issuing a one-way no-contact order against a respondent as long as it is not disciplinary, punitive, or unreasonably burdensome on a respondent (e.g., prohibiting a respondent from directly communicating with a complainant, enforcing a court’s restraining order or protective order);
- Supervising a student-employee respondent in their workplace interactions with other students; or
- Placing a student-employee respondent on paid administrative leave or any other employee respondent on administrative leave.³⁰

A SEPARATE “NON-TITLE IX” POLICY

If an incident does not meet the 2020 Rule’s definition of “sexual harassment,” occurred outside an “education program or activity,” occurred outside the United States, or occurred before August 14, 2020 (see #1, #2, and #3), schools should provide the supportive measures described above to all complainants under a separate policy, even if the supportive measure could be considered disciplinary, punitive, or burdensome to the respondent.

7. IF A PARTY LEAVES THE SCHOOL

THE 2020 RULE

Under the 2020 Rule, a complainant cannot file a formal complaint with a school unless they are “participating or attempting to participate” in an education program or activity of that school at the time of filing.³¹ Schools also have the option of dismissing a formal complaint if at any time during the grievance process if the respondent is “no longer enrolled or employed” by the school.³²

HOW SCHOOLS CAN SUPPORT SURVIVORS

When a complainant leaves: A school’s policies, training, and communication to students should make clear that the school must investigate as long as a complainant files a formal complaint before leaving the school. Further, schools should clarify that a complainant is still “participating or attempting to participate” in an education program or activity if:

- They are taking a leave of absence;
- They have dropped out but plan to re-enroll if their school responds appropriately to the incident;
- They have graduated from one program but plan to apply to a different program; or
- They have graduated but plan to participate in alumni activities.³³

If a complainant does not meet any of these standards (i.e., they are not “participating or attempting to participate” in an education program or activity when they file a formal complaint), the Title IX coordinator can still file a formal complaint on the complainant’s behalf under the school’s Title IX policy, or the school can address the harassment under a separate policy.³⁴

When a respondent leaves: If a respondent leaves at any point during a grievance process, the school should exercise its discretion not to dismiss the complaint under the 2020 Rule.

A SEPARATE “NON-TITLE IX” POLICY

If an incident does not meet the 2020 Rule’s definition of “sexual harassment,” occurred outside an “education program or activity,” occurred outside the United States, or occurred before August 14, 2020 (see #1, #2, and #3), schools should address it using a separate policy that does not allow it to dismiss a formal complaint or ignore a reported incident merely because a complainant or respondent has left the school.

8. PRESUMPTION OF NO HARASSMENT

THE 2020 RULE

Under the 2020 Rule, schools must presume that a respondent is not responsible for the alleged sexual harassment until the end of a grievance process, but they are *prohibited* from assuming that complainants are lying or from making credibility determinations based on any person’s status as a complainant, respondent, or witness.³⁵

HOW SCHOOLS CAN SUPPORT SURVIVORS

Schools should clarify in their policies, in their trainings, and to the investigators and parties that the “presumption” requirement does not amount to an assumption that the complainant is lying.³⁶

9. TIME FRAME

THE 2020 RULE

Under the 2020 Rule, schools *must* use “reasonably prompt” time frames and *must* ensure that any delay is only “temporary” and “limited,” even if there is “good cause” for the delay.³⁷ A school’s grievance process is *not* dependent on a concurrent police investigation.³⁸ If police activity extends beyond a “temporary delay,” then the school must continue its own investigation independently.³⁹ Similarly, a school cannot use a party’s need for language assistance or a disability accommodation to unreasonably delay its process, as these services are already required to be timely under other civil rights laws.⁴⁰

HOW SCHOOLS CAN SUPPORT SURVIVORS

“Reasonably prompt.” Schools can and should require grievance processes to conclude within 60 days or less, as long as the parties have at least 10 days to review and respond to the evidence and at least 10 days to review and respond to the investigative report.⁴¹

Delays. A school should never delay conducting its own investigation simply because the police are also investigating, especially because police investigations can take a very long time. A school should also ensure that its Title IX office is coordinating with offices that provide language assistance and disability accommodations so that students with those needs are not unfairly burdened or delayed in receiving supporting measures or when participating in an investigation.

10. QUESTIONING PARTIES AND WITNESSES DURING AN INVESTIGATION

THE 2020 RULE

Under the 2020 Rule, postsecondary schools must use a live hearing to investigate formal sexual harassment complaints, where each party’s advisor is *allowed* to ask the other party and witnesses “relevant” cross-examination questions, but parties and witnesses are not *required* to submit to cross-examination in order for their statements to be

considered as evidence.⁴² PK-12 schools must allow parties to submit “relevant” written questions to the other party and witnesses.⁴³

HOW SCHOOLS CAN SUPPORT SURVIVORS

Evidence about complainants. Both PK-12 and postsecondary schools should clarify that the following evidence about a complainant is not “relevant” and questions on such topics are thus prohibited by the 2020 Rule:

- Evidence that implies sexual activity (e.g., pregnancy, use of birth control, sexually transmitted infection);
- Clothes, makeup, or LGBTQI+ status;
- Sexual behavior with anyone besides the respondent at any time before, during, or after the incident—unless offered to prove mistaken identity; or
- Sexual behavior with the respondent at any time before, during, or after the incident—unless offered to prove consent during the incident.⁴⁴

If a complainant’s “prior sexual behavior” with a respondent is considered relevant because it falls under the “consent” exception, schools should give it limited weight in determining whether the complainant consented during the incident, as consent is given to specific sex acts at specific times and is not transferrable to other sex acts at other times. Further, schools should give limited weight to evidence that the parties continued to have a social, romantic, or sexual relationship after the incident, as many survivors continue to talk to, date, or have sex with an assailant or abuser afterwards in an attempt to cope with the loss of control and to regain control. (See #1 on schools’ discretion to define “consent.”)

Non-evidentiary rules. Postsecondary schools can and should adopt and inform parties about additional non-evidentiary rules beyond what is required in the 2020 Rule that protect the parties equally during and outside of a hearing,⁴⁵ such as:

- Allowing any party to request a virtual hearing;
- Allowing parties and witnesses to take breaks during a hearing;
- Prohibiting advisors from asking abusive or repetitive questions, yelling, or invading personal space;
- Requiring a party to choose a different advisor if the advisor repeatedly violates the school’s hearing rules; and
- Preventing evidence from being misused outside of a hearing.⁴⁶

Trauma-informed training. Both PK-12 and postsecondary schools can and should train all Title IX coordinators, investigators, decisionmakers, and informal facilitators about the impact of trauma on sexual harassment victims and on trauma-informed approaches to conducting investigations and hearings.⁴⁷ The impact of trauma on behavior is well researched, and trauma-informed investigations are critical to understanding how trauma can impact behavior following an assault and during an investigation, which ensures investigations are thorough and that complaints of sexual harassment and assault are not ignored.

A SEPARATE “NON-TITLE IX” POLICY

If an incident does not meet the 2020 Rule’s definition of “sexual harassment,” occurred outside an “education program or activity,” occurred outside the United States, or occurred before August 14, 2020 (see #1, #2, and #3), postsecondary schools should address it using a separate policy that:

- Prohibits parties or their advisors from conducting live cross-examination and instead allows students to submit written questions for other parties and witnesses to a neutral official, who can obtain written or oral responses on their behalf;⁴⁸ and
- Prohibits advisors from asking cross-examination questions that are misleading, more prejudicial than probative, assume facts not in evidence, repetitive, or abusive.

Both PK12 and postsecondary schools should address these “non-Title IX” incidents through a separate policy that prohibits consideration of a complainant’s prior sexual behavior with anyone—before, during, or after the incident—unless it is offered to prove mistaken identity.

11. STANDARD OF PROOF

THE 2020 RULE

Under the 2020 Rule, when making a determination regarding responsibility, a school *must* use one of two standards of proof in formal complaints of sexual harassment against students and employees: (i) the “preponderance of the evidence” standard (i.e., “more likely than not”); or (ii) the “clear and convincing evidence” standard (i.e., “substantially more likely than not”).⁴⁹

HOW SCHOOLS CAN SUPPORT SURVIVORS

If at all possible, schools should use the preponderance

standard, as it is the same standard that is used by courts in all civil rights cases and is the only standard of proof that treats both sides equally.⁵⁰ If a school has a collective bargaining agreement that requires it to use the “clear and convincing” standard for employee sexual misconduct investigations, and thus is required under the 2020 Rule to use the “clear and convincing” standard for student sexual harassment investigations as well, the school should work cooperatively with its employee unions to renegotiate the standard of proof used in employee sexual harassment investigations.⁵¹

12. INFORMAL RESOLUTION

THE 2020 RULE

Under the 2020 Rule, schools may choose to offer an “informal resolution process” to resolve *student-on-student* incidents.⁵²

HOW SCHOOLS CAN SUPPORT SURVIVORS

Schools can and should offer restorative justice as an informal resolution option, as long as the facilitators are well trained on how to conduct an effective and trauma-informed process.⁵³ Schools should *not* offer mediation to resolve complaints of sexual assault or domestic or dating violence, as mediation assumes that both parties share responsibility for the incident and often requires direct interaction between the parties, which can be retraumatizing to the complainant.

13. RETALIATION

THE 2020 RULE

Under the 2020 Rule, schools and individuals are prohibited from retaliating against any person for participating or refusing to participate in a grievance process required under the 2020 Rule.⁵⁴ This means schools cannot:

- Discipline a complainant for engaging in “collateral” conduct during a reported incident of sexual harassment (e.g., consensual sex acts, underage drinking, self-defense, COVID policy violation) because otherwise this will chill reporting of sexual harassment—*unless* the school has a “zero tolerance” policy that *always* punishes such collateral conduct, even if it occurs during a student’s victimization;
- Discipline a complainant for “lying” during a grievance process solely because the respondent is ultimately found not responsible; or

- Restrict any party’s ability to discuss the allegations in a formal complaint. (Schools may, however, restrict a party or advisor’s ability to discuss the evidence.)⁵⁵

HOW SCHOOLS CAN SUPPORT SURVIVORS

Schools can and should inform all parties that retaliation is prohibited.⁵⁶ Further, schools can and should adopt policies that prohibit:

- Punishing a complainant for “collateral” conduct during an incident (regardless of whether the school has a “zero tolerance” policy);
- Punishing a complainant for missing school or skipping class to avoid their harasser after an incident;
- Punishing a complainant for “acting out” after an incident when the behavior is merely an age-appropriate reaction to trauma;
- Pressuring or forcing a complainant to take time off, transfer to another school, or enroll in an “alternative education program” after reporting an incident; or
- Punishing a person for unintentionally misstating details or misstating immaterial details in a grievance process (i.e., for making a false statement without bad faith).⁵⁷

1 National Women’s Law Center, *DeVos’s New Title IX Sexual Harassment Rule, Explained* (last updated May 28, 2020) [hereinafter NWLC Title IX Rule Explainer], <https://nwlc.org/resources/devos-new-title-ix-sexual-harassment-rule-explained>.

2 National Women’s Law Center, *Federal Judge Vacates Part of Trump Administration’s Title IX Sexual Harassment Rule* (Aug. 11, 2021), <https://nwlc.org/resource/federal-judge-vacates-part-of-trump-administrations-title-ix-sexual-harassment> [hereinafter 2020 Rule Partial Vacatur].

3 Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 Fed. Reg. 41390 (proposed July 12, 2022) (to be codified at 34 C.F.R. pt. 106), <https://federalregister.gov/d/2022-13734>. See also Office of Information & Regulatory Affairs, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, <https://www.reginfo.gov/public/do/eAgendaViewRule?publd=202104&RIN=1870-AA16> (scheduling release of final rule for May 2023); Department of Education, *A Timing Update on Title IX Rulemaking* (May 26, 2023), <https://blog.ed.gov/2023/05/a-timing-update-on-title-ix-rulemaking> (delaying release of final rule to October 2023).

4 Department of Education, *Questions and Answers on the Title IX Regulations on Sexual Harassment* (July 2021) (Updated June 28, 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf> [hereinafter 2021 Q&A].

5 85 Fed. Reg. at 30061; 2021 Q&A, *supra* note 4, at 10.

6 34 C.F.R. § 106.45(b)(3)(i); 85 Fed. Reg. at 30154, 30157, 30443; 2021 Q&A, *supra* note 4, at 6-7. See also Dep’t of Educ., Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence*, 29 (Apr. 29, 2014), <https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>; Dep’t of Educ., Office of Civil Rights, *Dear Colleague Letter: Sexual Violence*, 4 (Apr. 4, 2011), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>; Dep’t of Educ., Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (Jan. 19, 2001), <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>.

7 85 Fed. Reg. at 30071, 30095, 30473; 2021 Q&A, *supra* note 4, at 33.

8 § 106.30(a) (defining “sexual harassment”).

9 85 Fed. Reg. at 30169, 30170; 2021 Q&A, *supra* note 4, at 7-8

10 85 Fed. Reg. at 30170; 2021 Q&A, *supra* note 4, at 7-8.

11 § 106.30(a); 85 Fed. Reg. at 30124; 2021 Q&A, *supra* note 4, at 6.

12 2001 Guidance, *supra* note 6, at 2.

13 § 106.44(a); 85 Fed. Reg. at 30196-97.

- 14** § 106.44(a) (“officially recognized”; “substantially controlled”); 85 Fed. Reg. at 30196 (on-campus), 30201 (school-sponsored), 30202 (online or digital); 2021 Q&A, *supra* note 4, at 8.
- 15** § 1-6.44(a) (“substantially controlled”); 85 Fed. Reg. at 30093 (private apartment), 30200 n.877 (private hotel), 30202 (teacher visiting student; device during class); 2021 Q&A, *supra* note 4, at 9-10.
- 16** 2014 Guidance, *supra* note 6, at 29; 2011 Guidance, *supra* note 6, at 4; 2001 Guidance, *supra* note 6, at 5.
- 17** 85 Fed. Reg. at 30061; 2021 Q&A, *supra* note 4, at 10.
- 18** § 106.30(a) (“actual knowledge”); 85 Fed. Reg. at 30115-16 n.517, 30192; *see also* § 106.30(a) (defining “complainant”).
- 19** 2001 Guidance, *supra* note 6, at 13.
- 20** 85 Fed. Reg. at 30107, 30115-16 n.517; 2021 Q&A, *supra* note 4, at 12-13.
- 21** 85 Fed. Reg. at 30523.
- 22** *Id.* at 30107, 30113.
- 23** § 106.44(a).
- 24** 2001 Guidance, *supra* note 6, at 15.
- 25** § 106.44(a).
- 26** § 106.44(a); 85 Fed. Reg. at 30198.
- 27** 85 Fed. Reg. at 30183, 30384.
- 28** § 106.30(a) (defining “supportive measures”); 85 Fed. Reg. at 30134 n.595, 30184, 30185.
- 29** § 106.30(a) (“supportive measures”); 85 Fed. Reg. at 30267.
- 30** *Id.* at 30182 (principal’s office, educational conversation), 30184 (one-way no-contact order), 30231 (change in seat, class, housing, or dining hall; one-way no-contact order prohibiting direct communication), 30236 (paid administrative leave), 30237 (supervision), 30267 (one-way no-contact order prohibiting direct communication).
- 31** § 106.30(a) (defining “formal complaint”).
- 32** § 106.45(b)(3)(ii); 85 Fed. Reg. at 30290.
- 33** 85 Fed. Reg. at 30138; 2021 Q&A, *supra* note 4, at 15.
- 34** 2021 Q&A, *supra* note 4, at 15-16.
- 35** §§ 106.45(b)(1)(ii), 106.45(b)(1)(iv); 85 Fed. Reg. at 30264-65.
- 36** § 106.45(b)(1)(ii); 85 Fed. Reg. at 30264-65.
- 37** § 106.45(b)(1)(v).
- 38** 85 Fed. Reg. at 30272.
- 39** *Id.* at 30271.
- 40** *Id.* at 30271-72.
- 41** 85 Fed. Reg. at 30269 (within 60 days), 30310 (at least 20 days); 2021 Q&A, *supra* note 4, at 20-21.
- 42** § 106.45(b)(6)(i); 85 Fed. Reg. at 30294; ; 2021 Q&A, *supra* note 4, at 23, 28-29; 2020 Rule Partial Vacatur, *supra* note 2
- 43** § 106.45(b)(6)(ii).
- 44** § 106.45(b)(6)(i)-(ii); 85 Fed. Reg. at 30350 n.1343, 30354 n.1355 (“prior”); 2021 Q&A, *supra* note 4, at 25.
- 45** § 106.45(b).
- 46** 85 Fed. Reg. at 30319 (abusive), 30320 (different advisor), 30331 (yelling, personal space), 30342 (prevent misuse), 30361 (repetitive); 2021 Q&A, *supra* note 4, at 23-24, 25-26.
- 47** 85 Fed. Reg. at 30187, 30527; 2021 Q&A, *supra* note 4, at 17.
- 48** 2014 Guidance, *supra* note 6, at 31; 2011 Guidance, *supra* note 6, at 12.
- 49** § 106.45(1)(vii); 85 Fed. Reg. at 30386 n.1472, 30388 n.1480.
- 50** NWLC Title IX Rule Explainer, *supra* note 1, at 5.
- 51** 85 Fed. Reg. at 30378.
- 52** § 106.45(b)(9)(iii).
- 53** 2021 Q&A, *supra* note 4, at 30-31; *see also* David Karp & Kaaren Williamsen, *Five Things Student Affairs Administrators Should Know About Restorative Justice and Campus Sexual Harm* (Mar. 12, 2020), <https://www.naspa.org/report/five-things-student-affairs-administrators-should-know-about-restorative-justice-and-campus-sexual-harm1>.
- 54** § 106.71(a).
- 55** §§ 106.45(b)(5)(iii) (discussing allegations), 106.71(a) (collateral conduct), 106.71(b)(2) (lying); 85 Fed. Reg. at 30084 (“consensual” sex, underage drinking, self-defense), 30297-98 (advisors discussing evidence), 30422-23 (parties discussing evidence); 30536 (“collateral” conduct; “zero tolerance”); 2021 Q&A, *supra* note 4, at 32.
- 56** 85 Fed. Reg. at 30278.
- 57** 2021 Q&A, *supra* note 4, at 32-33.