

DEPARTMENT OF EDUCATION

34 CFR Part 106

[Docket ID ED–2018–OCR–0064]

RIN 1870–AA14

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary of Education amends the regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The final regulations specify how recipients of Federal financial assistance covered by Title IX, including elementary and secondary schools as well as postsecondary institutions, (hereinafter collectively referred to as “recipients” or “schools”), must respond to allegations of sexual harassment consistent with Title IX’s prohibition against sex discrimination. These regulations are intended to effectuate Title IX’s prohibition against sex discrimination by requiring recipients to address sexual harassment as a form of sex discrimination in education programs or activities. The final regulations obligate recipients to respond promptly and supportively to persons alleged to be victimized by sexual harassment, resolve allegations of sexual harassment promptly and accurately under a predictable, fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment, and effectively implement remedies for victims. The final regulations also clarify and modify Title IX regulatory requirements regarding remedies the Department may impose on recipients for Title IX violations, the intersection between Title IX, Constitutional protections, and other laws, the designation by each recipient of a Title IX Coordinator to address sex discrimination including sexual harassment, the dissemination of a recipient’s non-discrimination policy and contact information for a Title IX Coordinator, the adoption by recipients of grievance procedures and a grievance process, how a recipient may claim a religious exemption, and prohibition of retaliation for exercise of rights under Title IX.

DATES: These regulations are effective August 14, 2020.

FOR FURTHER INFORMATION CONTACT: Alejandro Reyes, U.S. Department of Education, 400 Maryland Avenue SW,

Room 4E308, Washington, DC 20202. Telephone: (202) 453–6639. Email: Alejandro.Reyes@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Table of Contents

- Effective Date
- Executive Summary
 - Purpose of This Regulatory Action
 - Summary of the Major Provisions of This Regulatory Action
- Timing, Comments, and Changes
- Adoption and Adaption of the Supreme Court’s Framework To Address Sexual Harassment
- Differences Between Standards in Department Guidance and These Final Regulations
- Definition of Sexual Harassment
- Actual Knowledge
- Deliberate Indifference
- Role of Due Process in the Grievance Process
 - Due Process Principles
 - Summary of § 106.45
 - Similarities and Differences Between the § 106.45 Grievance Process and Department Guidance
- Public Comment
 - Analysis of Comments and Changes
 - Personal Stories
 - Notice and Comment Rulemaking Rather Than Guidance
- General Support and Opposition
 - Commonly Cited Sources
 - Data—Overview
 - Prevalence Data—Elementary and Secondary Schools
 - Prevalence Data—Postsecondary Institutions
 - Prevalence Data—Women
 - Prevalence Data—Men
 - Prevalence Data—LGBTQ Persons
 - Prevalence Data—Persons of Color
 - Prevalence Data—Individuals With Disabilities
 - Prevalence Data—Immigrants
 - Impact Data
 - Cost Data
 - Reporting Data
 - Stereotypes/Punishment for “Lying”
 - False Allegations
- General Support and Opposition for Supreme Court Framework Adopted in § 106.44(a)
- General Support and Opposition for the Grievance Process in § 106.45
- Section 106.30 Definitions
 - Actual Knowledge
 - Support for Actual Knowledge Requirement and General Safety Concerns
 - Student Populations Facing Additional Barriers to Reporting
 - Chilling Reporting
 - Generally Burdening Complainants
 - Employees’ Obligations
 - Elementary and Secondary Schools
 - Large Schools
 - Miscellaneous Comments and Questions
 - Complainant
 - Consent

- Elementary and Secondary Schools
- Formal Complaint
- Support for Formal Complaint Definition
- No Formal Complaint Required To Report Sexual Harassment
- Burden on Complainants To File a Formal Complaint
- Anonymous Reporting and Anonymous Filing of Formal Complaints
- Officials Other Than the Title IX Coordinator Filing a Formal Complaint
- Complexity of a Document Labeled “Formal Complaint”
- Parents’ and Guardians’ Rights To File a Formal Complaint
- Methods of Reporting and Methods of Filing a Formal Complaint
- Miscellaneous Concerns About the Formal Complaint Definition
- Postsecondary Institution
- Respondent
- Sexual Harassment
- Overall Support and Opposition for the § 106.30 Sexual Harassment Definition
- Prong (1) *Quid pro quo*
- Prong (2) *Davis* standard
- Davis* Standard Generally
- So Severe
- And Pervasive
- Objectively Offensive
- Effectively Denies Equal Access
- Prong (3) Sexual Assault, Dating Violence, Domestic Violence, Stalking
- Gender-Based Harassment
- Supportive Measures
- Overall Support and Opposition
- No-Contact Orders
- Other Language/Terminology Comments
- Section 106.44 Recipient’s Response to Sexual Harassment, Generally
- Section 106.44(a) “Actual Knowledge”
- The Recipient’s Self-Interest
- Burdening the Complainant
- Elementary and Secondary Schools
- Confusion for Employees
- Intersection Between Actual Knowledge and Deliberate Indifference
- Modeling Reporting on the Military System
- Section 106.44(a) “education program or activity”
- General Support and Opposition for “Education Program or Activity” as a Jurisdictional Condition
- Online Sexual Harassment
- Consistency With Title IX Statutory Text
- Constitutional Equal Protection
- Institutional Autonomy and Litigation Risk
- Requests for Clarification
- Section 106.44(a) “Against a Person in the U.S.”
- Impact on Study Abroad Participants
- Consistency With Federal Law and Departmental Practice
- Constitutional Equal Protection
- Impact on International or Foreign Exchange Students in the U.S.
- Section 106.44(a) Deliberate Indifference Standard
- Recipient’s Response in Specific Circumstances
- Section 106.44(b) Proposed “Safe Harbors,” Generally
- Section 106.44(b)(1) Mandate To Investigate Formal Complaints and Safe Harbor
- Proposed § 106.44(b)(2) Reports by Multiple Complainants of Conduct by

| | | |
|---|---|---|
| Same Respondent [Removed in Final Regulations] | Section 106.45(b)(2) Written Notice of Allegations | Section 106.45(b)(6)(ii) Elementary and Secondary School Recipients May Require Hearing and Must Have Opportunity To Submit Written Questions |
| Proposed § 106.44(b)(3) Supportive Measures Safe Harbor in Absence of a Formal Complaint [removed in final regulations] | Retaliation | Determinations Regarding Responsibility |
| Section 106.44(b)(2) OCR Will Not Re-Weigh the Evidence | Warning Against False Statements Investigative Process | Section 106.45(b)(7)(i) Single Investigator Model Prohibited |
| Additional Rules Governing Recipients' Responses to Sexual Harassment | Administrative Burden on Schools | Benefits of Ending the Single Investigator Model |
| Section 106.44(c) Emergency Removal | Elementary and Secondary Schools Confidentiality and Anonymity for Complainants | Consistency with Case Law |
| Overall Support and Opposition to Emergency Removals | General Modification Suggestions | Alternative Approaches to Ending Single Investigator Model |
| Intersection With the IDEA, Section 504, and ADA | General Clarification Requests | Chilling Reporting and Other Harmful Effects |
| Post-Removal Challenges | Dismissal and Consolidation of Formal Complaints | Respecting the Roles of Title IX Coordinators and Investigators |
| No Stated Time Limitation for the Emergency Removal | Section 106.45(b)(3)(i) Mandatory Dismissal of Formal Complaints | Preserving Recipient Autonomy |
| "Removal" | Section 106.45(b)(3)(ii)–(iii) Discretionary Dismissals/Notice of Dismissal | Consistency With Federal Law and Employment Practices |
| "Individualized Safety and Risk Analysis" | Section 106.45(b)(4) Consolidation of Formal Complaints | Limiting the Prohibition of the Single Investigator Model |
| "Provides the Respondent With Notice and an Opportunity To Challenge the Decision Immediately Following the Removal" | Investigation | Requests for Clarification |
| How OCR Will Enforce the Provision | Section 106.45(b)(5)(i) Burdens of Proof and Gathering Evidence Rest on the Recipient | Section 106.45(b)(7)(i) Standard of Evidence and Directed Question 6 |
| Section 106.44(d) Administrative Leave | Section 106.45(b)(5)(ii) Equal Opportunity To Present Witnesses and Other Inculpatory/Exculpatory Evidence | Mandating a Higher Standard of Evidence Supporting § 106.45(b)(7)(i) |
| Section 106.45 Recipient's Response to Formal Complaints | Section 106.45(b)(5)(iii) Recipients Must Not Restrict Ability of Either Party To Discuss Allegations or Gather and Present Relevant Evidence | One-Sided Condition on Choice of Evidentiary Standard |
| General Requirements for § 106.45 Grievance Process | Section 106.45(b)(5)(iv) Advisors of Choice Supporting Presence and Participation of Advisors | Same Evidentiary Standard in Student and Faculty Cases |
| Section 106.45(a) Treatment of Complainants or Respondents Can Violate Title IX | Fairness Considerations | Requiring the Preponderance of the Evidence Standard |
| Section 106.45(b)(1)(i) Equitable Treatment of Complainants and Respondents | Conflicts of Interest, Confidentiality, and Union Issues | Improving Accuracy of Outcomes Safety Concerns |
| Section 106.45(b)(1)(ii) Objective Evaluation of All Relevant Evidence | Modification Requests | Consistency of Standards of Evidence Across Recipients |
| Section 106.45(b)(1)(iii) Impartiality and Mandatory Training of Title IX Personnel; Directed Question 4 (Training) | Section 106.45(b)(5)(v) Written Notice of Hearings, Meetings, and Interviews | Standards of Evidence Below the Preponderance of the Evidence |
| Section 106.45(b)(1)(iv) Presumption of Non-Responsibility | Section 106.45(b)(5)(vi) Inspection and Review of Evidence Directly Related to the Allegations, and Directed Question 7 | Questioning the Department's Legal Authority |
| Purpose of the Presumption | Section 106.45(b)(5)(vii) An Investigative Report that Fairly Summarizes Relevant Evidence | Alternative Approaches and Clarification Requests |
| Students of Color, LGBTQ Students, and Individuals With Disabilities | Hearings | Section 106.45(b)(7)(ii) Written Determination Regarding Responsibility Must Include Certain Details |
| The Complainant's Right to Due Process Protections | Cross-Examination Generally | Section 106.45(b)(7)(iii) Timing of When the Decision Becomes Final |
| False Allegations | Support for Cross-Examination | [§ 106.45(b)(7)(iv) Title IX Coordinator Responsible for Effective Implementation of Remedies: Addressed Under § 106.45(b)(7)(iii)] |
| Inaccurate Findings of Non-Responsibility | Retraumatizing Complainants | Transcript Notations |
| Recipients Should Apply Dual Presumptions or No Presumption | Reducing Truth-Seeking | Appeals |
| The Adversarial Nature of the Grievance Process | Demeanor Evaluation Is Unreliable | Section 106.45(b)(8) Appeals |
| Supportive Measures | Trauma Responses | Informal Resolution |
| Miscellaneous Concerns | Reliance on Rape Myths | Section 106.45(b)(9) Informal Resolution Supporting and Expanding Informal Resolution |
| Section 106.45(b)(1)(v) Reasonably Prompt Time Frames | Cross-Examination as a Due Process Requirement | Terminology Clarifications |
| Support | Discourages Participation | Written Notice Implications |
| Opposition—Lack of Specified Time Limit | Financial Inequities | Voluntary Consent |
| Effects on Recipients | Changes the Nature of the Grievance Process | Safety Concerns Based on Confidentiality |
| Concerns Regarding Concurrent Law Enforcement Activity | Section 106.45(b)(6)(ii) Should Apply to Postsecondary Institutions | Consistency With Other Law and Practice |
| Alternative Proposals | False Accusations Occur Infrequently | Training Requirements |
| Clarification Requests | Excluding Cross-Examination Questions | Non-Binding Informal Resolution |
| Section 106.45(b)(1)(vi) Describe Range or List of Possible Sanctions and Remedies | Section 106.45(b)(6)(i) Postsecondary Institution Recipients Must Provide Live Hearing With Cross-Examination | Survivor-Oriented Protections |
| Section 106.45(b)(1)(vii) Describe Standard of Evidence | Self-Representation Versus Cross-Examination Conducted by Advisors | Restorative Justice |
| Section 106.45(b)(1)(viii) Procedures and Bases for Appeal | Explain Decision to Exclude Questions | Avoiding Formal Process |
| Section 106.45(b)(1)(ix) Describe Range of Supportive Measures | No Reliance on Statements of a Party Who Does Not Submit to Cross-Examination | Electronic Disclosures |
| Section 106.45(b)(1)(x) Privileged Information | Rape Shield Protections | Expulsion Through Informal Resolution |
| Written Notice of Allegations | Separate Rooms for Cross-Examination Facilitated by Technology; Directed Question 9 | Clarification Requests |
| | Discretion To Hold Live Hearings and Control Conduct of Hearings | Recordkeeping |
| | | Section 106.45(b)(10) Recordkeeping and Directed Question 8 |
| | | Clarifying Amendments to Existing Regulations |

Section 106.3(a) Remedial Action
 Section 106.6(d)(1) First Amendment
 Section 106.6(d)(2) Due Process
 Section 106.6(d)(3) Other Constitutional Rights
 Section 106.6(e) FERPA Background
 Comments, Discussion, and Changes
 Section 106.6(f) Title VII and Directed Question 3 (Application to Employees)
 Section 106.6(g) Exercise of Rights by Parents/Guardians
 Section 106.6(h) Preemptive Effect
 Section 106.8(a) Designation of Coordinator
 Section 106.8(b) Dissemination of Policy
 Removal of 34 CFR 106.9(c)
 List of Publications
 Professional Organizations
 Parents of Elementary and Secondary School Students
 Subjectivity in Publications' Implication of Discrimination
 Judicial Requirements for Sex Discrimination
 Implicit Forms of Sex Discrimination
 Analogous Provisions in Other Laws
 Suggested Modifications
 Section 106.8(c) Adoption and Publication of Grievance Procedures
 Section 106.8(d) Application Outside the United States
 Section 106.12 Educational Institutions Controlled by a Religious Organization
 Directed Questions
 Directed Question 1: Application to Elementary and Secondary Schools
 Directed Question 2: Application Based on Type of Recipient or Age of Parties
 Directed Question 5: Individuals With Disabilities
 Miscellaneous
 Executive Orders and Other Requirements
 Length of Public Comment Period/Requests for Extension
 Conflicts With First Amendment, Constitutional Confirmation, International Law
 Clery Act
 Background
 Comments, Discussion, and Changes
 Different Standards for Other Harassment
 Spending Clause
 Litigation Risk
 Effective Date
 Retaliation
 Section 106.71 Retaliation Prohibited
 Severability
 Regulatory Impact Analysis (RIA)
 Costs of Sexual Harassment and Assault
 Overall Net Effects/Characterization of Savings
 Motivation for Rulemaking
 The Department's Model and Baseline Assumptions
 Data Sources
 Other
 Section 106.44(a) Supportive Measures
 Section 106.45(b)(1)(iii) Title IX Coordinators, Investigators, and Decision-Makers Must Be Properly Trained
 Section 106.45(b)(5) Investigation of Formal Complaints
 Section 106.45(b)(6) Hearings
 Section 106.45(b)(7) Determinations Regarding Responsibility

Section 106.45(b)(8) Appeals
 Section 106.45(b)(9) Informal Resolution
 Executive Orders 12866, 13563, and 13771
 Regulatory Impact Analysis
 Need for Regulatory Action
 Discussion of Costs, Benefits, and Transfers
 Regulatory Alternatives Considered
 Accounting Statement
 Regulatory Flexibility Act
 Paperwork Reduction Act of 1995
 Accessible Format
 Electronic Access to This Document

Effective Date

On March 13, 2020, the President of the United States declared that a national emergency concerning the novel coronavirus disease (COVID-19) outbreak began on March 1, 2020, as stated in “Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak,” Proclamation 9994 of March 13, 2020, **Federal Register** Vol. 85, No. 53 at 15337–38. The Department appreciates that exigent circumstances exist as a result of the COVID-19 national emergency, and that these exigent circumstances require great attention and care on the part of States, local governments, and recipients of Federal financial assistance. The Department recognizes the practical necessity of allowing recipients of Federal financial assistance time to plan for implementing these final regulations, including to the extent necessary, time to amend their policies and procedures necessary to comply. Taking into account this national emergency, as well as consideration of public comments about an effective date as discussed in the “Effective Date” subsection of the “Miscellaneous” section of this preamble, the Department has determined that these final regulations are effective August 14, 2020.

Executive Summary

Purpose of This Regulatory Action

Enacted in 1972, Title IX prohibits discrimination on the basis of sex in education programs and activities that receive Federal financial assistance.¹ In its 1979 opinion *Cannon v. University of Chicago*,² the Supreme Court stated that the objectives of Title IX are two-fold: first, to “avoid the use of Federal resources to support discriminatory practices” and second, to “provide individual citizens effective protection

¹ 20 U.S.C. 1681 (“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . .”).

² 441 U.S. 677 (1979).

against those practices.”³ The U.S. Department of Education (the “Department” or “we”) may issue rules effectuating the dual purposes of Title IX.⁴ We refer herein to Title IX’s prohibition on sex discrimination and purposes as described by the Supreme Court as Title IX’s non-discrimination mandate.

The Department’s predecessor, the Department of Health, Education, and Welfare (HEW), first promulgated regulations under Title IX, effective in 1975.⁵ Those regulations reinforced Title IX’s non-discrimination mandate, addressing prohibition of sex discrimination in hiring, admissions, athletics, and other aspects of recipients’ education programs or activities. The 1975 regulations also required recipients to designate an employee to coordinate the recipient’s efforts to comply with Title IX and to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints that a recipient is discriminating based on sex.

When HEW issued its regulations in 1975, the Federal courts had not yet addressed recipients’ Title IX obligations with respect to sexual harassment as a form of sex discrimination. In the decades since HEW issued the 1975 regulations, the Department has not promulgated any Title IX regulations to address sexual harassment as a form of sex discrimination. Beginning in 1997, the Department addressed this subject through a series of guidance documents, most notably the 2001 Guidance⁶

³ *Cannon v. Univ. of Chicago*, 441 U.S. 677, 704 (1979).

⁴ 20 U.S.C. 1682 (“Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity . . . is authorized and directed to effectuate the provisions of section 1681 of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken.”).

⁵ 40 FR 24128 (June 4, 1975) (codified at 45 CFR part 86). In 1980, Congress created the United States Department of Education. Public Law 96–88, sec. 201, 93 Stat. 669, 671 (1979); Exec. Order No. 12212, 45 FR 29557 (May 2, 1980). By operation of law, all of HEW’s determinations, rules, and regulations continued in effect and all functions of HEW’s Office for Civil Rights, with respect to educational programs, were transferred to the Secretary of Education. 20 U.S.C. 3441(a)(3). The regulations implementing Title IX were recodified without substantive change in 34 CFR part 106. 45 FR 30802, 30955–65 (May 9, 1980).

⁶ U.S. Dep’t. of Education, Office for Civil Rights, *Revised Guidance on Sexual Harassment: Harassment of Students by School Employees, Other Students, or Third Parties* (Jan. 19, 2001) (hereinafter, “2001 Guidance”), <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>.

(which revised similar guidance issued in 1997⁷), the withdrawn 2011 Dear Colleague Letter,⁸ the withdrawn 2014 Q&A,⁹ and the 2017 Q&A.¹⁰ The Department understands that agency guidance is not intended to represent legal obligations; however, we also acknowledge that in part because the Title IX statute and the Department's implementing regulations have (until these final regulations) not addressed sexual harassment, recipients and the Department have relied on the Department's guidance to set expectations about how recipients should respond to sexual harassment and how the Department investigates recipients for possible Title IX violations with respect to responding to sexual harassment.¹¹ These final

⁷ U.S. Dep't. of Education, Office for Civil Rights, *Sexual Harassment Guidance: Harassment of Students By School Employees, Other Students, or Third Parties*, 62 FR 12034 (Mar. 13, 1997) (hereinafter, "1997 Guidance"), <https://www2.ed.gov/about/offices/list/ocr/docs/sexhar01.html#skipnav2>.

⁸ U.S. Dep't. of Education, Office for Civil Rights, *Dear Colleague Letter: Sexual Violence* (April 4, 2011) (hereinafter "2011 Dear Colleague Letter"), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>, withdrawn by, U.S. Dep't. of Education, Office for Civil Rights, *Dear Colleague Letter* (Sept. 22, 2017), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf>.

⁹ U.S. Dep't. of Education, Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence* (April 29, 2014) (hereinafter "2014 Q&A"), <https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>, withdrawn by, U.S. Dep't. of Education, Office for Civil Rights, *Dear Colleague Letter* (Sept. 22, 2017), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf>.

¹⁰ U.S. Dep't. of Education, Office for Civil Rights, *Q&A on Campus Sexual Misconduct* (Sept. 22, 2017) (hereinafter, "2017 Q&A"), <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>.

¹¹ For example, OCR found numerous institutions in violation of Title IX for failing to adopt the preponderance of the evidence standard in its investigations of sexual harassment, even though the notion that the preponderance of the evidence standard is the only standard that might be applied under Title IX is set forth in the 2011 Dear Colleague Letter and not in the Title IX statute, current regulations, or other guidance. *E.g.*, U.S. Dep't. of Education, Office for Civil Rights, Letter of Findings to Harvard Law School 7 (Dec. 10, 2014) ("Harvard Law Letter"), <https://www2.ed.gov/documents/press-releases/harvard-law-letter.pdf> ("[I]n order for a recipient's grievance procedures to be consistent with the Title IX evidentiary standard, the recipient must use a preponderance of the evidence standard for investigating allegations of sexual harassment, including sexual assault/violence.") OCR in its letter of findings against Harvard Law School noted that Harvard's procedures provide that "formal disciplinary sanctions shall be imposed only upon clear and convincing evidence." Harvard Law Letter at 10. OCR found the following: "This higher standard of proof was inconsistent with the preponderance of the evidence standard required by Title IX for investigating allegations of sexual harassment or violence." *Id.*; see also U.S. Dep't. of Education, Office for Civil Rights, Letter of Findings to S. Methodist Univ. 4 (Dec. 11, 2014), [regulations impose, for the first time, legally binding rules on recipients with respect to responding to sexual harassment, and the nature of the legal obligations imposed under these final regulations is similar in some ways, and different in some ways, to the way the Department approached this subject in its guidance documents. Those similarities and differences are explained throughout this preamble, including in the "Adoption and Adaption of the Supreme Court's Framework to Address Sexual Harassment" and "Role of Due Process in the Grievance Process" sections of this preamble.](https://www2.ed.gov/documents/press-releases/southern-</p>
</div>
<div data-bbox=)

Prior to these final regulations, the Department's last policy statement on Title IX sexual harassment was its withdrawal of the 2011 Dear Colleague Letter¹² and concomitant issuance of the 2017 Q&A. The 2017 Q&A along with the 2001 Guidance represent the "status quo" or "baseline" against

[methodist-university-letter.pdf](https://www2.ed.gov/documents/press-releases/princeton-letter.pdf); U.S. Dep't. of Education, Office for Civil Rights, Letter of Findings to Princeton Univ. 6, 11, 18 (Nov. 5, 2014), <https://www2.ed.gov/documents/press-releases/princeton-letter.pdf>; U.S. Dep't. of Education, Office for Civil Rights, Letter of Findings to Tufts Univ. 5 (Apr. 28, 2014), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01102089-a.pdf>; U.S. Dep't. of Education, Office for Civil Rights, Letter of Findings to Yale Univ. 4–5 (June 15, 2012), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/01112027-a.pdf>. Many recipients changed their Title IX policies and procedures to conform to the 2001 Guidance, and then to the 2011 Dear Colleague Letter, in part based on OCR enforcement actions that found recipients in violation for failing to comport with interpretations of Title IX found only in guidance. *E.g.*, Blair A. Baker, *When Campus Sexual Misconduct Policies Violate Due Process Rights*, 26 Cornell J. of Law & Pub. Pol'y 533, 542 (2016) (The 2011 Dear Colleague Letter has "forced universities to change their former policies drastically, with regards to their specific procedures as well as the standard of proof, out of fear that the Department of Education will pursue their school for a violation of Title IX. In sum, the Dear Colleague Letter applied pressure on colleges to maintain a victim-friendly environment, which is admirable and necessary, but in turn has created a situation that can be insensitive to the accused and 'tilted in favor of the alleged victim.' These situations do not have to be mutually exclusive; and there must be a solution in which victim-friendly is not synonymous with procedurally adverse to respondents.") (internal citations omitted); Lauren P. Schroeder, *Cracks in the Ivory Tower: How the Campus Sexual Violence Elimination Act Can Protect Students from Sexual Assault*, 45 Loy. Univ. Chi. L. J. 1195, 1202 (2014) ("[Because] Title IX is such a short statute with little direction, schools look to specific guidance materials provided by the Department of Education to determine the specific requirements of Title IX.").

¹² The 2014 Q&A (withdrawn at the same time as the 2011 Dear Colleague Letter was withdrawn) expounded on the same approach taken by the Department in the withdrawn 2011 Dear Colleague Letter; throughout this preamble, references to and discussion of the 2011 Dear Colleague Letter may be understood to assume that the same or similar approach was taken in the 2014 Q&A unless otherwise noted.

which these final regulations make further changes to the Department's enforcement of Title IX obligations.¹³ However, the withdrawal of the 2011 Dear Colleague Letter and issuance of the 2017 Q&A did not require or result in wholesale changes to the set of expectations guiding recipients' responses to sexual harassment or to many recipients' Title IX policies and procedures. The Department understands from public comments and media reports that many (if not most) recipients chose not to change their Title IX policies and procedures following the withdrawal of the 2011 Dear Colleague Letter and issuance of the 2017 Q&A.¹⁴ This lack of change by recipients is a reasonable response to the following facts: Guidance is not legally enforceable;¹⁵ the 2017 Q&A expressly stated to recipients that the 2017 Q&A was issued as an interim, non-binding interpretation of Title IX sexual harassment responsibilities while the Department conducted rulemaking to arrive at legally binding regulations addressing this subject;¹⁶ and both the 2017 Q&A and the withdrawn 2011 Dear Colleague Letter relied heavily on the 2001 Guidance,¹⁷ and not the withdrawn 2011 Dear Colleague Letter, remain the baseline against which these final regulations make further changes to enforcement of Title IX obligations.

These final regulations largely address the same topics addressed in the Department's current and past guidance, including withdrawn guidance. Throughout this preamble we explain points of difference, and similarity, between these final regulations, and the Department's guidance. As such discussion makes clear, some of the Title IX policies and procedures that

¹³ 2017 Q&A at 1 ("[T]hese questions and answers—along with the [2001 Guidance] previously issued by the Office for Civil Rights—provide information about how OCR will assess a school's compliance with Title IX" in "the interim" while the Department "engag[es] in rulemaking on the topic of schools' Title IX responsibilities concerning complaints of sexual misconduct, including peer-on-peer sexual harassment and sexual violence.").

¹⁴ *E.g.*, Alice B. Lloyd, *Colleges Stick With Obama-Era Title IX Guidance*, Washington Examiner (Aug. 2, 2018) (describing the 2017 Q&A and withdrawal of the 2011 Dear Colleague Letter as giving recipients "the option to adjust their procedures" for example with respect to which standard of evidence to use in sexual harassment cases, and designating a longer investigation time frame than the 60 calendar day time frame specified in the 2011 Dear Colleague Letter, and describing reasons why most recipients have chosen not to change Title IX policies and procedures).

¹⁵ *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 96–98 (2015).

¹⁶ 2017 Q&A at 1.

¹⁷ Compare 2017 Q&A at 1–4, 6–7 with 2011 Dear Colleague Letter at 2, 3–9, 11, 13.

recipients have in place due to following the 2001 Guidance and the withdrawn 2011 Dear Colleague Letter remain viable policies and procedures for recipients to adopt while complying with these final regulations. Because these final regulations represent the Department's interpretation of a recipient's legally binding obligations, rather than best practices, recommendations, or guidance, these final regulations focus on precise legal compliance requirements governing recipients. In many regards, as discussed throughout this preamble, these final regulations leave recipients the flexibility to choose to follow best practices and recommendations contained in the Department's guidance or, similarly, best practices and recommendations made by non-Department sources, such as Title IX consultancy firms, legal and social science scholars, victim advocacy organizations, civil libertarians and due process advocates, and other experts.

Based on extensive review of the critical issues addressed in this rulemaking, the Department has determined that current regulations do not provide clear direction for how recipients must respond to allegations of sexual harassment because current regulations do not reference sexual harassment at all. Similarly, the Department has determined that Department guidance is insufficient to provide clear direction on this subject because it is not legally enforceable,¹⁸ has created confusion and uncertainty among recipients,¹⁹ and has not

¹⁸ For further discussion, see the "Notice and Comment Rulemaking Rather Than Guidance" section of this preamble.

¹⁹ Janet Napolitano, "Only Yes Means Yes": An Essay on University Policies Regarding Sexual Violence and Sexual Assault, 33 Yale L. & Pol'y Rev. 387, 393–97 (2015) (The Honorable Janet Napolitano, the President of the University of California, who is a former Governor and Attorney General of Arizona and a former United States Secretary of Homeland Security, writing that OCR's guidance documents "left [campuses] with significant uncertainty and confusion about how to appropriately comply after they were implemented" and specifically noted that the "2011 Dear Colleague Letter generated significant compliance questions for campuses."); see also Task Force on Fed. Regulation of Higher Education, *Recalibrating Regulation of Colleges and Universities* at 12 (2015) (the Task Force on Federal Regulation of Higher Education, appointed by a bipartisan group of U.S. Senators, noting: "[A] guidance document meant to clarify uncertainty only led to more confusion. A 2011 'Dear Colleague' letter on Title IX responsibilities regarding sexual harassment contained complex mandates and raised a number of questions for institutions. As a result, the Department was compelled to issue further guidance clarifying its letter. This took the form of a 53-page 'Questions and Answers' document [the withdrawn 2014 Q&A] that took three years to complete. Still, that guidance has raised further questions. Complexity begets more complexity.").

adequately advised recipients as to how to uphold Title IX's non-discrimination mandate while at the same time meeting requirements of constitutional due process and fundamental fairness.²⁰ Therefore, the Department issues these final regulations addressing sexual harassment, to better align the Department's Title IX regulations with the text and purpose of Title IX, the U.S. Constitution, Supreme Court precedent and other case law, and to address the practical challenges facing students, employees, and recipients with respect to sexual harassment allegations in education programs and activities.

The final regulations define and apply the following terms, as discussed in the "Section 106.30 Definitions" section of this preamble: "actual knowledge," "complainant," "elementary and secondary schools," "formal complaint," "postsecondary institution," "respondent," "sexual harassment," and "supportive measures"; each term has a specific meaning under these final regulations. For clarity of understanding when reading this preamble, "complainant" means any individual who is alleged to be the victim of sexual harassment, and "respondent" means any individual who is reported to be the perpetrator of sexual harassment. A person may be a complainant, or a respondent, even where no formal complaint has been filed and no grievance process is pending. A "formal complaint" is a document that initiates a recipient's grievance process, but a formal complaint is not required in order for a recipient to have actual knowledge of sexual harassment, or allegations of sexual harassment, that activates the recipient's legal obligation to respond promptly, including by offering supportive measures to a complainant. References in this preamble to a complainant, respondent, or other individual with respect to exercise of rights under Title IX should be understood to include situations in which a parent or guardian has the legal right to act on behalf of the individual.²¹

Alleged victims of sexual harassment often have options to pursue legal action through civil litigation or by pressing criminal charges. Title IX does not replace civil or criminal justice systems. However, the way in which a school, college, or university responds to allegations of sexual harassment in an education program or activity has

²⁰ See the "Role of Due Process in the Grievance Process" section of this preamble.

²¹ For further discussion see the "Section 106.6(g) Exercise of Rights by Parents/Guardians" subsection of the "Clarifying Amendments to Existing Regulations" section of this preamble.

serious consequences for the equal educational access of complainants and respondents. These final regulations require recipients to offer supportive measures to every complainant, irrespective of whether the complainant files a formal complaint. Recipients may not treat a respondent as responsible for sexual harassment without providing due process protections. When a recipient determines a respondent to be responsible for sexual harassment after following a fair grievance process that gives clear procedural rights to both parties, the recipient must provide remedies to the complainant.

Summary of the Major Provisions of This Regulatory Action

These final regulations are premised on setting forth clear legal obligations that require recipients to: Promptly respond to individuals who are alleged to be victims of sexual harassment by offering supportive measures; follow a fair grievance process to resolve sexual harassment allegations when a complainant requests an investigation or a Title IX Coordinator decides on the recipient's behalf that an investigation is necessary; and provide remedies to victims of sexual harassment.

Regarding sexual harassment, the final regulations:

- Define the conduct constituting sexual harassment for Title IX purposes;
- Specify the conditions that activate a recipient's obligation to respond to allegations of sexual harassment and impose a general standard for the sufficiency of a recipient's response, and specify requirements that such a response much include, such as offering supportive measures in response to a report or formal complaint of sexual harassment;
- Specify conditions that require a recipient to initiate a grievance process to investigate and adjudicate allegations of sexual harassment; and
- Establish procedural due process protections that must be incorporated into a recipient's grievance process to ensure a fair and reliable factual determination when a recipient investigates and adjudicates a formal complaint of sexual harassment.

Additionally, the final regulations: Affirm that the Department's Office for Civil Rights ("OCR") may require recipients to take remedial action for discriminating on the basis of sex or otherwise violating the Department's regulations implementing Title IX, consistent with 20 U.S.C. 1682; clarify that in responding to any claim of sex discrimination under Title IX, recipients are not required to deprive an individual of rights guaranteed under

the U.S. Constitution; acknowledge the intersection of Title IX, Title VII, and FERPA, as well as the legal rights of parents or guardians to act on behalf of individuals with respect to Title IX rights; update the requirements for recipients to designate a Title IX Coordinator, disseminate the recipient's non-discrimination policy and the Title IX Coordinator's contact information, and notify students, employees, and others of the recipient's grievance procedures and grievance process for handling reports and complaints of sex discrimination, including sexual harassment; eliminate the requirement that religious institutions submit a written statement to the Assistant Secretary for Civil Rights to qualify for the Title IX religious exemption; and expressly prohibit retaliation against individuals for exercising rights under Title IX.

Timing, Comments, and Changes

On November 29, 2018, the Secretary published a notice of proposed rulemaking (NPRM) for these parts in the **Federal Register**.²² The final regulations contain changes from the NPRM (interchangeably referred to in this preamble as the "NPRM," the "proposed rules," or the "proposed regulations"), and these changes are fully explained in the "Analysis of Comments and Changes" and other sections of this preamble.

Throughout this preamble, the Department uses the terms "institutions of higher education" (or "IHEs") interchangeably with "postsecondary institutions" (or "PSEs"). The Department uses the phrase "elementary and secondary schools" (or "ESEs") interchangeably with "local educational agencies" (or "LEAs" or "K-12").

Throughout this preamble, the Department refers to Title IX of the Education Amendments of 1972, as amended, as "Title IX,"²³ to the Individuals with Disabilities Education Act as the "IDEA,"²⁴ to Section 504 of the Rehabilitation Act of 1973 as "Section 504,"²⁵ to the Americans with Disabilities Act as the "ADA,"²⁶ to Title VI of the 1964 Civil Rights Act as "Title VI,"²⁷ to Title VII of the 1964 Civil Rights Act as "Title VII,"²⁸ to section 444 of the General Education Provisions Act (GEPA), which is commonly referred to as the Family Educational

Rights and Privacy Act of 1974, as "FERPA,"²⁹ to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act as the "Clery Act,"³⁰ and to the Violence Against Women Reauthorization Act of 2013 as "VAWA."³¹

The Department uses the phrase "Title IX sexual harassment" to refer to the conduct defined in § 106.30 to be sexual harassment as well as the conditions described in § 106.44(a) that require a recipient to respond to sexual harassment under Title IX and these final regulations.³² When the Department uses the term "victim" (or "survivor") or "perpetrator" to discuss these final regulations, the Department assumes that a reliable process, namely the grievance process described in § 106.45, has resulted in a determination of responsibility, meaning the recipient has found a respondent responsible for perpetrating sexual harassment against a complainant.³³

Throughout the preamble, the Department references and summarizes statistics, data, research, and studies that commenters submitted. The Department's reference to or summarization of these items, however, does not speak to their level of accuracy. Whether specifically cited or not, we considered all relevant information submitted to us in our analysis and promulgation of these final regulations.

The Department references statistics, data, research, and studies throughout this preamble. Such reference to or summarization of these items does not indicate that the Department independently has determined that the entirety of each item is accurate.

Many commenters referenced the impact of sexual harassment or the proposed rules on individuals who belong to, or identify with, certain demographic groups, and used a variety of acronyms and phrases to describe such individuals; for example, various commenters referred to "LGBT" or "LGBTQ+" and "persons of color" or "racial minorities." For consistency, throughout this preamble we use the acronym "LGBTQ" while recognizing

that other terminology may be used or preferred by certain groups or individuals, and our use of "LGBTQ" should be understood to include lesbian, gay, bisexual, transgender, queer, questioning, asexual, intersex, nonbinary, and other sexual orientation or gender identity communities. We use the phrase "persons of color" to refer to individuals whose race or ethnicity is not white or Caucasian. We emphasize that every person, regardless of demographic or personal characteristics or identity, is entitled to the same protections against sexual harassment under these final regulations, and that every individual should be treated with equal dignity and respect.

Finally, several provisions in the NPRM have been renumbered in the final regulations.³⁴ In response to commenters who asked for clarification as to whether the definitions in § 106.30 apply to a term in a specific regulatory provision, some of the regulatory provisions specifically refer to a term "as defined in § 106.30" to provide additional clarity.³⁵ Notwithstanding these points of additional clarification in certain regulatory provisions, the definitions in § 106.30 apply to the entirety of 34 CFR part 106. For consistency, references in this preamble are to the provisions as numbered in the final, and not the proposed, regulations.

³⁴ Provisions proposed in the NPRM, as renumbered in these final regulations, are:

Proposed § 106.44(b)(2) *eliminated in the final regulations.*

Proposed § 106.44(b)(3) *eliminated in the final regulations.*

Proposed § 106.44(b)(4) *eliminated in the final regulations.*

Proposed § 106.44(b)(5) *in the final regulations as § 106.44(b)(2).*

Proposed § 106.45(b)(3)(i) *in the final regulations as § 106.45(b)(5)(i).*

Proposed § 106.45(b)(3)(ii) *in the final regulations as § 106.45(b)(5)(ii).*

Proposed § 106.45(b)(3)(iii) *in the final regulations as § 106.45(b)(5)(iii).*

Proposed § 106.45(b)(3)(iv) *in the final regulations as § 106.45(b)(5)(iv).*

Proposed § 106.45(b)(3)(v) *in the final regulations as § 106.45(b)(5)(v).*

Proposed § 106.45(b)(3)(vi) *in the final regulations as § 106.45(b)(6)(ii).*

Proposed § 106.45(b)(3)(vii) *in the final regulations as § 106.45(b)(6)(i).*

Proposed § 106.45(b)(3)(viii) *in the final regulations as § 106.45(b)(5)(vi).*

Proposed § 106.45(b)(3)(ix) *in the final regulations as § 106.45(b)(5)(vii).*

Proposed § 106.45(b)(4) *in the final regulations as § 106.45(b)(7).*

Proposed § 106.45(b)(5) *in the final regulations as § 106.45(b)(8).*

Proposed § 106.45(b)(6) *in the final regulations as § 106.45(b)(9).*

Proposed § 106.45(b)(7) *in the final regulations as § 106.45(b)(10).*

³⁵ E.g., §§ 106.8(c), 106.44(a), 106.45(b) (introductory sentence), 106.45(b)(1)(i), 106.45(b)(2), 106.45(b)(3)(i), 106.45(b)(7).

²² 83 FR 61462 (Nov. 29, 2018) (to be codified at 34 CFR pt. 106).

²³ 20 U.S.C. 1681 *et seq.*

²⁴ 20 U.S.C. 1400 *et seq.*

²⁵ 29 U.S.C. 701 *et seq.*

²⁶ 42 U.S.C. 12101 *et seq.*

²⁷ 42 U.S.C. 2000d *et seq.*

²⁸ 42 U.S.C. 2000e *et seq.*

²⁹ 20 U.S.C. 1232g.

³⁰ 20 U.S.C. 1092(f).

³¹ 34 U.S.C. 12291 *et seq.* (formerly codified at 42 U.S.C. 13925).

³² Section 106.44(a) requires a recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States to respond promptly in a manner that is not deliberately indifferent, meaning not clearly unreasonable in light of the known circumstances.

³³ As noted in the "Executive Summary" section of this preamble, "respondent," "sexual harassment," and "complainant" are defined terms in § 106.30.

Citations to “34 CFR 106. ” in the body of the preamble and the footnotes are citations to the Department’s current regulations and not the final regulations.

Adoption and Adaption of the Supreme Court’s Framework To Address Sexual Harassment

Seven years after the passage of Title IX, the Supreme Court in *Cannon v. University of Chicago*³⁶ held that a judicially implied private right of action exists under Title IX. Thirteen years after that, in *Franklin v. Gwinnett County Public Schools*³⁷ the Supreme Court held that money damages are an available remedy in a private lawsuit alleging a school’s intentional discrimination in violation of Title IX. The *Cannon* Court explained that Title IX has two primary objectives: Avoiding use of Federal funds to support discriminatory practices and providing individuals with effective protection against discriminatory practices.³⁸ Those two purposes are enforced both by administrative agencies that disburse Federal financial assistance to recipients, and by courts in private litigation. These two avenues of enforcement (administrative enforcement by agencies, and judicial enforcement by courts) have different features: For instance, administrative enforcement places a recipient’s Federal funding at risk,³⁹ while judicial enforcement does not.⁴⁰ But the goal of both avenues of enforcement (administrative and judicial) is the same: To further the non-discrimination mandate of Title IX.

In deciding whether to recognize a judicially implied right of private action, the *Cannon* Court considered whether doing so would conflict with administrative enforcement of Title IX. The *Cannon* Court concluded that far from conflicting with administrative enforcement, judicial enforcement would complement administrative enforcement because some violations of Title IX may lend themselves to the administrative remedy of terminating Federal financial assistance, while other violations may lend themselves to a judicial remedy in private litigation.⁴¹ The *Cannon* Court recognized that

judicial and administrative enforcement both help ensure “the orderly enforcement of the statute” to achieve Title IX’s purposes.⁴²

In *Franklin*, the Supreme Court acknowledged that sexual harassment and sexual abuse of a student by a teacher may mean the school itself engaged in intentional sex discrimination.⁴³ The *Franklin* Court held that money damages is an available remedy in a private lawsuit under Title IX, reasoning that even though Title IX is a Spending Clause statute, schools have been on notice since enactment of Title IX that intentional sex discrimination is prohibited under Title IX.⁴⁴

In 1998, six years after *Franklin*, in *Gebser v. Lago Vista Independent School District*⁴⁵ the Supreme Court analyzed the conditions under which a school district will be liable for money damages for an employee sexually harassing a student. The *Gebser* Court began its analysis by stating that while *Franklin* acknowledged that a school employee sexually harassing a student may constitute the school itself committing intentional discrimination on the basis of sex, it was necessary to craft standards defining “the contours of that liability.”⁴⁶ The *Gebser* Court held that where a school has actual knowledge of an employee sexually harassing a student but responds with deliberate indifference to such knowledge, the school itself has engaged in discrimination, subjecting the school to money damages in a private lawsuit under Title IX.⁴⁷ The following year, in 1999, in *Davis v. Monroe County Board*

of Education,⁴⁸ the Supreme Court held that where sexual harassment is committed by a peer rather than an employee, the same standards of actual knowledge and deliberate indifference apply.⁴⁹ The *Davis* Court additionally crafted a definition of when sex-based conduct becomes actionable sexual harassment, defining the conduct as “so severe, pervasive, and objectively offensive” that it denies its victims equal access to education.⁵⁰

The Supreme Court’s *Gebser* and *Davis* cases built upon the Supreme Court’s previous Title IX decisions in *Cannon* and *Franklin* to establish a three-part framework describing when a school’s response to sexual harassment constitutes the school itself committing discrimination. The three parts of this framework are: Conditions that must exist to trigger a school’s response obligations (actionable sexual harassment, and the school’s actual knowledge) and the deliberate indifference liability standard evaluating the sufficiency of the school’s response. We refer herein to the “*Gebser/Davis* framework,” consisting of a definition of actionable sexual harassment, the school’s actual knowledge, and the school’s deliberate indifference.

The *Gebser/Davis* framework is the appropriate starting point for ensuring that the Department’s Title IX regulations recognize the conditions under which a school’s response to sexual harassment violates Title IX. Whether the available remedy is money damages (in private litigation) or termination of Federal financial assistance (in administrative enforcement), the Department’s regulations must acknowledge that when a school itself commits sex discrimination, the school has violated Title IX.

In crafting the *Gebser/Davis* framework, the Supreme Court emphasized that because a private lawsuit under Title IX subjects a school to money damages, it was important for the Court to set standards for a school’s liability premised on the school’s knowledge and deliberate choice to permit sexual harassment, analogous to the way that the Title IX statute provides that a school’s Federal

⁴² *Id.* at 705–06 (“The award of individual relief to a private litigant who has prosecuted her own suit is not only sensible but is also fully consistent with—and in some cases even necessary to—the orderly enforcement of the statute.”); *see also id.* at 707 (“the individual remedy will provide effective assistance to achieving the statutory purposes.”).

⁴³ *Franklin*, 503 U.S. at 74–75 (holding intentional discrimination by the school is alleged where the school’s employee sexually harassed a student).

⁴⁴ *Id.* at 74 (noting that under *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1 (1981), monetary damages may be appropriate to remedy an intentional violation of a Spending Clause statute because entities subject to the statute are on notice that intentional violations of a statute may subject the entity to monetary damages); *see also Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 281 (1998) (noting that in *Franklin*, the plaintiff alleged that “school administrators knew about the harassment but took no action, even to the point of dissuading her from initiating charges”).

⁴⁵ 524 U.S. 274 (1998).

⁴⁶ *Id.* at 281 (“*Franklin* thereby establishes that a school district can be held liable in damages in cases involving a teacher’s sexual harassment of a student; the decision, however, does not purport to define the contours of that liability. We face that issue squarely in this case.”).

⁴⁷ *Id.* at 290.

⁴⁸ 526 U.S. 629 (1999).

⁴⁹ *Id.* at 650 (holding that “funding recipients are properly held liable in damages only where they are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.”).

⁵⁰ *See id.*

³⁶ 441 U.S. 677, 717 (1979).

³⁷ 503 U.S. 60, 76 (1992).

³⁸ *Cannon v. Univ. of Chicago*, 441 U.S. 677, 704 (1979) (“Title IX, like its model Title VI, sought to accomplish two related, but nevertheless somewhat different, objectives. First, Congress wanted to avoid the use of federal resources to support discriminatory practices; second, it wanted to provide individual citizens effective protection against those practices.”).

³⁹ 20 U.S.C. 1682.

⁴⁰ *Franklin*, 503 U.S. at 76.

⁴¹ *Cannon*, 441 U.S. at 704–06.

Changes: None.

Section 106.12 Educational Institutions Controlled by a Religious Organization

Comments: Some commenters expressed support for the changes to § 106.12(b), on the basis that the changes offered additional flexibility to religious educational institutions, and religious freedom is a vital constitutional guarantee. Commenters also elaborated on the benefits of religious freedom, suggesting that religion helps preserve civic virtues, and instills positive moral values for both individuals and communities. Some commenters noted that freedom of religion is specifically contemplated by the U.S. Constitution, in the First Amendment's Free Exercise Clause. Drawing on this fact, commenters noted that the freedom of religion has been a touchstone of American government since the country was founded. Other commenters stated that proposed § 106.12(b) is consistent with the Religious Freedom Restoration Act, since it avoids placing an unnecessary burden on religious institutions. Some commenters noted that proposed § 106.12(b) has the ancillary benefit of avoiding confusion for schools, since many institutions may not obtain a religious exemption before having a complaint against them filed, but now they will know that there is no such duty. The corollary to this point, asserted commenters, is that opponents of a school's religious exemption may not incorrectly argue that a school has "waived" a right to invoke a religious exemption.

Discussion: The Department appreciates and agrees with the comments in support of § 106.12(b), which align with the Title IX statute, the First Amendment, and the Religious Freedom Restoration Act, 42 U.S.C. 2000bb–1. The final regulations bring § 106.12(b) further in line with the relevant statutory framework in this context, which states that Title IX "shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization," 20 U.S.C. 1681(a)(3), and that the term "program or activity," as defined in 20 U.S.C. 1687, "does not include any operation of an entity which is controlled by a religious organization if the application of section 1681 of this title to such operation would not be consistent with the religious tenets of such organization."

No part of the statute requires that recipients receive an assurance letter

from OCR, and no part of the statute suggests that a recipient must be publicly on the record as a religious institution claiming a religious exemption before it may invoke a religious exemption in the context of Title IX. Nevertheless, the current regulations are not clear on whether recipients may claim the exemption under § 106.12(a) only by affirmatively submitting a letter to the Assistant Secretary for Civil Rights.

However, longstanding OCR practice aligns with the statute, and the final regulations codify OCR's practice. To the extent that a recipient would like to request an assurance letter from OCR, the agency will continue to respond to such requests, as an option for recipients that are educational institutions controlled by a religious organization.

Changes: None.

Comments: Commenters noted that religious educational institutions themselves are vital for American society, noting that schools, among other religious institutions, have contributed to the alleviation of social ills through philanthropic and humanitarian projects. Religious educational institutions, suggested commenters, are necessary for religious freedom, and the proposed rules are consistent with the robust views of religious freedom that have been expressed by the U.S. Constitution, the U.S. Supreme Court, and Congress itself when it enacted Title IX. To that end, commenters noted that the Federal government ought to be making it easier for religious institutions to operate and thrive, not harder. Commenters noted that it would be a waste of a school's resources to apply for a religious exemption assurance letter, when no letter is in fact needed to invoke a religious exemption to Title IX. At least under the proposed rule, asserted the commenters, the Department's entanglement with a religious institution's tenets might be limited to those cases where a complaint is filed, or where the school affirmatively requests an exemption assurance letter.

Discussion: The Department appreciates the positive feedback on the proposed revisions in § 106.12(b) and believes that the Department's prior practice and the revisions to § 106.12(b) in these final regulations have the effect of promoting religious freedom. The final regulations codify longstanding OCR practices, and are consistent with the Title IX statute.

Changes: None.

Comments: Some commenters discussed current § 106.12, as well as the practice of OCR. Commenters stated

that the status quo requires a religious institution to affirmatively request an exemption, and that imposing such a duty inappropriately places the burden on religious educational institutions. Instead, the commenters suggested, the burden would more appropriately be placed on the government, by having to disprove the application of a religious exemption. Indeed, commenters suggested that the status quo could occasionally be turned against religious educational institutions, by denying religious exemptions or forcing schools to wait an excessively long period of time before obtaining a letter of assurance from OCR.

Discussion: Contrary to commenters who suggested that the status quo requires schools to affirmatively request an assurance letter from OCR, OCR has previously interpreted the current regulation to mean that a school can invoke a religious exemption even after OCR has received a complaint regarding the educational institution. Additionally, the Department views both the status quo and the final regulations to require a recipient to invoke and establish its eligibility for an exemption, and does not view the final regulations as placing the burden on the Federal government to disprove any claim for religious exemption. However, it may be correct that many schools and individuals—such as these commenters themselves—have incorrectly read current § 106.12 to mean that a recipient must always seek or receive an assurance letter from OCR to assert the religious exemption before any complaint is filed against the school, if a religious exemption is to be invoked. These final regulations clarify that this is not the case.

Changes: None.

Comments: In the same vein, many commenters supported § 106.12(b) because the provision alleviated the need for schools to request an assurance letter in order to invoke a religious exemption. That purported need, the commenters asserted, was inconsistent with the authority granted by Congress to the Department of Education in Title IX itself. It was better, the commenters argued, to simply allow schools the option to obtain the assurance ahead of time, but not require it. Commenters suggested that forcing religious institutions to jump through hoops in order to invoke a religious exemption imperils schools' deeply held religious beliefs. At least one commenter stated that religious educational institutions have a natural tendency to reduce their interactions with government, and thus allowing schools to maintain a religious

exemption to Title IX even absent an assurance letter was appropriate.

Discussion: The proposed revisions to § 106.12(b) codifies OCR's practice of permitting recipients to invoke a Title IX religious exemption without having obtained an assurance letter. However, the Department agrees with the concern that the current regulation is not as clear as it could be on this point, and that appears to have resulted in some confusion among recipients who were unaware of OCR's existing practice.

Changes: None.

Comments: Some commenters noted that § 106.12(b) will aid religious educational institutions, and assist with their legal compliance regimes under Title IX. For instance, one commenter asserted that a religious educational institution that had single-sex classes would understand that they do not have to comply with the single-sex provisions of the current Title IX regulations and instead would simply be able to maintain a religious exemption generally, if the classes were based on religious tenets or practices. In other cases, commenters stated, schools would be able to maintain more flexibility in their school policies, such as whether to allow students who were assigned one sex at birth to use the intimate facilities assigned to another sex; whether to offer birth control as part of their health services; and how to structure dormitory and other housing policies.

Discussion: The Department appreciates the positive feedback on § 106.12(b) and agrees with commenters that stated that the final regulations will assist recipients with complying with Title IX. The final regulations codify longstanding OCR practices, and are consistent with the Title IX statute.

Changes: None.

Comments: Many commenters suggested that the proposed change in § 106.12(b) is a good way to prevent future administrations from maintaining a hostile posture toward religious educational institutions. These commenters suggested that the process of compelling a school to write a request letter to the Assistant Secretary for Civil Rights, and then waiting for OCR to respond, may raise fears that the Federal government is passing judgment on religious institutions, or that hostility toward certain categories of exemptions could trigger additional delays, or perhaps unduly close scrutiny of whether a religious educational institution really is eligible for such an exemption. Commenters also suggested that close scrutiny of religious exemption requests excessively

entangles OCR with religious educational institutions.

Discussion: The Department is mindful of the concerns that educational institutions controlled by a religious organization sometimes express that OCR "entangles" itself with a recipient's religious practices by scrutinizing them too closely, or by delaying the issuance of an assurance letter (even when such delay is due to administrative backlogs and is not an intentional delay). The Department appreciates the positive feedback on § 106.12(b) and believes that the final regulations will help the Department and its OCR administer these final regulations consistent with the U.S. Constitution by minimizing entanglement issues. The final regulations codify longstanding OCR practices, and are consistent with the Title IX statute.

Changes: None.

Comments: Some commenters sought to address concerns about religious exemptions generally, suggesting that religious institutions need to rely on Title IX less than other schools, since some acts—like sexual harassment or sexual assault—are generally considered abhorrent sins under most religious persuasions. Some comments mentioned Christianity, in particular, as a religion that is committed to promoting the safest environment for students, free from discrimination and harassment. In that vein, commenters stated that Christian principles have caused Christian colleges to be exceptionally diligent in protecting students and employees from sexual harassment and sexual assault. Some commenters stated that it is inappropriate for a school to invoke a religious exemption in order to escape Title IX liability, since religious values disfavor discrimination, and discrimination is generally against a religious moral code. Commenters also stated that religious exemptions are contrary to the Bible, in that the Bible condemns sexual harassment and assault, and religious institutions should be leading the charge against such misconduct. One commenter stated that God made beings different from each other, and discrimination against students is contrary to God's creation.

Discussion: The Department appreciates the commenter's concerns and perspectives. The Department notes that the religious exemption applies only to the extent application of this part would not be consistent with the religious tenets of such organization. Through 20 U.S.C. 1682, Congress authorized the Department to effectuate

the provisions of Title IX, which includes a religious exemption. The Department does not take a position on whether it is appropriate for a school to invoke such an exemption and is effectuating the provisions of Title IX, including the religious exemption that Congress provided in 20 U.S.C. 1681(a)(3) through these final regulations, which are consistent with the First Amendment and the Religious Freedom Restoration Act.

Changes: None.

Comments: Several commenters noted that they supported § 106.12(b) because of its breadth, reading the provision to mean that any school, even with a minor religious affiliation, would be eligible for a religious exemption. The commenters asserted that this was the correct approach, and that the Department was wise to embrace such a broad religious exemption.

Discussion: Title IX and current § 106.12 provide that they do not apply to an "educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization." The Department does not consider the final regulations to be broader than the scope of the current regulations or the statute.

Changes: None.

Comments: One commenter argued that there is a potential internal contradiction between § 106.8 and proposed § 106.12. While a recipient may have a duty to issue a general notice of non-discrimination, the commenter argued that they might—at the same time—maintain a religious exemption that permitted such discrimination. The commenter argued that this would allow schools to mislead students by sending out a misleading non-discrimination notice. The commenter contended that this "bait and switch" would undermine OCR's credibility, and would mean that students at religious institutions will be deterred from filing complaints. To solve this problem, the commenter suggested schools claiming a religious exemption should have to include such a statement in the non-discrimination notice mandated by § 106.8.

Discussion: Recipients are permitted to distribute publications under § 106.8(b)(2)(ii) that clarify that the recipient may treat applicants, students, or employees differently on the basis of sex to the extent "such treatment is permitted by Title IX or this part." Nothing in the final regulations mandates that recipients deceive applicants, students, or employees regarding their non-discrimination practices, and recipients that assert a

religious exemption are not required to misstate their actual policies when disseminating their Title IX policy under § 106.8. Indeed, if a recipient provided inaccurate or false information in any notification required under § 106.8, then the recipient would not be in compliance with § 106.8. We note that nothing in the final regulations supersedes any other contractual or other remedy that an applicant, student, or employee may have against a recipient based on an alleged misstatement or false statement. Students at schools that assert a religious exemption also may always file a complaint with OCR.

Changes: None.

Comments: Numerous commenters expressed opposition to religious exemptions as a general matter, suggesting that such exemptions are commonly used to discriminate against students or employees, cause harm to students and employees, and often are not adequately disclosed in a public and transparent way so as to give students and employees appropriate notice that they would not be protected by Title IX. These commenters argued that the interests underlying the protection of civil rights outweigh the need to protect a religious institution's discomfort regarding student behavior. Students at religious institutions, including LGBTQ students, asserted the commenters, deserve protection just as much as all other students. Commenters asserted that the Department owes a duty to students to protect their civil rights and argued that the proposed rules run contrary to that duty.

In the same vein regarding transparency, some commenters argued that permitting recipients to invoke religious exemptions without having to make a public statement will pit students against their own schools. The commenters say that since a school is designed to cultivate critical thinkers, depriving students of transparency runs counter to this interest. Additionally, commenters stated that students who seek abortions, hormone therapy, or access to intimate facilities that are sex-segregated, may feel like their own school does not protect them, and may feel betrayed by their own institution, leading to an environment of distrust on campus. Worse, the commenters say, some students could feel bullied, threatened, or harassed once students see that the school itself is openly discriminating against its students. Commenters noted that the same could be true for employees, and not just students.

Commenters argued that even if a school is entitled to assert a religious

exemption, proposed § 106.12(b) goes too far because it seems to encourage schools to lie in wait before formally invoking the religious exemption. Commenters stated that religious educational institutions should have a legal obligation to give students notice prior to enrolling or working at a school maintaining a religious exemption. For that reason, commenters stated, § 106.12(b) is in tension with the OCR's usual assurance process for all recipients of Federal education funds, which requires a school to assure the Department that it will comply with non-discrimination laws as a condition of receiving Federal education dollars. Another commenter argued that for private religious elementary and secondary schools that educate students as part of their Free and Appropriate Public Education, it is highly troubling for parents not to know about Title IX exemptions prior to enrollment. One commenter alleged that allowing a recipient to invoke a religious exemption after a complaint has been filed with OCR is contrary to the due process principles that these final regulations are attempting to preserve and protect.

Discussion: In response to the comments about the propriety of having any religious exemption or the need to protect civil rights over religious freedom, the Department notes that Title IX itself guarantees the religious exemption and these final regulations do not change our long-standing practice of honoring and applying the religious exemption in the appropriate circumstances. As some commenters in support of § 106.12(b) noted, the proposed regulations do not prevent OCR from investigating a complaint simply because the complaint involves an educational institution controlled by a religious organization. The recipient must additionally invoke a religious exemption based on religious tenets. Moreover, this does not prevent OCR from investigating or making a finding against a recipient if its religious tenets do not address the conduct at issue. In those cases, OCR will proceed to investigate, and if necessary, make a finding on the merits.

The Department also appreciates the feedback on the potential policy implications of the proposed rule; however, the Department is limited by the Title IX statute,¹⁷²⁵ and cannot make changes to the final regulations that are

¹⁷²⁵ 20 U.S.C. 1681(a)(3) (“[T]his section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization”).

inconsistent with the statute, regardless of the policy implications addressed by commenters. As mentioned, the final regulations codify longstanding OCR practices, and are consistent with the Title IX statute. The Department does not believe that its current practice or the final regulations violate the U.S. Constitution. The Department further asserts that § 106.12(b) in these final regulations is consistent with the First Amendment, including the Free Exercise Clause as well as the Establishment Clause, because the Department is not establishing a religion and is instead respecting a recipient's right to freely exercise its religion. Additionally, § 106.12(b) in these final regulations is consistent with the Religious Freedom Restoration Act, 42 U.S.C. 2000bb *et seq.*, which applies to the Department, and requires the Department not to substantially burden a person's exercise of religion unless certain conditions are satisfied.¹⁷²⁶ As the Title IX statute does not require a recipient to request and receive permission from the Assistant Secretary to invoke the religious exemption, requiring a recipient to do so may constitute a substantial burden that is not in furtherance of a compelling government interest or the least restrictive means of furthering that compelling government interest under the Religious Freedom Restoration Act, 42 U.S.C. 2000bb–1. Such a requirement also is unnecessary in light of the other requirements in these final regulations that a recipient notify students, prospective students, and others about the recipient's non-discrimination statement as well as its grievance procedures and grievance process to address sex discrimination, including sexual harassment.

Section 106.8 requires all recipients to 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 its non-discrimination on the basis of sex as well as its 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. Additionally, § 106.8(b)(2)(ii) provides that a recipient

¹⁷²⁶ *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (holding “person” within meaning of the Religious Freedom Restoration Act's protection of a person's exercise of religion includes for-profit corporations).

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 these final regulations. Accordingly, students and prospective students should receive adequate notice of the recipient's non-discrimination statement as well as its grievance procedures and grievance process regarding sex discrimination, including sexual harassment, and such notice is consistent with due process principles. Such transparency helps guard against any misunderstandings, irrespective of whether a school asserts a religious exemption.

The religious exemption in Title IX, 20 U.S.C. 1681(a)(3), applies to an educational institution which is controlled by a religious organization, and students and prospective students likely will know whether an educational institution is controlled by a religious organization so as not to be surprised by a recipient's assertion of such a religious exemption. Additionally, the Department also notes that under § 106.8(b)(1) any person can inquire about the application of Title IX to a particular recipient by inquiring with the recipient's Title IX Coordinator, the Assistant Secretary, or both.

OCR is unaware of a religious school claiming an exemption from Title IX's obligations to respond to sexual harassment on the basis that such a response conflicts with the religious tenets of an organization controlling the religious school. As the Department explains more thoroughly in the "Gender-based harassment" subsection of the "Sexual Harassment" subsection of the "Section 106.30 Definitions" section, these final regulations focus on prohibited conduct. The Department believes any person may experience sex discrimination, irrespective of the identity of the complainant or respondent.

Nothing in the final regulations mandates that recipients deceive applicants, students, or employees regarding their non-discrimination practices, a recipient remains free to describe its religious exemption on its website, and nothing in the final regulations supersedes any other contractual or other remedy that an applicant, student, or employee may have against a recipient based on an alleged misstatement or false statement.

Changes: None.

Comments: Some commenters ascribed particularly nefarious motives to recipients, arguing that schools often intentionally deceive applicants to the school in order to obtain application

fees or tuition revenues. These commenters alleged that religious educational institutions deliberately hid their purported exemptions from Title IX and would then blindside students once they were already enrolled in school. One commenter suggested bigoted university officials would use religious exemptions as a fig leaf to impose personal beliefs, such as denying transgender students medical coverage for hormone therapy.

Discussion: Nothing in these final regulations mandates that recipients deceive applicants, students, or employees regarding their non-discrimination practices, and nothing in the final regulations supersedes any other contractual or other remedy that an applicant, student, or employee may have against a recipient based on an alleged misstatement or false statement. On the contrary, as explained above, these final regulations including § 106.8, promote transparency by requiring a recipient to provide notice of its non-discrimination statement as well as its grievance procedures and grievance process to address sex discrimination, including sexual harassment. Additionally, § 106.8(b)(1) allows inquiries about the application of Title IX and this part to a recipient to be referred to the recipient's Title IX Coordinator, to the Assistant Secretary, or both.

The Department disagrees with the suggestion that religious exemptions are tools for bigotry or should not be provided due to such characterizations. The First Amendment to the Constitution protects religious exercise, and Congress placed a religious exemption in Title IX and numerous other statutes. The Department's experience is that exemptions for religious liberty overwhelmingly serve to advance freedom and diversity in education, not bigotry. To the extent that an official of a recipient invokes a religious exemption "as a fig leaf" in order to impose only personal beliefs, that recipient would not qualify for a religious exemption because the religious exemption requires the application of Title IX and its regulations to be inconsistent with the religious tenets of a religious organization and not just inconsistent with personal beliefs.

Changes: None.

Comments: Some commenters ascribed nefarious motives to the Department. Commenters asserted that the people drafting the proposed rules would not be in favor of religious exemptions if their wives, mothers, or daughters were the victims of sexual assault. One stated that honoring women and girls' rights is what Jesus

calls for and implied that the proposed regulations go against this principle. Some commenters objected that the inclusion of religious exemptions is clearly a political decision made by politicians in this administration who seek to avoid accountability for their own sexual misconduct. Other commenters stated that the drafters of the proposed rules do not have the interests of students at heart, and that the proposed rules are intentionally designed to institutionalize patriarchy and homophobia. Other commenters stated that the inclusion of the religious exemption provision was a political decision to curry favor with religious institutions and warned the Department not to divide people. Another commenter suggested that the provision was an effort by Secretary Betsy DeVos to establish a Christian fascist nation that favors a fundamentalist strain of Christianity.

Discussion: Although the Department appreciates the feedback on the proposed rule, it rejects the assumptions of these commenters. As stated above, the Department's goals for these final regulations are to establish a grievance process that is rooted in due process principles of notice and opportunity to be heard and that ensures impartiality before unbiased officials. Specifically, these goals are to (i) improve perceptions that Title IX sexual harassment allegations are resolved fairly and reliably, (ii) avoid intentional or unintentional injection of sex-based biases and stereotypes into Title IX proceedings, and (iii) promote accurate, reliable outcomes, all of which effectuate the purpose of Title IX to provide individuals with effective protection from discriminatory practices, including remedies for sexual harassment victims. As stated above, § 106.12 reflects the statutory exemption for religious educational institutions granted by Congress, and the religious exemption applies only to the extent that the tenets of a religious organization controlling a religious educational institution conflict with the application of Title IX.

These final regulations apply to prohibit certain conduct and apply to anyone who has experienced such conduct, irrespective of a person's sexual identity or orientation. The Department believes that these final regulations provide the best protections for all persons, including women and people who identify as LGBTQ, in an education program or activity of a recipient of Federal financial assistance who experience sex discrimination, including sexual harassment.

Contrary to commenters' assertions, these final regulations do not establish a religion, and § 106.12(b) applies to all religions and not just Christianity.

The Department disagrees that these final regulations are patriarchal. These final regulations empower complainants with a choice to consider and accept supportive measures that a recipient must offer under § 106.44(a) and/or to file a formal complaint to initiate a grievance process under § 106.45.

The Department does not seek to curry favor with a particular population of recipients or individuals. The Department seeks to effectuate Title IX's non-discrimination mandate consistent with the U.S. Constitution, including the First Amendment, as well as other Federal laws such as the Religious Freedom Restoration Act.

Changes: None.

Comments: Some commenters suggested that religious educational institutions could manipulate the revisions to § 106.12(b) to their benefit. For instance, one commenter asserted that a school might wait to see how a Title IX investigation by OCR is going, and then if OCR is on the verge of issuing a finding in the case, the school might invoke a religious exemption at the last minute. Other commenters stated that a school might invoke a religious exemption as a way to retaliate against students, or would abuse the ability to invoke a religious exemption even when the school's tenets do not strictly contradict Title IX. One commenter asserted that recipients of all religious persuasions will suffer, when the public assumes that all religious schools discriminate against students.

Another commenter suggested that OCR ought to closely scrutinize claims of religious exemptions, and that schools should not receive any deference when invoking a religious exemption or arguing that their tenets conflict with Title IX. The commenter argued that this would be like letting a corporation verify or change its own tax status while being investigated by the Internal Revenue Service, e.g., moving to non-profit status in the middle of a tax fraud investigation.

Discussion: The Department appreciates the feedback on the potential policy implications of the proposed rules and believes that some of the commenters misunderstand § 106.12(b). Section 106.12(b) states: "In the event the Department notifies an institution that it is under investigation for noncompliance with this part and the institution wishes to assert an exemption set forth in paragraph (a) of this section, the institution may at that time raise its exemption by submitting

in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization, whether or not the institution had previously sought assurance of an exemption from the Assistant Secretary." When the Department notifies a recipient that it is under investigation for noncompliance with this part or a particular section of this part, the recipient identifies the provisions of this part which conflict with a specific tenet of the religious organization. Of course, a recipient must know what it is under investigation for, in order to assert an applicable exemption such as a religious exemption. Nonetheless, a recipient cannot invoke a religious exemption "at the last minute" because the recipient must be an educational institution which is controlled by a religious organization, and such control by a religious organization is not something that occurs "at the last minute." The educational institution must have been controlled by a religious organization when the alleged noncompliance occurred, and the educational institution is only exempt from Title IX and these final regulations to the extent that Title IX or these final regulations are not consistent with the religious tenets of such organization.

Additionally, retaliation is strictly prohibited under § 106.71, and a recipient cannot invoke a religious exemption to retaliate against a person. Similarly, a recipient may only assert an exemption to the extent that Title IX or these regulations are not consistent with the religious tenets of the religious organization that controls an educational institution.

The Department is not aware of any assumption that all educational institutions which are controlled by a religious organization engage in discriminatory practices, and the Department's experience has not been that all educational institutions which are controlled by a religious organization engage in discriminatory practices.

Under long-standing OCR policy, OCR's practice is generally to avoid questioning the tenet that an educational institution controlled by a religious organization has invoked to cover the conduct at issue. OCR does not believe it is in a position, generally, to scrutinize or question a recipient's sincerely held religious beliefs, and the First Amendment likely prohibits questioning the reasonableness of a recipient's sincerely held religious beliefs. However, recipients are not

entitled to any type of formal deference when invoking eligibility for a religious exemption, and recipients have the duty to establish their eligibility for an exemption, as well as the scope of any exemption. These final regulations, including § 106.12(b), make no changes to the conditions that must apply in order for a religious educational institution to qualify for the religious exemption.

Changes: None.

Comments: Some commenters stated that the Department failed to adequately provide a rationale for changing current 34 CFR 106.12(b) in the manner proposed in § 106.12(b), and argued that the Department failed to disclose the potential negative impacts of this change. The commenters suggested that the proposed rules ought to more carefully explain how compliance with Title IX is burdensome for religious institutions, given that the current procedures, according to commenters, are exceptionally generous to religious institutions. Additionally, these commenters stated that the Department should reassess the religious exemption to weigh more heavily a school's potential to be dishonest and to discriminate.

Commenters stated that they favored what they considered to be current OCR practice, under which, commenters asserted, most requests for exemptions came by letter before a complaint was opened, and under which OCR posts a publicly-available list of all schools that had invoked an exemption. Commenters contended that the Obama-era approach was popular among students and faculty, and was fair to all parties. Commenters also suggested that a requirement to force religious institutions to submit assurance requests ahead of time saves agency resources for OCR, so the preamble's assertion that the prior practice is confusing and burdensome is an absurd thing to say. Commenters argued that proceeding with this rationale will mean violating the Administrative Procedure Act, because the current procedures are not confusing or burdensome, as set forth clearly in the current regulation. Commenters argued that the current procedures require religious institutions to establish which tenets of their religion are in conflict with Title IX, whereas the proposed regulations would not require schools to fully elaborate which of their tenets are contradicted by Title IX.

Discussion: The Department appreciates the feedback on the potential policy implications of the proposed rule. The Department acknowledges that its practices in the

recent past regarding assertion of a religious exemption, including delays in responding to inquiries about the religious exemption and publicizing some requests for a religious exemption, may have caused educational institutions to become reluctant to exercise their rights under the Free Exercise Clause of the First Amendment, and the Department would like educational institutions to fully and freely enjoy rights guaranteed under the Free Exercise Clause of the U.S. Constitution without shame or ridicule. The Department may be liable for chilling a recipient's First Amendment rights and also is subject to the Religious Freedom Restoration Act. The Department properly engaged in this notice-and-comment rulemaking to clarify that the Department, consistent with 20 U.S.C. 1681, will not place any substantial burden on a recipient that wishes to assert the religious exemption under Title IX.

The Department is giving due weight to Congress' express religious exemption for recipients in Title IX, and Congress did not require a recipient to first seek assurance of such a religious exemption from the Department. The First Amendment and the Religious Freedom Restoration Act, which apply to the Department as a Federal agency, cause the Department to err on the side of caution in not hindering a recipient's ability to exercise its constitutional rights.

Based on at least some commenters asserting that recipients needed more clarity on the current regulations, the Department respectfully disagrees with commenters arguing that confusion and burdens have not resulted from the text of the current regulations. In any event, the final regulations codify longstanding OCR practices, and are consistent with the Title IX statute.

With respect to publishing a list of all recipients who have received assurances from OCR, OCR declines to set forth any formal policy in the final regulations. Such lists are necessarily incomplete, since they do not adequately describe the scope of every exemption, and because many recipients that are eligible for religious exemptions may nevertheless not seek assurance letters from OCR. However, nothing in the final regulations addresses publishing such a list, one way or another. In any event, correspondence between OCR and recipient institutions, including correspondence addressing religious exemptions, is subject to Freedom of Information Act requirements.

Changes: None.

Comments: Commenters argued that OCR's practice regarding religious

exemptions has worked since 1975, and that the time period between 1975 and the present day spans numerous presidencies across both Democrat and Republican administrations. One commenter stated that no religious exemption request has ever been denied, so addressing this topic in formal rulemaking is unnecessary.

Commenters contended that the change to the text of the religious exemption regulation is not responsive to any specific issue or wrong, and that the current regulation appropriately burdens the institution, as opposed to students.

Commenters also stated that the revisions to § 106.12(b) would largely remove the Department and OCR out of the religious exemption process, since students may not challenge a school's assertion of a religious exemption during the school's handling of a complaint. That would be problematic, asserted commenters, because students would be blindsided by assertions of exemptions that have not yet been evaluated or ruled on by the Department and OCR, so a student challenging an exemption, asserted commenters, would have their complaint ignored or stayed while they waited for OCR to rule on the validity of the exemption assertion.

Commenters suggested that placing the burden on a party not invoking the exemption is discordant with other areas of law, such as many States' requirement that parents submit a religious objection to immunizations in writing, or that an entity bear the burden of establishing its entitlement to tax-exempt status. Indeed, say the commenters, the Department administers the Clery Act, which is another statute that burdens schools by requiring them to collect and report information.

Discussion: The Department disagrees with commenters that assert § 106.12(b) should not be part of this notice-and-comment rulemaking. Some commenters have asserted that the current § 106.12(b) has caused confusion, and the Department wishes to clarify that neither Title IX nor these final regulations require a recipient to request an assurance of a religious exemption under 20 U.S.C. 1681(a)(3). Additionally, the Department wishes to avoid liability under the First Amendment and the Religious Freedom Restoration Act, and to the extent that § 106.12(b) may be ambiguous or vague, the Department would like to take this opportunity to revise § 106.12(b) to be even more consistent with Title IX, the First Amendment, and the Religious Freedom Restoration Act.

Section 106.12(b) as proposed and as included in these final regulations does not burden students as the recipient must still invoke the exemption. Indeed, a recipient must still demonstrate that it is an educational institution which is controlled by a religious organization and that the application of Title IX or its implementing regulations would not be consistent with the religious tenets of such organization. The student does not bear the burden with respect to the religious exemption.

The Department also disagrees that a complaint is placed on hold while the Department considers a recipient's religious exemption. The Department processes complaints in the normal course of business and will consider any religious exemption in the normal course of an investigation just as it considers other exemptions under Title IX during an investigation. Accordingly, a student will not suffer from any delays in the Department's processing of a complaint as a result of the revisions to § 106.12(b).

There also should not be any delays with respect to the recipient's processing of a student's complaint such as a formal complaint under §§ 106.44 and 106.45. Section 106.44(a) requires a recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States to respond promptly in a manner that is not deliberately indifferent. Section 106.12(b) clarifies that a recipient does not need to submit a statement in writing to the Assistant Secretary to assert a religious exemption before asserting an exemption and, thus, there is no need for the Department to intervene or delay any complaint of sex discrimination, including a formal complaint of sexual harassment, that the recipient is processing to determine whether the recipient qualifies for a religious exemption.

Students should not be blindsided and may always inquire about the application of Title IX and its implementing regulations to the recipient's Title IX Coordinator, to the Assistant Secretary, or both. Additionally, a recipient that is an educational institution must be controlled by a religious organization in order to assert an exemption under Title IX, 20 U.S.C. 1681(a)(3), and students likely will know whether the educational institution is controlled by a religious organization.

The Department reiterates that the burden remains on the recipient to establish and assert a religious exemption to Title IX, 20 U.S.C. 1681(a)(3). Congress expressly requires

postsecondary institutions that receive Federal student financial aid through the programs authorized by Title IV of the Higher Education Act of 1965, as amended, to make certain reports, including reports to the Department. The Department's regulations, implementing the Clery Act, address the reporting requirements that Congress enacted. Congress, however, did not require educational institutions to report a religious exemption to the public or to the Department under Title IX, and the Department declines to impose any burden on the constitutional rights of recipients of Federal financial assistance that Congress did not impose. Additionally, as previously explained, the First Amendment and the Religious Freedom Restoration Act may prohibit any such additional burdens.

Changes: None.

Comments: One commenter objected to any form of assurance letter being sent by OCR, on the basis that such a process caused an undue entanglement with religion. The commenter suggested that the statute simply apply on its own terms, without the need for OCR to closely scrutinize the tenets of a religious educational institution.

Discussion: The Department appreciates feedback on the proposed rule. The process of applying to OCR for an assurance letter is entirely optional, and nothing in the final regulations requires a school to obtain an assurance letter prior to invoking a religious exemption. The Department therefore sees no entanglement problem in allowing recipients to request an assurance letter, and generally avoids scrutinizing or questioning the theological tenets or sincerely held religious beliefs of a recipient that invokes the religious exemption in Title IX.¹⁷²⁷

Changes: None.

Comments: Several commenters asserted that the final regulations ought to be changed such that recipients are not entitled to religious exemptions under Title IX. Some commenters stated that the topic of religious exemptions might not be a significant one, and that it was unclear how many recipients had truly avoided an investigation or finding under Title IX due to a religious exemption. The commenter suggested that instead of modifying the regulations, the better course would be to study the issue further and determine how many recipients had successfully invoked a religious exemption to avoid a Title IX compliance issue in the last three to five years.

Discussion: The Department appreciates the feedback on § 106.12(b) but does not believe it is necessary to examine OCR records to report on how many recipients have successfully invoked a religious exemption under Title IX. This is because the Title IX statute provides a religious exemption for recipients, and the Department cannot eliminate the religious exemption in the Title IX statute through its regulations. In any event, the final regulations codify longstanding OCR practices, and both the final regulations and OCR practice are consistent with the Title IX statute.

Changes: None.

Comments: A commenter suggested that part of the process ought to be a publication of a book by OCR that contains the full list of recipients that have obtained an assurance letter. Some commenters suggested, apart from a book, that OCR ought to publish on its website a list of all recipients that have obtained a religious exemption assurance letter. Another commenter suggested that OCR at least require recipients to inform a student who has filed a complaint that the recipient has invoked a religious exemption, particularly if no assurance letter has been previously requested. These measures, asserted commenters, would increase transparency for students and employees who may attend or work for educational institutions that maintain exemptions from Title IX.

Discussion: The Department appreciates the feedback on the proposed rule. When OCR receives a complaint involving a recipient that invokes a religious exemption, OCR will proceed in accordance with OCR's Case Processing Manual, including with respect to notifying a complainant that the recipient has invoked a religious exemption. OCR's current practice does not require OCR to keep a complainant apprised of developments in an ongoing investigation of a recipient, and the Department has not proposed any procedural changes to the manner in which it processes complaints in this notice-and-comment rulemaking so as to give the public notice to comment on such a proposal. A complainant currently receives the opportunity to appeal the Department's determination with respect to a complaint or the dismissal of a complaint and may raise any concerns about a recipient's religious exemption as well as other matters on appeal.¹⁷²⁸ The Department

does not wish to treat a religious exemption, which Title IX provides and which the Department is required to honor under Title IX and in abiding by the First Amendment and the Religious Freedom Restoration Act, differently than any other exemption from Title IX that a recipient may invoke. Title IX provides exemptions other than a religious exemption in 20 U.S.C. 1681(a) (e.g., exemptions for membership policies of social fraternities or sororities, father-son or mother-daughter activities, scholarship awards in "beauty" pageants). The Department does not notify a complainant of a recipient's invocation of other exemptions provided in Title IX when the Department is processing a complaint and declines to do so for a religious exemption. Nothing in the final regulations prevents a recipient from informing the complainant of its invocation of a religious exemption. The Department notes that any person may direct an inquiry about the application of Title IX to a particular recipient to the recipient's Title IX Coordinator, the Assistant Secretary, or both, pursuant to § 106.8(b)(1).

On the subject of OCR publishing a book, list of names, or copies of the assurance letters that have been provided to recipients that address a recipient's eligibility for a religious exemption, the Department often posts such correspondence on the OCR website. Additionally, such documents are subject to Freedom of Information Act requests, and attendant rules regarding public disclosure of commonly-requested documents. The Department does not believe that publishing a book or a list of names of recipients that have asserted eligibility for a religious exemption is necessary, and the final regulations do not address that issue, one way or another.

Changes: None.

Comments: Some commenters stated that they would prefer the Department to at least encourage recipients to post information about Title IX religious exemptions on the recipient's website, so that people who are actively looking for that information can find it easily. Other commenters suggested that a recipient maintaining a religious exemption ought to be compelled to publish such information in their materials and policies, i.e., a student handbook, or a website.

Discussion: The Department generally does not include in its regulations specific types of advice or encouragement for recipients and believes that the Title IX statute and § 106.12 appropriately guide recipients

¹⁷²⁸ U.S. Dep't. of Education, Office for Civil Rights, *Case Processing Manual* § 307 Appeals, <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

¹⁷²⁷ 20 U.S.C. 1681(a)(3).

as to the scope and application of the religious exemption under Title IX.

The Department does not require recipients to publish any exemptions from Title IX under 20 U.S.C. 1681(a)(3) that may apply to the recipient and does not wish to single out the religious exemption for special or different treatment. The Department believes that the requirements in these final regulations provide sufficient transparency. As previously stated, § 106.8 requires all recipients to 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 its notice of non-discrimination on the basis of sex as well as its 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. Additionally, § 106.8(b)(2)(ii) provides that 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 these final regulations. Accordingly, students and prospective students should receive adequate notice of the recipient's non-discrimination statement as well as its grievance procedures and grievance process regarding sex discrimination, including sexual harassment, and such notice is consistent with due process principles. Such transparency helps guard against any misunderstandings, irrespective of whether a school asserts a religious exemption.

The religious exemption in Title IX, 20 U.S.C. 1681(a)(3), applies to an educational institution which is controlled by a religious organization, and students and prospective students likely will know whether an educational institution is controlled by a religious organization so as not to be surprised by a recipient's assertion of such a religious exemption. Additionally, the Department also notes that under § 106.8(b)(1) any person can inquire about the application of Title IX to a particular recipient by inquiring with the recipient's Title IX Coordinator, the Assistant Secretary, or both.

Changes: None.

Comments: Some commenters suggested that the religious exemptions language be altered, to carve out conduct that would be considered a crime. Other commenters suggested that

the Department should clarify how a school that maintains a religious exemption ought to interact with a school that does not maintain a religious exemption, if an incident involves two students, one from each type of school. Specifically, a commenter asked whether a school with a religious exemption has a duty to cooperate with another school that was investigating a Title IX incident involving one of its students. Another commenter asked the Department to clarify whether a recipient that invoked a religious exemption still had the duty to provide the full extent of the grievance procedures in § 106.45.

Discussion: The Department appreciates these nuanced questions about how recipients can comply with the final regulations under specific fact patterns. Generally, religious exemptions cannot be invoked to avoid punishment for criminal activity, and absent a specific example, the Department believes asserting a religious exemption to avoid punishment for a crime is unrealistic under Title IX. In any event, the Department does not punish recipients for criminal activity. The Department enforces the non-discrimination mandate in Title IX, which prohibits discrimination on the basis of sex.

With respect to the other factual scenarios that commenters present, the Department and OCR are willing to provide technical assistance to recipients who seek answers to individual factual circumstances, or to stakeholders who may file complaints against recipients eligible for religious exemptions, but we do not believe it is appropriate to attempt to answer these questions at this stage and without the benefit of a complete set of facts.

As with any regulation under Title IX, including § 106.45, an educational institution that is controlled by a religious institution is exempt from Title IX or its implementing regulations only to the extent that Title IX or one of its implementing regulations would not be consistent with the religious tenets of such organization.

Changes: None.

Comments: One commenter suggested a minor revision to § 106.12(b) to make clear that any future claims of institutional religious exemption under the proposed regulations are not predetermined by the scope or nature of any prior claims submitted in writing to the Assistant Secretary: “. . . whether or not the institution had previously sought assurance of the *an* exemption from the Assistant Secretary *as to that provision or any other provision of this part.*”

Discussion: The Department agrees with the reasoning behind this change and changes “the” to “an” as the commenter suggested. The Department does not believe the commenter's other suggested phrase, “as to that provision or any other provision of this part” is necessary to adequately explain the scope and application of this provision.

Changes: The word “the” has been changed to “an” in the final sentence of § 106.12(b) of the final regulations.

Comments: One commenter suggested that the Department ought to go beyond the proposed rule, and promulgate a definition for what it means to be “controlled by a religious organization,” so that recipients and the public would know which institutions are in fact eligible for religious exemptions, since there has been confusion previously. Additionally, the commenter asked that the definition take account of and be consistent with Supreme Court case law interpreting the Establishment Clause of the First Amendment.

Discussion: Although the Department appreciates this feedback, it declines to make any changes to these final regulations because the scope of proposed changes to § 106.12 was limited by the Department's proposal to change § 106.12(b) but not subsection (a). The Department decided to address what it means to be controlled by a religious organization for purposes of the religious exemption in Title IX through a subsequent notice of proposed rulemaking.¹⁷²⁹ The Department will continue to offer technical assistance regarding compliance with these final regulations.

Changes: None.

Directed Questions¹⁷³⁰

Directed Question 1: Application to Elementary and Secondary Schools

Comments: Some commenters commended the proposed rules for including elementary and secondary schools, suggesting that their inclusion would have a positive impact on these schools for Title IX purposes. Another commenter asserted that elementary and secondary schools, too, have sexual harassment issues that they must confront; it is not only a problem in

¹⁷²⁹ 85 FR 3190.

¹⁷³⁰ The Department addresses comments submitted in response to the NPRM's Directed Questions 3–4, and 6–9, throughout sections of this preamble to which such directed questions pertain. For example, Directed Question 3 inquired about applicability to the proposed rules to employees, and comments responsive to that directed question are addressed in the “Section 106.6(f) Title VII and Directed Question 3 (Application to Employees)” subsection of the “Clarifying Amendments to Existing Regulations” section of this preamble.

establishing the system and an administrative assistant will spend 8 hours doing so. With respect to postsecondary institutions, we assume recipients are less likely to use a paper filing system and are likely to use an electronic database for managing such information. Therefore, we assume it will take a Title IX Coordinator 24 hours, an administrative assistant 40 hours, and a database administrator 40 hours to set up the system for a total Year 1 estimated cost of approximately \$39,114,530 for 16,606 elementary and secondary schools, 6,766 postsecondary institutions, and 600 other entities that are recipients of Federal financial assistance. Given their size and organizational complexity, we assume that other entities that are recipients of Federal financial assistance that are not elementary and secondary schools or postsecondary institutions will face the same time burdens associated with complying as elementary and secondary schools.

In later years, we assume that the systems will be relatively simple to

maintain. At the elementary and secondary school level as well as for other recipients of Federal financial assistance that are not elementary and secondary schools or postsecondary institutions, we assume it will take the Title IX Coordinator 2 hours and an administrative assistant 4 hours to do so. At the postsecondary institution level, we assume 4 hours from the Title IX Coordinator, 40 hours from an administrative assistant, and 8 hours from a database administrator. In total, we estimate an ongoing cost of approximately \$15,189,260 per year.

We estimate that elementary and secondary schools and other recipients of Federal financial assistance will take 12 hours and postsecondary institutions will take 104 hours to establish and maintain a recordkeeping system for the required sexual harassment documentation during Year 1. In out-years, we estimate that elementary and secondary schools and other recipients of Federal financial assistance will take 6 hours annually and postsecondary institutions will take 52 hours annually

to maintain the recordkeeping requirement for Title IX sexual harassment documentation. The total burden for this recordkeeping over three years is 398,544 hours for elementary and secondary schools, 1,407,328 hours for postsecondary institutions, and 14,400 for other recipients of Federal financial assistance. The Department calculates burden over a seven-year period because § 106.45(b)(10)(i) requires recipients to maintain certain records for a period of seven years. The total burden for this recordkeeping requirement over seven years is 797,088 hours for elementary and secondary schools, 2,814,656 hours for postsecondary institutions, and 28,800 hours for other recipients of Federal financial assistance. Collectively, we estimate the burden over seven years for elementary and secondary schools, postsecondary institutions, and other recipients of Federal financial assistance for recordkeeping of Title IX sexual harassment documents will be 3,640,544 hours under OMB Control Number 1870–NEW.

COLLECTION OF INFORMATION

| Regulatory section | Information collection | OMB Control No. and estimated burden [change in burden] |
|---------------------|---|--|
| 106.45(b)(2) | This regulatory provision requires recipients to provide parties with written notice when investigating a formal complaint. | OMB 1870–NEW. The burden over the first seven years will be \$2,650,654 and 35,958 hours. |
| 106.45(b)(9) | This regulatory provision requires recipients to provide written notice to parties wishing to participate in informal resolution of a formal complaint. | OMB 1870–NEW. The burden over the first seven years will be \$2,650,654 and 35,958 hours. |
| 106.45(b)(10) | This regulatory provision requires recipients to maintain certain documentation related to Title IX activities. | OMB 1870–NEW. The burden over the first seven years will be \$130,250,090 and 3,640,544 hours. |
| TOTAL | | \$135,551,398; 3,712,460 hours. |

Accessible Format

Individuals with disabilities can obtain this document in an accessible format (e.g., Braille, large print, audiotope, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. You can view this document at that site, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects in 34 CFR Part 106

Education, Sex discrimination, Civil rights, Sexual harassment.

Betsy DeVos,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 106 of title 34 of the Code of Federal Regulations as follows:

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 106.3 is amended by revising paragraph (a) to read as follows:

§ 106.3 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity under this part, or otherwise violated this part, such recipient must take such remedial action as the Assistant Secretary deems necessary to

remedy the violation, consistent with 20 U.S.C. 1682.

* * * * *

■ 3. Section 106.6 is amended by revising the section heading and adding paragraphs (d), (e), (f), (g), and (h) to read as follows:

§ 106.6 Effect of other requirements and preservation of rights.

* * * * *

(d) *Constitutional protections.*

Nothing in this part requires a recipient to:

(1) Restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution;

(2) Deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution; or

(3) Restrict any other rights guaranteed against government action by the U.S. Constitution.

(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.

(f) *Title VII of the Civil Rights Act of 1964.* Nothing in this part may be read in derogation of any individual's rights under title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* or any regulations promulgated thereunder.

(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.

* * * * *

■ 4. 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.

■ 5. Section 106.9 is revised to read as follows:

§ 106.9 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.

■ 6. Section 106.12 is amended by revising paragraph (b) to read as follows:

§ 106.12 Educational institutions controlled by religious organizations.

* * * * *

(b) *Assurance of exemption.* An educational institution that seeks assurance of the exemption set forth in paragraph (a) of this section may do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part that conflict with a specific tenet of the religious organization. An institution is not required to seek assurance from the Assistant Secretary in order to assert such an exemption. In the event the Department notifies an institution that it is under investigation for noncompliance with this part and the institution wishes to assert an exemption set forth in paragraph (a) of this section, the institution may at that time raise its exemption by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization, whether or not the institution had previously sought assurance of an exemption from the Assistant Secretary.

* * * * *

■ 7. Add § 106.18 to subpart B to read as follows:





Page 1 of 4 – U.S. Department of Education, Office for Civil Rights Discrimination
Complaint Form, Consent Form, and Complaint Processing Procedures

DISCRIMINATION COMPLAINT FORM
to the
United States Department of Education
Office for Civil Rights

1. Name of person filing this complaint:

Last Name, First, Middle Swain, Lauren L.
Address: 8532 N. Ivanhoe St., #208
City, State, Zip Code: Portland, OR 97203
Home/Work Telephone: 
Email Address: lauren@paulsouthwick.com

2. Name of person discriminated against (if **other** than person filing). If the person discriminated against is age 18 or older, we will need that person's signature on this complaint form and the consent/release form before we can proceed with this complaint. If the person is a minor, and you do not have the legal authority to file a complaint on the student's behalf, the signature of the child's parent or legal guardian is required.

Last Name, First, Middle Alex Duron
Address: 
City, State, Zip Code: 
Home/Work Telephone: 
Email Address: 

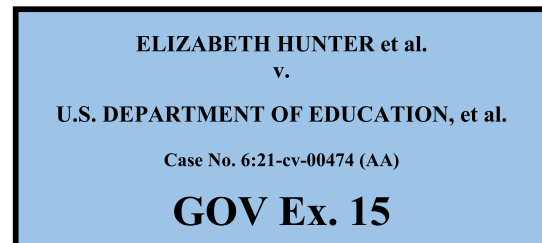
3. OCR investigates discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education and against public educational entities and libraries that are subject to the provisions of Title II of the Americans with Disabilities Act. Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

Name of Institution: Union University
Address: 1050 Union University Dr.
City, State, Zip Code: Jackson, TN 38305
Department/School:

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, age or retaliation. Please indicate the basis of your complaint:

- Discrimination **based on sex (specify)**

Discrimination on the basis of sexual orientation



Page 2 of 4 – U.S. Department of Education, Office for Civil Rights Discrimination
Complaint Form, Consent Form, and Complaint Processing Procedures

5. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved and, why you believe the discrimination was because of race, disability, age, sex, etc. Also please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

Alex applied to Union and was admitted for the Fall 2020 term. However, a few weeks before he was due to begin, Union revoked his admission upon learning of his sexual orientation. See attached declaration.

6. What is the most **recent date** you were discriminated against?

Date: Current, Ongoing

7. If this date is **more than 180 days ago**, you may request a waiver of the filing requirement.

X I am requesting a waiver of the 180-day time frame for filing this complaint.

Please explain why you waited until now to file your complaint.

- 1) the Covid-19 pandemic;
2) The Trump administration's policies and statements about religious exemptions to Title IX;
3) The Trump administration's policies and statements about Title IX not prohibiting discrimination on the basis of sexual orientation or gender identity.
4) The discrimination against Alex remains ongoing, as his sexual orientation prevents him from being admitted to Union University. Although the initial act of discrimination took place more than 180 days ago, Alex's complaint should not be considered time-barred because of the ongoing discrimination.

8. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing?

x No

If you answered **yes**, please describe the allegations in your grievance or hearing, identify the date you filed it, and tell us the status. If possible, please provide us with a copy of your grievance or appeal or due process request and, if completed, the decision in the matter.

Page 3 of 4 – U.S. Department of Education, Office for Civil Rights Discrimination
Complaint Form, Consent Form, and Complaint Processing Procedures

- 9. If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the other agency or court.

Agency or Court: U.S. District Court - District of Oregon - Eugene Division

Date Filed: 03/29/21

Case Number or Reference: 6:21-cv-00474-AA

Results of Investigations/Findings by Agency or Court: Pending

- 10. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information is **not required**, but it will be helpful to us.

Not applicable

- 11. What would you like the institution to do as a result of your complaint — what remedy are you seeking?

Alex would like Union University's policies amended to state that (1) same-sex dating relationships and displays of affection will be treated by Union in the same manner as opposite-sex dating relationships and displays of affection; (2) students will not be punished for coming out as LGBTQ+ or for expressing their sexual or gender identity (through pronouns, clothing, hair, makeup, etc.); (3) Union will not encourage or facilitate conversion therapy or any other sexual or gender orientation change efforts; (4) students who report sexual or physical assault will be granted safe harbor from discipline relating to sexual activity or other code of conduct violations; and (5) Union's non-discrimination policy includes sexual orientation and gender identity as applied to all aspects of Union, including housing and other programs.

Compensation for emotional distress and economic consequences of revocation of acceptance.

- 12. We cannot accept your complaint if it has not been signed. Please sign and date your complaint below.

07/07/2021

(Date)

Jul 8, 2021

(Date)



(Signature)

Alex Duron

Alex Duron (Jul 8, 2021 13:37 PDT)

(Signature of person in Item 2)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION**

Elizabeth HUNTER; et al., on behalf of)
themselves and all others similarly situated,)

Plaintiffs,)

v.)

U.S. DEPARTMENT OF EDUCATION and)
Suzanne GOLDBERG, in her official capacity as)
Acting Assistant Secretary for Civil Rights,)
U.S. Department of Education,)

Defendants.)

Civil Action No. 6:21-cv-00474-
AA

**DECLARATION OF ALEX
DURON**

I, Alex Duron, declare:

1. I am over 18 years of age and have personal knowledge of the matters stated in this declaration and would testify truthfully to them if called upon to do so.
2. I am currently a resident of Fresno, California.
3. I am originally from El Paso, Texas.
4. I grew up in a Latinx, Catholic family and remain Catholic myself.
5. I am bilingual in Spanish and English.
6. I am the only member of my family who graduated from high school and went to college.
7. I am also a gay man. I came out around the age of 25. I am now 39.
8. My partner and I have been together for nearly four years. We have been engaged since January of 2020.
9. I received an Associate Degree of Nursing from San Antonio College.
10. I received a Bachelor of Science in Nursing (BSN) degree in 2015 from the University of Texas, Arlington.
11. I worked as an ICU nurse in San Antonio, Texas for about six and a half years before I applied for my Doctor of Nursing Practice Degree (DNP) with a concentration in Nurse Anesthesia.
12. The DNP is a terminal degree that takes three years to complete.

13. As an ICU nurse with more than six years of experience, I knew that I possessed knowledge and experience that, without an additional degree, I was not allowed to fully use.
14. In the fall of 2019, I applied to several universities for my doctorate, including Union University in Jackson, Tennessee.
15. During the application process, I described my prior nursing experience and degrees. I also listed my same-sex partner as my emergency contact.
16. In November 2019, I was invited to the on-campus interview process. During this interview process, I demonstrated to Union that I had the skills, knowledge and drive needed to complete the program.
17. Union asked me about my relationship with Christ and how I thought about faith. I told them about my religious beliefs and how when I work with the human body in my job, I am reminded that there is a higher power that has created us.
18. About a week after on my on-campus interview, I received a call from the director of the program informing me that I had been admitted.
19. I felt so proud about getting into the program. I told my partner and my mother and they were very proud of me.
20. I immediately decided that I was going to accept my admission to Union.
21. I paid the \$1,300 to reserve my space in the program.
22. I chose Union for a variety of reasons, including the smaller cohort size. Union's DNP program is highly competitive program. They only admit 30 students.
23. I also chose Union because I had coworkers who had attended Union's program and I really connected with the teachers and director of the program at Union.
24. I planned to live on campus with some roommates at the beginning of my studies.
25. My partner planned to join me later on but I wanted to focus on my studies during that first semester. We had also recently purchased a home back in Texas and my partner had started a new job, so it made more sense to live apart for awhile.
26. Union assigned me a room in their graduate student housing.
27. I sold my car prior to moving to Union in preparation to start this new stage of my life.
28. My program at Union would have started in August of 2020. Everything was lined up and I was ready to go.
29. However, on a Saturday in July of 2020, I received an unexpected email from the Provost at Union University.

30. I received this email less than a week before my on-campus orientation at Union. I had already booked an Airbnb for the orientation in Jackson, TN.
31. I remember the moment I received this email vividly. I was leaving the gym on a Saturday morning when I opened it. The email was short. In a few sentences, the Provost told me that Union had rescinded their offer of acceptance to their DNP program.
32. I went into shock. I felt like I was going to pass out. When I got home, I fell apart and broke down. I went into our closet, closed the door, turned the lights off and cried.
33. My future was ripped away from me. It felt like all my work as a ICU nurse and all my prior degrees meant nothing.
34. I was embarrassed. I had already quit my job. I had already told my family and my colleagues.
35. At this point, only days before my orientation at Union, there was no time for me to get into another DNP program.
36. I didn't understand what was happening to me. I am a straight passing man and had not been treated differently for being gay before. This was the first time I had experienced the sting of ant-gay discrimination.
37. Once I realized that I had been discriminated against, I started to process what had happened to me. I began to identify with the broader LGBTQ+ community and the history of discrimination against our community.
38. My partner and I started researching whether what Union did to me was legal. As we researched, we learned about the religious exemption to Title IX. We found the religious exemption request and response letters online between Union University and the U.S. Department of Education authorizing Union to discriminate against me.
39. We felt like there was nothing we could do.
40. So, I posted online about what happened to me. Many people rallied around me, including the medical community.
41. We don't know for sure how I went from admitted at Union one day to rejected the next. However, we know that union researched the social media of me and my partner.
42. This may have arisen because, shortly before the rejection email, Union had called me and asked me where I was going to live. I told them that I would live in the dorms. Union asked for the deposit of \$100, which I provided.
43. Union also said that they have family housing. They asked whether I was married. I said "no," but that I was engaged. Union then told me that I did not qualify for married housing because I was only engaged. I was fine with that.

44. I'm not sure how, but someone at Union determined that I was gay and was engaged to another man and that I needed to be expelled because of this.
45. After my story became public, other DNP programs starting reaching out to me and encouraged me to apply. I wasn't read right away, as I was still dealing with the shock of Union's discrimination.
46. About a month after Union rescinded my admission, I took a FEMA contract to treat Covid patients in San Antonio.
47. Eventually, I applied to other DNP programs and I am enrolled in a DNP program in Fresno, California.
48. I should never have been put in this situation.
49. Union's doctorate program is accredited by The Council on Accreditation of Nurse Anesthesia Educational Programs (COA). COA prohibits discrimination on the basis of sexual orientation in the admission to its programs.
50. Union has "Community Values Statements", also included in the student handbook that goes to all students. These statements address a number of the school's moral and ethical standards, including when it comes to LGBTQ+ students.
51. There is a paragraph in the current statement on "Sexually Impure Relationships" in the "Community Values Statements". This policy states: "Sexually impure relationships include but are not limited to participation in or appearance of engaging in premarital sex, extramarital sex, homosexual activities, or cohabitation. Union affirms that sexual relationships are designed by God to be expressed solely within a marriage between a man and a woman. The Bible condemns all sexual relationships outside of marriage (Matt. 5:27-29; Gal. 5:19). The promotion, advocacy, defense or ongoing practice of a homosexual lifestyle (including same-sex dating behaviors) is also contrary to our community values. Homosexual behaviors, even in the context of a marriage, remain outside Union's community values. We seek to help students who face all types of sexual temptation, encouraging single students to live chaste, celibate lives, and encouraging married students to be faithful to their marriage and their spouse."
52. The policy was largely the same when I applied but it also included a prohibition on "homosexuality" in addition to the prohibition on "homosexual activities." It also did not include the section stating that "Homosexual behaviors, even in the context of a marriage, remain outside Union's community values."
53. Classmates in the cohort I was supposed to be in, and other students at Union, supported me but they were scared about being able to comment on my Facebook post because, under the student handbook, they could be kicked out for "promotion, advocacy, or defense" of me as a gay man engaged to another man.
54. There are other LGBTQ+ students on campus at Union right now. Several current LGBTQ+ students reached out to me after my story came out, including very young

students who told me they were suicidal and struggling at Union. One LGBTQ+ student told me that another student had turned them into the administration as being gay and had to attend meetings with the administration.

55. The policy goes on to address transgender students in a "Gender Identity" paragraph which states: "Union adheres to the biblical tenet that God created only two genders, that He fashioned each one of us and thus designated our gender/sex. Therefore, identifying oneself as a gender other than the gender assigned by God at birth is in opposition to the University's community values. Further, engaging in activities or making any efforts to distinguish or convert one's gender/sex to something other than the gender/sex to which you were biologically born and which was God-given (i.e. transvestites, transsexuals, transgenders, etc.) is prohibited."
56. Union's policies denied me access to the federally-funded nursing program of my choice. A federally funded institution should not be able to pick and choose who can receive an education.
57. I should have been protected by Title IX, but I was not because of a religious exemption.
58. I am a federal taxpayer. I also took out student loans from the U.S. Department of Education to attend Union.
59. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed this 7th day of March, 2021.

By:



Alex Duron

Page 1 of 4 – U.S. Department of Education, Office for Civil Rights Discrimination
Complaint Form, Consent Form, and Complaint Processing Procedures


**DISCRIMINATION COMPLAINT FORM
to the
United States Department of Education
Office for Civil Rights**

ELIZABETH HUNTER et al.
v.
U.S. DEPARTMENT OF EDUCATION, et al.
Case No. 6:21-cv-00474 (AA)
GOV Ex. 16

1. Name of person filing this complaint:

Last Name, First, Middle Swain, Lauren
Address: 8532 N. Ivanhoe St., #208
City, State, Zip Code: Portland, OR 97203
Home/Work Telephone: 
Email Address: lauren@paulsouthwick.com

2. Name of person discriminated against (if **other** than person filing). If the person discriminated against is age 18 or older, we will need that person's signature on this complaint form and the consent/release form before we can proceed with this complaint. If the person is a minor, and you do not have the legal authority to file a complaint on the student's behalf, the signature of the child's parent or legal guardian is required.

Last Name, First, Middle Wojnarowisch, Audrey
Address: 
City, State, Zip Code: 
Home/Work Telephone: 
Email Address: 

3. OCR investigates discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education and against public educational entities and libraries that are subject to the provisions of Title II of the Americans with Disabilities Act. Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

Name of Institution: George Fox University
Address: 414 N. Meridian St.
City, State, Zip Code: Newberg, OR, 97132
Department/School:

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, age or retaliation. Please indicate the basis of your complaint:

- Discrimination **based on sex (specify)**

Discrimination on the basis of sexual orientation and gender identity

Page 2 of 4 – U.S. Department of Education, Office for Civil Rights Discrimination
Complaint Form, Consent Form, and Complaint Processing Procedures

5. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved and, why you believe the discrimination was because of race, disability, age, sex, etc. Also please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

George Fox has vague policies implying that behavior reflecting LGBT identity is not permissible on campus. Due to fear of being punished for their sexual orientation, Audrey hesitated to report that they were stalked and sexually assaulted by another student on campus. After Audrey reported the assault to a resident assistant, Audrey was told that the Area Coordinator would file a Title IX complaint on their behalf, but the coordinator never filed it. Audrey had to continue attending school with their assailant. After a fellow student came out on campus very publicly in 2019, Audrey and other students followed by coming out as LGBT. Soon, the president of student government issued a statement in support of LGBTQ students. However, after several weeks, George Fox President Robin Baker issued a statement that the university prohibits same-sex marriage and all sexual conduct outside of heterosexual marriage, putting Audrey and others who came out at the risk of discipline and exclusion. Please see attached declaration.

6. What is the most **recent date** you were discriminated against?

Date: Current, Ongoing

7. If this date is **more than 180 days ago**, you may request a waiver of the filing requirement.

I am requesting a waiver of the 180-day time frame for filing this complaint.

Please explain why you waited until now to file your complaint.

- 1) the Covid-19 pandemic;
- 2) The Trump administration's policies and statements about religious exemptions to Title IX;
- 3) The Trump administration's policies and statements about Title IX not prohibiting discrimination on the basis of sexual orientation or gender identity.
- 4) Although the initial act of discrimination took place more than 180 days ago, Audrey's complaint should not be considered time-barred because George Fox continues to discriminate against Audrey and to promulgate policies and practices that discriminate against LGBTQ+ students.

Page 3 of 4 – U.S. Department of Education, Office for Civil Rights Discrimination
Complaint Form, Consent Form, and Complaint Processing Procedures

8. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing?

Yes

If you answered **yes**, please describe the allegations in your grievance or hearing, identify the date you filed it, and tell us the status. If possible, please provide us with a copy of your grievance or appeal or due process request and, if completed, the decision in the matter.

See attached declaration.

9. If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the other agency or court.

Agency or Court: U.S. District Court - District of Oregon - Eugene Division

Date Filed: 03/29/21

Case Number or Reference: 6:21-cv-00474-AA

Results of Investigations/Findings by Agency or Court: Pending

10. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information **is not required**, but it will be helpful to us.

Not applicable

11. What would you like the institution to do as a result of your complaint — what remedy are you seeking?

Prevent conflicts of interest by separating Title IX officer positions from administrative positions involved in enforcing student codes of conduct/honor code and prevent the sharing of information from Title IX office to administrative offices involved in enforcing student codes of conduct/honor code.

Audrey would also like George Fox's policies amended to state that (1) same-sex dating relationships and displays of affection will be treated by George Fox in the same manner as opposite-sex dating relationships and displays of affection; (2) students will not be punished for coming out as LGBTQ+ or for expressing their sexual or gender identity (through pronouns, clothing, hair, makeup, etc.); (3) George Fox will not encourage or facilitate conversion therapy or any other sexual or gender orientation change efforts; (4) students who report sexual or physical assault will be granted safe harbor from discipline relating to sexual

Page 4 of 4 – U.S. Department of Education, Office for Civil Rights Discrimination
Complaint Form, Consent Form, and Complaint Processing Procedures

activity or other code of conduct violations; and (5) George Fox's non-discrimination policy includes sexual orientation and gender identity as applied to all aspects of George Fox, including housing and other programs.

12. We cannot accept your complaint if it has not been signed. Please sign and date your complaint below.

07/24/21

[Date]

Jul 24, 2021

[Date]



[Signature]



Audrey W. Marowisch (Jul 24, 2021 21:05 PDT)

[Signature of person in Item 2]

wisdom of the Holy Spirit combine to provide the means to live victoriously with respect to sexual purity.”

9. There are no explicit prohibitions on same-sex dating or displays of affection but it is unclear what counts as “sexual immorality” and same-sex relationships of any kind, dating, marriage or otherwise, are never affirmed by the university. The vague policy pronouncements make it difficult for LGBTQ+ student to navigate their relationships and make it unpredictable as to how any particular administrator, professor or student will, or will be expected, to respond.
10. I am bisexual and non-binary. My pronouns are she/they.
11. I did not start questioning my sexuality or gender identity until I was already at George Fox.
12. It was not until my Sophomore year, that I really started to embrace my sexual identity.
13. My coming out was prompted by the coming out of another gay student on campus. He came out to the entire student body during a lip sync performance for our annual talent show. His performance, and the student body’s reaction, was electric and joyous.
14. Campus felt safe for me, more than it ever had before. I felt known. I felt accepted. I felt at peace with all the different parts of myself.
15. I came out of the closet as bisexual because of this student’s bravery and the student body’s welcoming embrace of him as a gay man.
16. A social movement erupted on campus because of this event and a subcommittee of student government was formed to address LGBTQ+ issues.
17. The president of student government issued a campus-wide statement supporting and affirming LGBTQ+ students. This was the first affirming statement I heard from the George Fox community. It felt so validating.
18. However, the George Fox administration soon issued its own response. President Robin Baker, the president of George Fox, responded to this outpouring of support for the gay student by reminding the entire campus community of the university’s stance on marriage and sexuality, which prohibits same-sex marriage and all sexual conduct outside of heterosexual marriage.
19. I expected this kind of a response from the university but other LGBTQ+ students were more surprised and really hurt by it. It felt like a slap in the face.
20. Town halls and other meetings were held on campus. LGBTQ+ students expressed how they felt unsafe going to campus counselling services or talking with their RAs about their sexuality or gender identity, as well as other fears.

21. Several LGBTQ+ students, myself included, were asked to speak to George Fox leaders, most of whom we had never seen or met before.
22. During one of these meetings, the head of the theology department asked me: "If you knew that George Fox's policies on marriage and sexuality were never going to change, would you still have enrolled here?" This was a scary question to be asked and it was unclear what the purpose of that question was.
23. At another meeting, a transgender student was asked to defend his use of masculine pronouns.
24. George Fox then had straight students go through the same meetings and explain why they defended the school's current policies. This was hard to listen to after having just made ourselves vulnerable while pleading for our identities to be respected.
25. None of us went to class the next day. We were emotionally drained.
26. Having supportive faculty members helps us feel less alone on campus. And there are many supportive professors at George Fox. However, my affirming professors are worried that they will be fired for supporting LGBTQ+ students, so they cannot fully support us.
27. Unfortunately, the health and counselling center is not a safe space for us. LGBTQ+ students and identities are controversial topics on campus. People are scared of interacting with us, even at the counselling center, because they are also subject to George Fox's policies.
28. The school's policies affect me and my brain. They affect my development and my family. They also prevent me from getting the mental health and mentoring support that I need.
29. We need George Fox to acknowledge our existence, affirm our identities and stop policing our relationships and bodies.
30. There is nothing in the health and counselling center that says we won't be discriminated against for our sexuality or gender identity.
31. There are not enough LGBTQ+ students out on campus. They are here but it doesn't feel safe for them to come out.
32. For example, some students ask to be moved out of their dorms if they are rooming with an LGBTQ+ person. It hurts to know that you can be seen as someone who is dangerous.
33. As another example, LGBTQ+ students who are RAs are put in impossible situations. When you are an RA on campus, you open yourself up to be in leadership over students with all kinds of beliefs and viewpoints. However, if your identity is considered divisive, you have to be quiet, or, if you make it known, you open yourself up to being criticized

and rejected. As a specific example, a lesbian RA had one of the students leave her dorm because she didn't want to be in a dorm with a lesbian.

34. I do not feel safe on campus. My needs and the needs of my fellow queer classmates are constantly being ignored and minimized.
35. I have been part of numerous task forces, subcommittee meetings, town halls and round table discussions specifically to communicate with the school administration about the ways our campus is unsafe for queer students. They have failed us every, single, time.
36. When we are given opportunities to share grievances, it always feels like they are attempting to quiet student concern with tokenism.
37. The school's policies and approach to LGBTQ+ students make me feel marginalized, pushed aside, and erased. It affects my college experience on every level. It affects my performance in the classroom, where professors teach that straight marriage is the foundation of God's social order. It affects my experience with potential mentors in my department, where professors preach that queer identities are fundamentally at odds with the Christian faith. It affects my experience in chapel, where I am alienated from worship spaces. It affects my experience with my peers, who are allowed to treat me as an outsider.
38. Marginalization is both a condition and a process that prevents flourishing. I am prevented from enjoying things that my cishet fellow students are allowed to participate in. The psychosocial effects of marginalization are impossible for my queer students and I to escape.
39. We are not allowed to exist without being politicized.
40. I have experienced depression and anxiety as a direct result of the homophobic culture at George Fox.
41. When I got to campus, I was looking for people like me. The first group of LGBTQ+ people I met was not safe. This is fairly common because we were hurt and rejected by our families. When you put broken people together, that sometimes ends poorly.
42. Freshman year I was stalked by a student who followed me everywhere and sent me hundreds of text messages.
43. The stalking eventually led to a sexual assault. This made me feel ostracized by the LGBTQ+ community that I found, because they were part of this community. Reporting or talking about the assault, would out my sexuality to the university, which would put me at risk with the school.
44. I decided to report the stalking and assault to my resident advisor. My resident advisor informed the Area Coordinator. The Area Coordinator was supposed to file a Title IX complaint but they never filed a complaint.

45. I asked my RA to keep my sexuality confidential so that I wouldn't lose friends or get in trouble with the school. My RA did not know how to handle my sexuality or how to care for me.
46. Because George Fox did nothing to help me, I had to figure out how to handle this as an 18 year-old-freshman, who was unfamiliar with sex and dating, all on my own. I did not know what to do.
47. I told the women who assaulted me that she couldn't speak to me alone anymore and that we could be pleasant to each other socially but we couldn't be friends.
48. I had to live close to this person and go to class with this person for the rest of the year. The assault and lack of protection affects me to this day.
49. Because I had no support from the outside, it would not have been good for me to tell people this woman had assaulted me, because I would have been demonized by all sides.
50. I was raised in purity culture. I was not taught about consent. We are not taught how to pursue someone you want to be with. This is even harder when you are queer because we don't have models or examples of how to date or approach sex. It is harder still when your campus environment demonizes sex and queerness. We are not taught consent because we are taught not to have sex and especially not queer sex.
51. Eventually, during my Sophomore year, I found a different, supportive and safe group of queer students. We help each other feel less alone.
52. I want George Fox's policies to change so that I won't be at risk of discipline for my identity or relationships and so I, and other LGBTQ+ students, will be protected if we experience unsafe situations, harassment or violence.
53. I am also concerned about my future career opportunities because of my school's views. I am working towards a degree in social justice and community development while being taught that LGBTQ+ people should not be treated equally. I do not believe my University has adequately prepared me to serve my community. And why would a future employer?
54. I am participating in this case because I do not want to be erased. The history and experience of LGBTQ people is constantly being covered up by George Fox and similar institutions. We matter. We deserve to be seen. We deserve safety and respect.
55. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed this 23rd day of March, 2021.

By Audrey Wojnarowisch
Audrey Wojnarowisch (Mar 25, 2021 16:28 PDT)

Audrey Wojnarowisch






Audrey Wojnarowisch Declaration

Final Audit Report

2021-03-25

| | |
|-----------------|--|
| Created: | 2021-03-25 |
| By: | Lauren Swain (lauren@paulsouthwick.com) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAA3a1HR1PcqSeGMrMZy7HvZw5lBtX1O2tW |

"Audrey Wojnarowisch Declaration" History

-  Document created by Lauren Swain (lauren@paulsouthwick.com)
2021-03-25 - 11:22:31 PM GMT - IP address: 73.169.43.135
-  Document emailed to Audrey Wojnarowisch (audreywojnarowisch@gmail.com) for signature
2021-03-25 - 11:22:57 PM GMT
-  Email viewed by Audrey Wojnarowisch (audreywojnarowisch@gmail.com)
2021-03-25 - 11:27:04 PM GMT - IP address: 74.125.209.45
-  Document e-signed by Audrey Wojnarowisch (audreywojnarowisch@gmail.com)
Signature Date: 2021-03-25 - 11:28:21 PM GMT - Time Source: server- IP address: 50.39.157.145
-  Agreement completed.
2021-03-25 - 11:28:21 PM GMT

HAMELIN
10/15
3

Office of the President

September 24, 1976

Mr. Martin H. Gerry, Director
Office of Civil Rights
Department of Health, Education, and Welfare
Washington, D.C. 20201

ELIZABETH HUNTER et al.
v.
U.S. DEPARTMENT OF EDUCATION, et al.
Case No. 6:21-cv-00474 (AA)
GOV Ex. 17

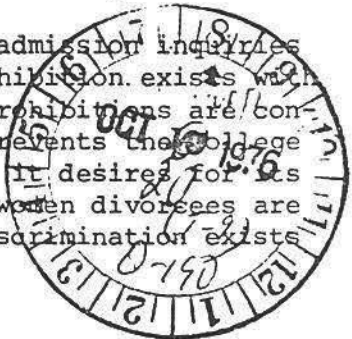
Dear Mr. Gerry;

The College seeks exemptions from the following sections of the Final Title IX Regulations: 86.21(c); 86.40(b)(1) and (5); 86.57 (a)(1)(b)(c)(d); 86.60(a).

The substance of all of the above sections deals with items such as marital status, pregnancy, pregnancy as a temporary disability, pregnancy leave, etc. Normally, the College is not concerned with the marital status of either a prospective student or faculty member if the status is either that of single or married. Such persons are not discriminated against on the basis of sex. On the subject of divorce, however, the College takes a different stance.

Scripture teaches that a person is to be married to one partner for life barring certain circumstances. And when a person procures a divorce because of circumstances which are specifically contrary to Biblical teaching, the acceptance of such a person as a student or member of the faculty/staff can jeopardize the Biblecal stance/teaching/education process of this church-owned College. For example, assume two persons are married. Person one involves himself in all kinds of extramarital immoral sexual activity while married which leads to his partner's procural of a divorce. Since this College takes a very clear position on the high moral behavior of students and faculty, and since these expectations are based on clear Biblical teachings, the acceptance of such a student or employee (assuming the student or employee still practices the immoral behavior) will jeopardize the integrity of the College community and its religious teachings.

Under section 86.21(c), the College may make no pre-admission inquiries as to the marital status of the applicant. This same prohibition exists with regard to employees in 86.60(a). In sum, both of these prohibitions are contrary to religious tenets of the institution in that it prevents the college from seeking to select the kind of students and employees it desires for its student body. It should be noted here that both men and women divorcees are treated in identical manners so that in fact no sexual discrimination exists here.



GEORGE FOX COLLEGE / NEWBERG, OREGON 97132 / (503) 538-8383

Assurance

Mr. Martin H. Gerry

September 24, 1976

Page 2

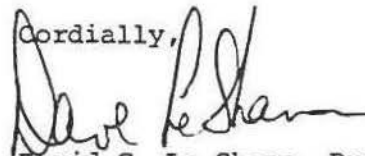
With regard to the pregnancy sections (sections 86.40 and 86.57) the College is only concerned here with an out-of-wedlock pregnancy. : As long as the pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom occur in wedlock, the College is in compliance with sections 86.40 and 86.57. But where either a student or employee becomes pregnant out of wedlock, the College reserves the right to exclude such persons (bother mother and father) from any or all of its programs. To do otherwise would be to run counter to the College's position with regard to sexual morality, which position is based on a religious/Biblical tenet.

Further, consistent with the expectations of HEW Form 639, the College submits the following information:

- (1) The name of the religious organization governing the College is the Northwest Yearly Meeting of Friends Church. The College is controlled by such organization.
- (2) Implementing the sections of Title IX as hereinbefore noted without exemptions asked for would conflict with a specific religious tenet of religion as practiced by the Northwest Yearly Meeting of Friends Church.

I trust this is acceptable to you.

Cordially,



David C. Le Shana, President
GEORGE FOX COLLEGE
Newberg, OR 97132

DLS:gj

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

AUG 3 1985

Dr. Edward F. Stevens
President
George Fox College
Newberg, Oregon 97132

Dear Dr. Stevens:

The Office for Civil Rights of the Department of Education (OCR/ED) is in the process of clearing a backlog of requests for religious exemption from Title IX of the Education Amendments of 1972. Our records indicate that George Fox College filed such a request, but there is no record that OCR adequately acknowledged this request.

We have recently reviewed the request filed by former President David C. Le Shana (copy enclosed) in which he described several policies practiced at George Fox College as consistent with the tenets of the religious organization that controls the institution. These policies would violate certain sections of the regulation implementing Title IX (copy enclosed) absent a religious exemption. Dr. Le Shana supplied information in his request letter that establishes that the institution is controlled by a religious organization and that tenets followed by this organization conflict with specific sections of the Title IX regulation. Therefore, I am granting George Fox College an exemption to those sections of the Title IX regulation specified in the request letter. The exemption is limited to the extent that compliance with the Title IX regulation conflicts with the religious tenets followed by the institution. George Fox College is hereby exempted from the requirements of the following sections of the Title IX regulation: 34 C.F.R. §§ 106.21(c); 106.40(b)(1) and (5); 106.57(a)(1), (b), (c), (d); and, 106.60(a). The basis for our decision to grant this exemption is discussed in further detail below.

Dr. Le Shana's letter indicated that the religious organization governing George Fox College is the Northwest Yearly Meeting of Friends Church (NYMFC), and that the College is controlled by this organization. This relationship between the NYMFC and George Fox College adequately establishes that George Fox College is controlled by a religious organization as is required for consideration for exemption under § 106.12 of the Title IX regulation.

In his letter Dr. Le Shana indicated that "Scripture teaches that a person is to be married to one partner for life barring certain circumstances. And when a person procures a divorce because of circumstances which are specifically contrary to Biblical teaching, the acceptance of such a person as a student or member of the faculty/staff can jeopardize the Biblical stance/teaching/education process of this church-owned college." Thus, with respect to admissions and hiring, George Fox College "takes a very clear position on the high moral behavior of students and faculty, and . . . these expectations are based on clear Biblical teachings[.]"

Page 2 - Dr. Edward F. Stevens

Based on the above principle, George Fox College has requested and is granted by this letter, exemption to 34 C.F.R. § 106.21(c), which pertains to prohibitions with respect to consideration of marital or parental status in admission of students; and 34 C.F.R. § 106.60(a), which pertains to pre-employment inquiries with respect to the marital status of an applicant.

Dr. Le Shana also indicated in his letter that, based on a religious/Biblical tenet concerning sexual morality, George Fox College reserves the right to exclude from its programs persons who become pregnant out of wedlock.

Based on the above principle, George Fox College has requested and is granted by this letter, exemption to: § 106.40(b)(1) and (5), which prohibits different treatment of students for reasons concerning pregnancy and related conditions; and § 106.57(a)(1), (b), (c), (d), which prohibits taking any employment action for reasons concerning a person's potential marital, parental, or family status, or concerning pregnancy and related conditions.

This letter should not be construed to grant exemption from any section of the Title IX regulation not specifically mentioned. In the event that OCR receives a complaint against George Fox College, we are obligated to determine initially whether the allegations fall within the exemption herein granted. Also, in the unlikely event that a complainant alleges that the practices followed by George Fox College are not based on the religious tenets of the NYMFC, OCR is obligated to contact the NYMFC to verify those tenets. If the NYMFC provides an interpretation of tenets that has a different practical impact than that described by George Fox College, or if the NYMFC denies that it controls the institution, this exemption will be rescinded.

I hope this letter responds fully to your institution's request. I regret the inordinate delay in responding to the original request. If you have any questions, please do not hesitate to contact the Seattle Regional Office for Civil Rights. The address is:

Gary D. Jackson
Regional Civil Rights Director
Office for Civil Rights, Region X
Department of Education
2901 Third Avenue, M/S 106
Seattle, Washington 98101

Sincerely,



Harry M. Singleton
Assistant Secretary
for Civil Rights

Enclosures

cc: Gary D. Jackson, Regional Civil Rights Director, Region X



GEORGE FOX
UNIVERSITY

414 N. Meridian St., Newberg, OR 97132
503.538.8383

March 31, 2014

Catherine Lhamon, Assistant Secretary
U.S. Department of Education, Office for Civil Rights
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100

Re: George Fox University's Request for Title IX Religious Exemption

Dear Ms. Lhamon:

I have become aware that the Departments of Education and Justice recently interpreted Title IX's ban on sex discrimination in education to include discrimination based on gender identity.¹ As President of George Fox University, a private, religious liberal arts college in Oregon, I hereby request, under 34 C.F.R. §106.12, an exemption for George Fox from this interpretation of Title IX, due to the religious beliefs of our institution.

George Fox University, a Christ-centered community, prepares students spiritually, academically, and professionally to think with clarity, act with integrity, and serve with passion. Since its founding more than a century ago, George Fox has been committed to providing a Christian education – from its early days as Friends Pacific Academy, established in 1885, to the present. Its name honors the founder of the Friends (Quaker) movement and the University is owned by the Northwest Yearly Meeting of Friends (in fact, 4/7 of the Board of Trustees must be Friends).

In its Statement of Faith, the University expresses its belief that, “[i]n love and joy, God creates and sustains the universe, including humanity, male and female, who are made in God’s image.”² The University believes “that God inspired the Bible and has given it to us as the uniquely authoritative, written guide for Christian living and thinking. As illumined by the Holy Spirit, the Scriptures are true and reliable.” These theological beliefs are also embedded in the doctrinal statements of the Northwest Yearly Meeting of Friends.

The University believes that human beings, fashioned by God in His own image, are created male and female (Genesis 1:27). In the New Testament, Jesus confirms the heterosexual creation of human beings: God made them male and female (Matthew 19:4). Like the rest of

¹ Resolution Agreement Between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division, available at <http://www.justice.gov/crt/about/edu/document/arcadiaagree.pdf>

² George Fox University, *About George Fox- Statement of Faith*, http://www.georgesfox.edu/about/mission_vision_values/faith_statement.html (last visited Mar. 17, 2014).

Letter to Ms. Catherine Lhamon
March 31, 2014
Page 2 of 3

God's creation, the sexual differences between man and woman are pronounced "very good" (Genesis 1:31).

This distinction between men and women is also assumed in our lifestyle statement with regard to issues of sexual morality. The statement says that "in regard to sexual morality, we believe that only marriage between a man and a woman is God's intention for the joyful fulfillment of sexual intimacy. This should always be in the context of mutual compassion, love, and fidelity. Sexual behaviors outside of this context are inconsistent with God's teaching. We recognize these principles may conflict with the practice or opinion of some within the larger culture. We are convinced that this is God's design for providing the most loving guidance and practice for individuals and our community."

We affirm the dignity of all human beings. We also separate the value of each person from the behavioral choices one makes. We believe that, as Christians, we are called to treat all people with compassion, and to extend the gospel of repentance, forgiveness, and transformation through Jesus Christ to such persons without reservation. However, in keeping with our biblical beliefs surrounding the morality of such actions, we cannot in good conscience support or encourage an individual to live in conflict with biblical principles.

Based on the resolution recently entered into by the Department and a California school district,³ it appears that the Department is now interpreting Title IX's ban on discrimination in education because of sex to also mean that educational institutions may not "discriminate" on the basis of "gender identity." Specifically, the school district in that dispute was ordered to allow a female student presenting herself as male to use the restroom, locker room, and living accommodations of her choice, and to participate in boys' athletic programs.

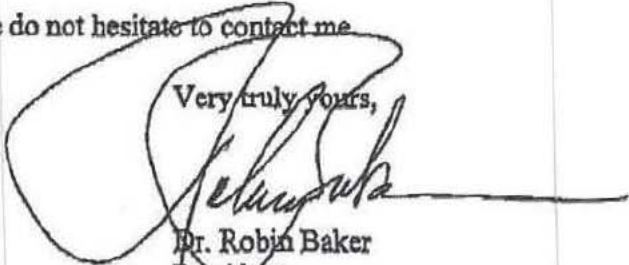
We would not be able to make similar accommodations consistent with our religious beliefs. Because of our biblical beliefs regarding gender and sexual morality, our practices might be deemed a violation of this interpretation of Title IX. However, under 20 U.S.C. §1681(a)(3) and 34 C.F.R. §106.12(a), this interpretation does not apply to George Fox: "This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization."

Thus, on behalf of George Fox University, I hereby request an official exemption from compliance with that interpretation of Title IX. George Fox gladly complies with Title IX with respect to granting equal opportunities in educational programs or employment to members of both sexes; our request for exemption is limited to the recent interpretation that "sex" under Title IX also includes gender identity.

³ See *supra* note 1.

Letter to Ms. Catherine Lhamon
March 31, 2014
Page 3 of 3

If you require anything further, please do not hesitate to contact me

Very truly yours,


Dr. Robin Baker
President
George Fox University

cc: Gregory S. Baylor, Esq., Alliance Defending Freedom



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

May 23, 2014

Dr. Robin Baker
President
George Fox University
414 N. Meridian St.
Newberg, Oregon 97132

Dear Dr. Baker:

The purpose of this letter is to respond to your March 31, 2014, letter to the U.S. Department of Education, Office for Civil Rights (OCR), in which you requested a religious exemption for George Fox University (University) of Newberg, Oregon from Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance.

The implementing regulation at 34 C.F.R. § 106.12 provides that Title IX does not apply to educational institutions controlled by religious organizations to the extent that application of Title IX would be inconsistent with the institution's religious tenets. Therefore, such educational institutions are allowed to request an exemption from Title IX by identifying the provisions of Title IX that conflict with a specific tenet of the religious organization. The request must identify the religious organization that controls the educational institution and specify the tenets of that organization and the provisions of the law and/or regulation that conflict with those tenets.

Your request explained that the University, which is owned by the Northwest Yearly Meeting of Friends (part of the Quaker movement), is "a Christ-centered community" that is "committed to providing a Christian education." You note that four of the University's seven Board of Trustees members must be Friends. You state that the University's biblical belief is that human beings are created male and female, and that the University "cannot in good conscience support or encourage an individual to live in conflict with biblical principles."

Your exemption request points to a recent OCR resolution agreement in which a school district agreed to allow a transgender male student to use the restroom, locker room, and living facilities consistent with the student's gender identity, and to play on boys' athletic teams. You explain that the University "would not be able to make similar accommodations consistent with [your] religious beliefs." You further state that, for these reasons, the University is requesting an exemption from Title IX and its

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-1100
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Dr. Robin Baker, George Fox University
May 23, 2014
Page 2 of 2

implementing regulation to the extent that they prohibit discrimination based on gender identity. We interpret this statement as a request for exemption from provisions 34 C.F.R. §§ 106.32 (governing housing), 106.33 (governing comparable facilities such as restrooms and locker rooms), and 106.41 (governing athletics). The University is exempt from these provisions to the extent that they require a recipient to treat students consistent with their gender identity, but doing so would conflict with the controlling organization's religious tenets.

Please note that this letter should not be construed to grant exemption from the requirements of Title IX and the regulation other than as stated above. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption here granted. Also, in the unlikely event that a complainant alleges that the practices followed by the institution are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, this exemption will be rescinded.

I hope this letter responds fully to your request. If you have any questions, please do not hesitate to contact me.

Sincerely,



Catherine E. Lhamon
Assistant Secretary for Civil Rights
Office for Civil Rights
U.S. Department of Education


Page 1 of 4 – U.S. Department of Education, Office for Civil Rights Discrimination Complaint Form, Consent Form, and Complaint Processing Procedures

DISCRIMINATION COMPLAINT FORM
to the
United States Department of
Education Office for Civil Rights

1. Name of person filing this complaint:

| | |
|---------------------------------|--|
| Last Name, First, Middle | <u>Swain, Lauren</u> |
| Address: | <u>8532 N. Ivanhoe St., #208</u> |
| City, State, Zip Code: | <u>Portland, OR 97203</u> |
| Home/Work Telephone: |  |
| Email Address: | <u>lauren@paulsouthwick.com</u> |

2. Name of person discriminated against (if **other** than person filing). If the person discriminated against is age 18 or older, we will need that person's signature on this complaint form and the consent/release form before we can proceed with this complaint. If the person is a minor, and you do not have the legal authority to file a complaint on the student's behalf, the signature of the child's parent or legal guardian is required.

| | |
|---------------------------------|--|
| Last Name, First, Middle | <u>Penales, Veronica Bonifacio</u> |
| Address: |  |
| City, State, Zip Code: | |
| Home/Work Telephone: | |
| Email Address: | |

3. OCR investigates discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education and against public educational entities and libraries that are subject to the provisions of Title II of the Americans with Disabilities Act. Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

| | |
|-------------------------------|--------------------------|
| Name of Institution: | <u>Baylor University</u> |
| Address: | <u>1311 S. 5th St.</u> |
| City, State, Zip Code: | <u>Waco, TX, 76706</u> |
| Department/School: | |

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, age or retaliation. Please indicate the basis of your complaint:

Discrimination **based on sex (specify)**
Discrimination on the basis of sexual orientation

ELIZABETH HUNTER et al.
v.
U.S. DEPARTMENT OF EDUCATION, et al.
Case No. 6:21-cv-00474 (AA)
GOV Ex. 18

Page 2 of 4 – U.S. Department of Education, Office for Civil Rights Discrimination
Complaint Form, Consent Form, and Complaint Processing Procedures

5. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved and, why you believe the discrimination was because of race, disability, age, sex, etc. Also please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

Baylor publishes a statement on sexuality that includes anti-LGBT policies. The statement urges students "struggling" with same sex attraction to seek counseling. Baylor claims in its Civil Rights policy that it is exempt from compliance with select civil rights laws on the basis of religious exemption. As a result of these policies, Veronica does not feel free to express her sexual orientation while attending Baylor. When Veronica reports harassment hateful anti-LGBT statements from other students, officials at the school do not address it and instead tell her to seek counseling. As a result, Veronica has stopped reporting hate speech to the school staff. Please see attached declaration.

6. What is the most **recent date** you were discriminated against?

Date: Current, Ongoing

7. If this date is **more than 180 days ago**, you may request a waiver of the filing requirement.

I am requesting a waiver of the 180-day time frame for filing this complaint.

Please explain why you waited until now to file your complaint.

- 1) the Covid-19 pandemic;
- 2) The Trump administration's policies and statements about religious exemptions to Title IX;
- 3) The Trump administration's policies and statements about Title IX not prohibiting discrimination on the basis of sexual orientation or gender identity.
- 4) Although the initial act of discrimination took place more than 180 days ago, Veronica's complaint should not be considered time-barred because Baylor continues to discriminate against Veronica and to promulgate policies and practices that discriminate against LGBTQ+ students.

8. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing?

Yes

If you answered **yes**, please describe the allegations in your grievance or hearing, identify the date you filed it, and tell us the status. If possible, please

Page 3 of 4 – U.S. Department of Education, Office for Civil Rights Discrimination Complaint Form, Consent Form, and Complaint Processing Procedures

provide us with a copy of your grievance or appeal or due process request and, if completed, the decision in the matter.

See attached declaration.

- 9. If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the other agency or court.

Agency or Court: U.S. District Court - District of Oregon - Eugene Division

Date Filed: 03/29/21

Case Number or Reference: 6:21-cv-00474-AA

Results of Investigations/Findings by Agency or Court: Pending

- 10. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information is **not required**, but it will be helpful to us.

Not applicable

- 11. What would you like the institution to do as a result of your complaint — what remedy are you seeking?

Veronica would like Baylor’s policies amended to state that (1) same-sex dating relationships and displays of affection will be treated by Baylor in the same manner as opposite-sex dating relationships and displays of affection; (2) students will not be punished for coming out as LGBTQ+ or for expressing their sexual or gender identity (through pronouns, clothing, hair, makeup, etc.); (3) Baylor will not encourage or facilitate conversion therapy or any other sexual or gender orientation change efforts; (4) students who report sexual or physical assault will be granted safe harbor from discipline relating to sexual activity or other code of conduct violations; and (5) Baylor’s non-discrimination policy includes sexual orientation and gender identity as applied to all aspects of Baylor, including housing and other programs.

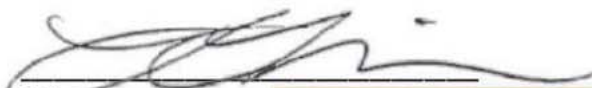
- 12. We cannot accept your complaint if it has not been signed. Please sign and date your complaint below.

07/23/2021

(Date)

Jul 24, 2021

(Date)


 (Signature)
Veronica Bonifacio Penales
 Veronica Bonifacio Penales (Jul 24, 2021 17:29 CDT)
 (Signature of person in Item 2)

https://secure.n3.adobe.com/verifier?lx=CBJCHB0AABAA3vUVQNWAB21NGAT14r114Jp9pl9Hq-HG

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION**

| | | |
|---|---|---------------------------|
| Elizabeth HUNTER; et al., on behalf of themselves and all others similarly situated, |) | |
| |) | |
| |) | Civil Action No. |
| Plaintiffs, |) | |
| v. |) | DECLARATION OF VBP |
| |) | |
| U.S. DEPARTMENT OF EDUCATION and |) | |
| Suzanne GOLDBERG, in her official capacity as |) | |
| Acting Assistant Secretary for Civil Rights, |) | |
| U.S. Department of Education, |) | |
| |) | |
| Defendants. |) | |

I, VBP, declare:

1. I am over 18 years of age and have personal knowledge of the matters stated in this declaration and would testify truthfully to them if called upon to do so.
2. I am a resident of Waco, Texas, located in McClennan County.
3. I grew up in Shreveport, Louisiana and graduated from a public high school in 2019.
4. I began attending Baylor University in Waco, Texas in August 2019.
5. I am a pre-law student. I expect to graduate in May 2023 with a degree in Political Science and International Studies.
6. I am a Sophomore Senator under the Legislative Branch of Baylor Student Government.
7. I am also president of College Democrats of Baylor.
8. I received a Presidential Gold scholarship to attend Baylor.
9. Baylor has multiple statements listed in its website when it comes to marriage and sexuality.
10. The school has an official policy on sexual conduct. This policy states “Baylor will be guided by the biblical understanding that human sexuality is a gift from God and that physical sexual intimacy is to be expressed in the context of marital fidelity. Thus, it is expected that Baylor students, faculty, and staff will engage in behaviors consistent with this understanding of human sexuality.”
11. Baylor’s official Statement on Human Sexuality states “Baylor University welcomes all students into a safe and supportive environment in which to discuss and learn about a variety of issues, including those of human sexuality. The University affirms the biblical

understanding of sexuality as a gift from God. Christian churches across the ages and around the world have affirmed purity in singleness and fidelity in marriage between a man and a woman as the biblical norm. Temptations to deviate from this norm include both heterosexual sex outside of marriage and homosexual behavior. It is expected that Baylor students will not participate in advocacy groups which promote understandings of sexuality that are contrary to biblical teaching.”

12. This statement makes me feel like I don't belong at Baylor.
13. Baylor does not practice what it preaches about diversity, inclusion, love and support because Baylor does not take actions to make us feel safe and supported. Words are not enough and ring hollow without action.
14. Baylor's official statement on Human Sexuality then directs students "struggling" with these issues to go to some form of counselling at one of the on-campus counselling centers.
15. Baylor says that it does not condone conversion therapy but this statement sounds like the promotion of conversion therapy by another name.
16. Baylor University also has a statement of "Commitment to Diversity and Inclusion" which states "we seek to embody Christ's teachings of love and inclusivity across boundaries of racial, ethnic, gender, socio-economic, religious, and other expressions of human difference. Because, at Baylor, 'Love thy neighbor' are not just words...they are a way of life."
17. In practice, Baylor does not live up to this commitment.
18. This "way of life" seems to be a value of the school, except when it is not, such as when Baylor expressly allows for discrimination, as stated in Baylor's Civil Rights policy, "As a religiously controlled institution of higher education, Baylor is exempt from compliance with select provisions of certain civil rights laws, and Baylor is also exempt from prohibitions of discrimination based on religion. As such, the University prescribes standards of personal conduct which are consistent with its religious mission and values".
19. This statement tells me that Baylor cares more about its right to discriminate against queer and other students than it does about the health and safety of its queer and other students.
20. This policy of discrimination makes me feel unsafe and unprotected by the law.
21. Baylor is unlikely to discipline queer students merely for being queer. However, Baylor's policy forbidding "homosexual behavior" and its other statements condemning queer identities and relationships, makes me feel like I could never show affection to a queer partner and that I would be at risk of discipline and ridicule if I were to hold their hand or give them a kiss in public.
22. I am a queer woman.

23. I initially attended Baylor as I considered it a safe school. It was close to home without being too close. Baylor could get me where I wanted to go in life and would put me on the career path that I wanted.
24. However, I have dealt with discrimination by my peers at Baylor since I came out. The school makes little effort to do anything about it.
25. The school's common response to my reporting hate on campus is that I should go to counselling. As a result, I stopped reporting incidents.
26. The incidents of harassment and discrimination against me include: (1) cruel, homophobic Instagram comments, including "#f**runner #notinmygoodbaptistuniversity"; (2) someone left a Bible at my dorm door, that was annotated and highlighted all of the Scriptures that they claimed were against homosexuality; it also contained a handwritten note that said "I'm praying for you," (3) I've had sticky notes left on my door that use the f** slur, which I reported to Baylor, but nothing was done about it.
27. Baylor has also defended a professor who sent a transphobic tweet that caused a lot of concern among queer students at Baylor. This felt like another betrayal of Baylor's purported values.
28. I am participating in this lawsuit because I want Baylor to realize what it is doing it wrong and harmful. There is no excuse for ostracizing, discriminating against, and hurting their students.
29. I am not using my name in this declaration for fear that I will be subject to harassment, discrimination and academic harm from Baylor professors, administrators and other students.
30. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed this 27th day of February, 2021.

By:



VBP



BAYLOR UNIVERSITY

Abner V. McCall • President
Waco, Texas 76703

*McK
2/4*

January 12, 1976

Director of the Office for Civil Rights
U. S. Department of Health, Education
and Welfare
Washington, D. C. 20201

Dear Sir:

Pursuant to Sec. 86.12(b) of "Title IX Regulation Implementing Education Amendments of 1972 Prohibiting Sex Discrimination in Education," this letter is to advise that Baylor University of Waco, Texas, is an educational institution which is controlled by the Baptist General Convention of Texas and that the following portions of the above mentioned regulations are not consistent with the religious tenets of such organization.

1. Premarital unchastity whether on the part of a man or woman is contrary to the tenets of the Southern Baptists. Insofar as these regulations require Baylor University to treat the pregnancy, childbirth, false pregnancy or termination of pregnancy of an unmarried woman as a mere temporary disability such regulations conflict with the tenets of Southern Baptists. Such regulations pertaining to unmarried women whether students or prospective students or employees or prospective employees are inconsistent with the policies of the university and Southern Baptists. These inconsistent regulations include Sec. 86.21(c), 86.39, 86.40, 86.51(b)(6), 86.57(a)(1), (b), (c), 86.60(a).

2. It is the tenet and practice of practically all Southern Baptist churches that only men should be licensed and ordained for the ministry. The Baptist General Convention of Texas awards a partial scholarship to every licensed ministerial student attending Baylor University. Baylor University matches this partial scholarship. Section 86.37(a)(b) of such regulations is inconsistent with this Southern Baptist tenet. Educational programs

ELIZABETH HUNTER et al.
v.
U.S. DEPARTMENT OF EDUCATION, et al.
Case No. 6:21-cv-00474 (AA)
GOV Ex. 19

*1/19/76
McCall*

Director of the Office for Civil Rights
January 12, 1976

designed for ministerial students and campus clubs and programs primarily for ministerial students will reflect this tenet. The following regulations may be inconsistent therewith: Sec. 86.6(c), 86.11, 86.31, 86.34, 86.36(c), 86.38(a)(1)(2).

Licensed and ordained Baptist ministers are given preference in employment in certain offices, e.g. chaplain and certain academic departments, e.g. Department of Religion. Since women are not licensed or ordained as ministers, such tenet is inconsistent with Sec. 86.51, 86.53, 86.55(a).

Sincerely,



Abner V. McCall
President

kt



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

SEP 26 1985

SEP 26 1985

Dr. Herbert H. Reynolds
President
Baylor University
Waco, Texas 76798

Dear President Reynolds:

The Office for Civil Rights of the Department of Education (OCR/ED) is in the process of resolving a number of pending requests for religious exemption from Title IX of the Education Amendments of 1972. Our records indicate that Baylor University filed such a request, but there is no record that OCR adequately acknowledged this request.

We have recently reviewed the request filed by former President McCall (copy enclosed) in which he described several policies practiced at Baylor University as being consistent with the tenets of the religious organization that controls the institution. These policies would violate certain sections of the regulation implementing Title IX (copy enclosed) absent a religious exemption. The former president supplied information in his request letter that establishes that Baylor University is controlled by a religious organization and that tenets followed by this organization conflict with specific sections of the Title IX regulation. Therefore, I am granting Baylor University an exemption to those sections of the Title IX regulation appropriate to the request letter. The exemption is limited to the extent that compliance with the Title IX regulation conflicts with the religious tenets followed by the institution. Baylor University is hereby exempted from the requirements of the following sections of the Title IX regulation: 34 C.F.R. §§ 106.6(c), 106.21(c), 106.31, 106.34, 106.36(c), 106.37(a) and (b), 106.38(a); 106.39, 106.40, 106.51, 106.53, 106.55(a), 106.57 and 106.60(a). The basis for our decision to grant this exemption is discussed in further detail below.

The request letter indicates that Baylor University is controlled by the Baptist General Convention of Texas. This relationship between the Baptist General Convention and Baylor University adequately establishes that Baylor University is controlled by a religious organization as is required for consideration for exemption under § 106.12 of the Title IX regulation.

Page 2 - Dr. Herbert H. Reynolds

In the request letter, the former president indicates that premarital unchastity is contrary to the religious tenets of Southern Baptists. Additionally, treating pregnancy, childbirth, false pregnancy, or termination of pregnancy of an unmarried woman as a temporary disability is contrary to the tenets of Southern Baptists. Based on these principles, Baylor University has requested and is granted by this letter exemption to: § 106.21(c) (marital or parental status of applicants for admission), § 106.39 (health and insurance benefits and services), § 106.40 (marital or parental status of students), 106.51(b)(6) (leaves of absence for pregnancy and related conditions and child care), § 106.57 (marital or parental status of employees) and § 106.60(a) (pre-employment inquiries regarding marital status).

The request letter indicates that almost all Southern Baptist churches allow only men to be licensed and ordained for the ministry. The Baptist General Convention of Texas awards a partial scholarship to every licensed ministerial student attending Baylor University, and Baylor University matches this partial scholarship. Also, some educational programs and campus clubs are designed for ministerial students. Based on this principle, Baylor University has requested and is granted by this letter exemption to: § 106.6(c) (effect of rules or regulations of private organizations), § 106.31 (education programs and activities), § 106.34 (access to course offerings), § 106.36(c) (counseling - disproportion in classes), § 106.37(a) and (b) (financial assistance) and § 106.38(a) (employment assistance to students).

The former president's letter indicates that licensed and ordained ministers are given preference in employment in certain offices, and women are not licensed or ordained as ministers. Based on this principle, Baylor University has requested and is granted by this letter exemption to: § 106.51 (employment), § 106.53 (recruitment of employees) and § 106.55(a) (job classification and structure).

Baylor University also requested exemption to § 106.11 regarding the application of the Title IX regulation. The request letter did not demonstrate that the institution's practices conflict with all sections of the Title IX regulation. Therefore, no exemption has been granted for § 106.11.

This letter should not be construed to grant exemption from any section of the Title IX regulation not specifically mentioned. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption herein granted. Also, in the unlikely event that a complainant alleges that the practices followed by the institution are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, this exemption will be rescinded.

Page 3 - Dr. Herbert H. Reynolds

I hope this letter responds fully to your request. I regret the inordinate delay in responding to your original request. If you have any questions, please do not hesitate to contact the Dallas Regional Office for Civil Rights. The address is:

Taylor D. August
Regional Civil Rights Director
Office for Civil Rights, Region VI
Department of Education
1200 Main Tower Building, Suite 400
Dallas, Texas 75202

Sincerely,



Harry M. Singleton
Assistant Secretary
for Civil Rights

Enclosures

cc: Taylor D. August, Regional Civil Rights Director, Region VI

Page 1 of 4 – U.S. Department of Education, Office for Civil Rights Discrimination Complaint Form, Consent Form, and Complaint Processing Procedures

**DISCRIMINATION COMPLAINT FORM
to the
United States Department of Education
Office for Civil Rights**

ELIZABETH HUNTER et al.
v.
U.S. DEPARTMENT OF EDUCATION, et al.
Case No. 6:21-cv-00474 (AA)
GOV Ex. 20

1. Name of person filing this complaint:

Last Name, First, Middle Swain, Lauren
Address: 8532 N. Ivanhoe St., #208
City, State, Zip Code: Portland, OR 97203
Home/Work Telephone: 
Email Address: lauren@paulsouthwick.com

2. Name of person discriminated against (if **other** than person filing). If the person discriminated against is age 18 or older, we will need that person’s signature on this complaint form and the consent/release form before we can proceed with this complaint. If the person is a minor, and you do not have the legal authority to file a complaint on the student’s behalf, the signature of the child’s parent or legal guardian is required.

Last Name, First, Middle Hunter, Elizabeth
Address: 
City, State, Zip Code:
Home/Work Telephone:
Email Address:

3. OCR investigates discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education and against public educational entities and libraries that are subject to the provisions of Title II of the Americans with Disabilities Act. Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

Name of Institution: Bob Jones University (BJU)
Address: 1700 Wade Hampton Blvd.
City, State, Zip Code: Greenville, SC, 29614
Department/School:

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, age or retaliation. Please indicate the basis of your complaint:

Discrimination **based on sex (specify)**

Discrimination on the basis of (sexual orientation, gender identity and/or marital status)

Page 2 of 4 – U.S. Department of Education, Office for Civil Rights Discrimination
Complaint Form, Consent Form, and Complaint Processing Procedures

5. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved and, why you believe the discrimination was because of race, disability, age, sex, etc. Also please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

BJU publishes anti-LGBT policies in its student handbook, including a prohibition on students advocating for LGBT rights on social media. School staff disciplined Elizabeth for posting pro-LGBT material on social media and tried to force her to admit her sexual orientation during a long meeting. They asked her to disavow her support for LGBT rights and relationships, then put her on probation for refusing to do so. As a result, Elizabeth felt she could not express her views about LGBT rights and that she must hide her sexual orientation for the remainder of her time at BJU. See attached declaration.

6. What is the most **recent date** you were discriminated against?

Date: Current, Ongoing

7. If this date is **more than 180 days ago**, you may request a waiver of the filing requirement.

I am requesting a waiver of the 180-day time frame for filing this complaint.

Please explain why you waited until now to file your complaint.

- 1) the Covid-19 pandemic;
- 2) The Trump administration's policies and statements about religious exemptions to Title IX;
- 3) The Trump administration's policies and statements about Title IX not prohibiting discrimination on the basis of sexual orientation or gender identity.
- 4) Although the initial act of discrimination took place more than 180 days ago, Elizabeth's complaint should not be considered time-barred because Bob Jones continues to discriminate against Elizabeth and to promulgate policies and practices that discriminate against LGBTQ+ students.

8. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing?

No

Page 3 of 4 – U.S. Department of Education, Office for Civil Rights Discrimination
Complaint Form, Consent Form, and Complaint Processing Procedures

- 9. If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the other agency or court.

Agency or Court: U.S. District Court - District of Oregon - Eugene Division

Date Filed: 03/29/21

Case Number or Reference: 6:21-cv-00474-AA

Results of Investigations/Findings by Agency or Court: Pending

- 10. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information is **not required**, but it will be helpful to us.

Not applicable

- 11. What would you like the institution to do as a result of your complaint — what remedy are you seeking?

Elizabeth would also like Bob Jones’s policies amended to state that (1) same-sex dating relationships and displays of affection will be treated by Bob Jones in the same manner as opposite-sex dating relationships and displays of affection; (2) students will not be punished for coming out as LGBTQ+ or for expressing their sexual or gender identity (through pronouns, clothing, hair, makeup, etc.); (3) Bob Jones will not encourage or facilitate conversion therapy or any other sexual or gender orientation change efforts; (4) students who report sexual or physical assault will be granted safe harbor from discipline relating to sexual activity or other code of conduct violations; and (5) Bob Jones’s non-discrimination policy includes sexual orientation and gender identity as applied to all aspects of Bob Jones, including housing and other programs.

- 12. We cannot accept your complaint if it has not been signed. Please sign and date your complaint below.

07/24/21

[Date]

Jul 24, 2021

[Date]



[Signature]

Fawn Hunt
Fawn Hunt (Jul 24, 2021 14:49 EDT)

[Signature of person in Item 2]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION**

| | | |
|--|---|--|
| Elizabeth HUNTER; et al., on behalf of themselves and all others similarly situated, |) | |
| |) | |
| Plaintiffs, |) | |
| v. |) | |
| U.S. DEPARTMENT OF EDUCATION and Suzanne GOLDBERG, in her official capacity as Acting Assistant Secretary for Civil Rights, U.S. Department of Education, |) | |
| |) | |
| Defendants. |) | |
| |) | |

Civil Action No.

**DECLARATION OF
ELIZABETH HUNTER**

I, Elizabeth Hunter, declare:

1. I am over 18 years of age and have personal knowledge of the matters stated in this declaration and would testify truthfully to them if called upon to do so.
2. I lived in foster care until the age of 10 and survived a sexual assault during this time.
3. I was then placed with a family and grew up in Texas as part of a fundamentalist Christian cult most well-known for the Duggar family.
4. I am currently a resident of Greenville, South Carolina, located in Greenville County.
5. My parents did not want me to attend college because I am a woman. However, I applied to college without my parents knowing.
6. I applied to Bob Jones University, a conservative Christian college known for its recent racist policies, mishandling of sexual abuse claims and ongoing ultraorthodox social policies, because it was one of the few colleges that I thought I could attend without being disowned by my parents.
7. In August of 2015, I started my freshman year Bob Jones University in Greenville, South Carolina.
8. Bob Jones University’s student handbook outlines rules of behavior for students. This handbook contains several sections dealing with “purity” or sexual conduct in general.
9. The “purity” section towards the beginning of the handbook sets the tone for the school’s policies towards sexual conduct. The section states that purity means “honoring God’s design for sex, celebrating and practicing it only within the marriage relationship between one man and one woman for a lifetime.”

10. Bob Jones University also has strict internet, social media, and entertainment policies, which includes a description of a “content filtering system to restrict biblically offensive material on the internet” that the students at the school are not allowed to bypass. The social media policy also includes the wording that students’ social media content should “be biblical and avoid promoting a lifestyle contrary to the principles taught in scripture or at the university”.
11. The handbook has an official “position on human sexuality” stating that the “New Testament exhorts believers to strive to live morally pure and sexually undefiled lives even in the midst of an immoral and sexually permissive culture”.
12. Included in this handbook is: “Consistent with our commitment to God’s design for gender identity, the public advocacy for or act of altering one’s biological sex through medical transition or transgender expression is prohibited. Any same-sex dating or advocacy for such is also prohibited. BJU’s perspective also applies to but is not limited to- the use of bathrooms, locker rooms, student housing, attire polices and participating in sex-specific university groups, clubs and organizations.”
13. Appendix B in the student handbook further reiterates the school’s position on “Marriage and Human Sexuality”. It begins by stating that “Bob Jones University believes marriage is an institution ordained by God and prescribed by the Scripture to be a monogamous relationship between a man and woman physically created in these respective genders by God. We believe God intended heterosexual marriage to be an enduring covenanted relationship established before Himself and man to propagate the human race, lovingly express healthy relational and sexual intimacy, and picture the covenant relationship He has with all genuine believers.”
14. Appendix B also states in its “Context for Human Sexuality” that “the Bible restricts all forms of consensual sexual activity to within the boundaries of the marriage relationship...The Bible clearly prohibits not only non-consensual sexual conduct but also any consensual sexual activity outside the boundaries of heterosexual marriage...Furthermore the Bible specifically names as sinful and prohibits any form of sexual activity between persons of the same sex...polygamy...bestiality...adultery...and fornication of any sort including pornography.”
15. Appendix B also has a “Statement on Gender Identity” in which the handbook states “God created man and woman in his image as two distinct but equal genders which he intends to use for his glory...Furthermore, individual gender is assigned by God and determined at conception...Therefore we believe that to intentionally alter or change one’s physical gender or to live as a gender other than the one assigned at conceptions is to reject God’s right as Creator to assign gender to his creatures and is a personal rejection of His plan to glorify Himself through the original gender He assigned that individual.”
16. As someone figuring out their sexuality while at college, Bob Jones University’s policies on sexuality and marriage created a scary, harsh environment for me.

17. I am now fully out as a lesbian woman but I was not able to be fully out at Bob Jones University.
18. I initially started coming out to some friends my junior year at Bob Jones University but I knew that it was not safe to come out to BJU faculty or staff or to be out on campus.
19. However, I began posting about some LGBTQ+ issues and themes on social media during this time.
20. In one of my social media posts, I reviewed a book with a lesbian main character and mentioned on Twitter that I was writing a book with a lesbian relationship.
21. After school leadership discovered my online activity, I was questioned about my sexuality and subsequently disciplined.
22. During a three hour meeting with a BJU administrator, where I was summoned without advance notice, I was told by school leadership that I “must be gay” for reading and writing these materials.
23. They had printed out all of my Tweets and went through them one by one. They tried to get me to admit that I was a homosexual.
24. I was scared. I didn’t know what to do.
25. I knew I was gay but I also knew that I could not fully admit it to them or I would be expelled. So, I told the administrator that I “was not straight” but that I was probably asexual, like the Apostle Paul.
26. I also told them adamantly that I had not been sexually active with women or men and therefore had not broken any specific rules.
27. I was asked to disavow my support for LGBTQ+ rights and relationships. I refused. It would have been like disavowing myself.
28. As a result, BJU put me on disciplinary probation.
29. I was also immediately terminated from my on-campus student life position in the school’s media department, a position I treasured.
30. BJU also forced me to attend mandatory counseling with the Dean of Women.
31. I was also required to pay a monetary fine to BJU for my code of conduct violation.
32. This was the darkest month of my entire life. I felt depressed and suicidal.
33. For the rest of my time at BJU, I was forced completely back into the closet and had to hold my head down in shame.

34. I felt like I was being watched and monitored. When I told a friend about my disciplinary meeting, the administration got word of that and angrily told me that I was not allowed to discuss the disciplinary meeting with anyone.
35. My entire education experience was forever tainted by the shaming I endured at BJU. I survived and graduated in May of 2019. But I still feel the sting of the discrimination I endured.
36. The policy towards LGBTQ+ students at Bob Jones University is harsh and incredibly frustrating. It creates extreme shame and confusion by lumping all sexual behavior outside of heterosexual marriage, including homosexuality, adultery and bestiality, into the same category.
37. The campus culture at BJU is toxic for LGBTQ+ people. Homophobia among the student body, faculty and administration is rampant. LGBTQ+ students have to hide who we are and will suffer grave consequences if we come out and stand up for ourselves.
38. We have no one at BJU to advocate for our safety or our rights. We are alone.
39. Moreover, BJU cannot be trusted to monitor its compliance with Title IX on its own. A two-year investigation into BJU's handling of reports of sexual abuse culminated in the issuance of the GRACE Report in December 2014. GRACE spoke with about 40 survivors, finding that students who reported abuse were blamed for bringing it on themselves and that proper authorities had not been notified.
40. The GRACE Report specifically called out the culpability of one of BJU's senior administrators and recommended that he not be allowed to speak or consult on any issue relating to counselling on or off-campus. Nevertheless, BJU allowed this man to speak at two recent Mental Health themed services in 2019/2020.
41. Additionally, during my junior or senior year, while in a public relations class, another student asked the Provost of academic programs, who was also on the Board of BJU, about the *Bob Jones v. United States* case decided by the United States Supreme Court in 1983 concerning BJU's policies against interracial dating at the time.
42. This student asked the Provost how BJU could justify their anti-LGBTQ policies now, given that they lost the interracial dating case. The Provost replied that BJU would not be able to defend their anti-LGBTQ policies now because BJU had justified its racist policies based on the Bible but they eventually had to admit that they were wrong about interracial dating and that their beliefs changed.
43. I only recently came out to my family as lesbian. I waited until I was financially secure because I feared that they would shun me.
44. I am participating in this lawsuit because I am hopeful that things will change.
45. Experiencing hate and discrimination should not be a part of attending college.

46. I am a federal income taxpayer in the United States. I will also be required to repay student loans from the U.S. Department of Education that I took out to study at Bob Jones University.
47. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed this ____ day of March, 2021.

By:



Printed Name: Elizabeth Hunter
Elizabeth Hunter






Elizabeth Hunter Declaration v2

Final Audit Report

2021-03-24

| | |
|-----------------|--|
| Created: | 2021-03-24 |
| By: | Lauren Swain (lauren@paulsouthwick.com) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAATT4YD0GLHgIT02_29vkOBfOVN26Z-Pua |

"Elizabeth Hunter Declaration v2" History

-  Document created by Lauren Swain (lauren@paulsouthwick.com)
2021-03-24 - 0:58:18 AM GMT- IP address: 73.169.43.135
-  Document emailed to Faith Elizabeth Hunter (faithlizhunter@gmail.com) for signature
2021-03-24 - 0:58:49 AM GMT
-  Email viewed by Faith Elizabeth Hunter (faithlizhunter@gmail.com)
2021-03-24 - 1:09:37 AM GMT- IP address: 66.249.88.53
-  Document e-signed by Faith Elizabeth Hunter (faithlizhunter@gmail.com)
Signature Date: 2021-03-24 - 1:10:22 AM GMT - Time Source: server- IP address: 99.96.78.171
-  Agreement completed.
2021-03-24 - 1:10:22 AM GMT

| Recipient | Assurance of Religious Exemption Letter | Plaintiff |
|---|--|--|
| Azusa Pacific University | No | Jonathan Jones |
| Baylor University | Yes | Justin Tidwell-Davis, Jake Picker, Veronica B. Penales |
| Bob Jones University | Yes | Elizabeth Hunter |
| Brigham Young University | Yes | Ashtin Markowski |
| Brigham Young University-Idaho | Yes | Chandler Horning and Rachel Moulton |
| Cedarville University | Yes | Brooke C. |
| Clarks Summit University (formerly Baptist Bible College) | Yes | Gary Campbell |
| College of the Ozarks | Yes | Saren Craig |
| Colorado Christian University | Yes | Journey Mueller |
| Dordt University | Yes | Avery Bonestroo, Lauren Hoekstra |
| Eastern University | No | Faith Millender |
| Fuller Theological Seminary in California | No | Darren McDonald, Joanna Maxon, Nathan Brittsan |
| George Fox University | Yes | Audrey Wojnarowisch |
| Indiana Wesleyan University | Yes | Mortimer Halligan, Louis James |
| La Sierra University | No | Cameron Martinez |
| Lee University | Yes | Daniel Tidwell-Davis |
| Liberty University | Yes | Lucas Wilson |
| David Lipscomb University | Yes | Victoria Joy Bacon |
| Messiah University | No | Rachel Held |
| Moody Bible Institute | No | Megan Steffen |
| Oklahoma Baptist University | Yes | Tristan Campbell |
| Regent University School of Law | No | Jamie Lord |
| Seattle Pacific University | No | Spencer Vigil |
| Toccoa Falls College | Yes | Natalie Carter |
| Union University | Yes | Alex Duron, Scott McSwain |
| Westmont College | No | Darren McDonald |
| York College | Yes | Hayden Brown |

ED2.000241

ELIZABETH HUNTER et al.

v.

U.S. DEPARTMENT OF EDUCATION, et al.

Case No. 6:21-cv-00474 (AA)

GOV Ex. 21