



As of September 13, 2024, pursuant to Federal court orders, the Department is currently enjoined from enforcing the 2024 [Final Rule](#) in the states of Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming; the Department is also currently enjoined from enforcing the 2024 Final Rule at the schools on the list located at <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/list-of-schools-enjoined-from-2024-t9-rule.pdf>. Per Court order, this list of schools may be supplemented in the future. The Final Rule and this resource do not currently apply in those states and schools. Pending further court orders, the Department’s Title IX Regulations, as amended in 2020 ([2020 Title IX Final Rule](#)) remain in effect in those states and schools.

## Small Entity Compliance Guide

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

#### **Introduction and Background**

This guide was prepared by the staff of the U.S. Department of Education (“the Department”) as a “small entity compliance guide” under Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended. The guide summarizes and explains the Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance regulations (hereinafter referred to as the “final regulations”) published in the *Federal Register* by the Department on April 29, 2024 (89 FR 33474). This guide, which primarily reproduces excerpts from the preamble to the final regulations, is intended to be used primarily by recipients that are small entities.<sup>1</sup> This guide is not a substitute for the final regulations. Only the final regulations can provide complete and definitive information regarding their requirements.

Enacted in 1972, Title IX of the Education Amendments of 1972 (Title IX) states that “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,” absent certain exceptions. 20 U.S.C. 1681. The Department has authority to issue rules effectuating this prohibition on sex discrimination consistent with the objectives of the statute. 20 U.S.C. 1682.

The final regulations:

- Require recipients to adopt grievance procedures that provide for fair, prompt, and equitable resolution of complaints of sex discrimination and to take other necessary steps to provide an educational environment free from sex discrimination;

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<sup>1</sup> Throughout this guide, “recipient” is used to refer to a recipient of Federal financial assistance from the Department. The Department explains how “small entities” are defined in the final regulations in the discussion of “Entities Subject to the Rule,” below.

- Clarify that Title IX’s prohibition on sex discrimination includes sex-based harassment in the form of quid pro quo harassment, hostile environment harassment, and four specific offenses (sexual assault, dating violence, domestic violence, and stalking); and
- Clarify that sex discrimination includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

## **Summary of the Major Provisions**

### ***With regard to sex-based harassment, the final regulations:***

- Define “sex-based harassment” as a form of sex discrimination that includes sexual harassment and other harassment on the basis of sex, including harassment based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity, that is quid pro quo harassment, hostile environment harassment, or one of four specific offenses referenced in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act (“Clery Act”) as amended by the Violence Against Women Reauthorization Act of 2013;
- Provide and clarify definitions of various terms related to a recipient’s obligations to address sex discrimination, including sex-based harassment;
- Clarify a recipient’s required response to sex discrimination, including sex-based harassment, in its education program or activity;
- Modify a recipient’s obligations to provide prompt and equitable grievance procedures and to take other necessary steps when it receives a complaint of sex discrimination, including sex-based harassment; and
- Provide for additional requirements in grievance procedures at postsecondary institutions for complaints of sex-based harassment involving a student complainant (a student who is alleged to have been subjected to conduct that could constitute sex discrimination) or student respondent (a student who is alleged to have violated the recipient’s prohibition on sex discrimination).

### ***With regard to discrimination against individuals who are pregnant or parenting, the final regulations:***

- Define the terms “pregnancy or related conditions” and “parental status”;
- Clarify the prohibition on discrimination against students and applicants for admission and employees or applicants for employment on the basis of current, potential, or past pregnancy or related conditions; and
- Clarify a recipient’s obligations to students and employees who are pregnant or experiencing pregnancy-related conditions.

### ***In addition, the final regulations:***

- Clarify and streamline administrative requirements with respect to designating a Title IX Coordinator, disseminating a nondiscrimination notice, adopting grievance procedures,<sup>2</sup> and maintaining records;
- Specify that a recipient must train a range of relevant persons on the recipient’s obligations under Title IX;
- Clarify that, except as permitted by certain provisions of Title IX or the regulations, a recipient must not carry out any otherwise permissible different treatment or separation on the basis of sex in a way that would cause more than de minimis harm, including by adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with their gender identity; and
- Clarify a recipient’s obligation to address retaliation.

***With regard to severability, the final regulations:***

- Clarify that §§ 106.9, 106.16, 106.24, 106.48, 106.62, 106.72, and 106.82 establish severability protections to ensure that if any provision or application of the final regulations are held invalid, the remaining provisions of that subpart and of other subparts would continue to apply.

**Compliance Date for Entities Subject to These Regulations**

The final regulations are effective August 1, 2024.

**Entities Subject to the Rule**

The final regulations apply to institutions that receive Federal financial assistance from the Department. For purposes of the final regulations, the Department defines “small entities” by reference to enrollment, to allow meaningful comparison of regulatory impact across all types of higher education institutions in the for-profit, non-profit, and public sectors. The enrollment standard for small less-than-two-year institutions (below associate degrees) is less than 750 full-time-equivalent (FTE) students and for small institutions of at least two but less-than-4-years and 4-year institutions, less than 1,000 FTE students. The Department consulted with the Office of Advocacy for the Small Business Administration on the alternative standard for this rulemaking.

**Description of (and Where Feasible) an Estimate of the Number of Small Entities to Which the Regulations Will Apply**

The following table summarizes the number of higher education institutions potentially affected by the final regulations.

Number of Small IHEs Under Enrollment Based Definition				
	4-year	2-year	Less than 2-year	Total
Not Small	1,612	667	89	2,368

<sup>2</sup> The Department prepared a [Resource for Drafting Nondiscrimination Policies, Notices of Nondiscrimination, and Grievance Procedures](#) to help recipients draft Title IX policies that comply with the requirements of §§ 106.8(a)-(c), 106.45, and if applicable 106.46 of the final regulations.

Small	1,155	908	1,572	3,635
Total	<b>2,767</b>	<b>1,575</b>	<b>1,661</b>	<b>6,003</b>

Source: 2022 IPEDS data reported to the Department.

In addition, the Department defines “small local educational agency (LEA)” as either an LEA that is (1) a traditional public school district located in a county with a total population of less than 50,000, or (2) a charter school LEA. With regard to charter school LEAs, given their average size and their inherent geographic limitations, which limit their ability to be “dominant” in the field, it is reasonable to treat all charter school LEAs as small LEAs for purposes of this analysis. Under this analysis, 8,914 of all LEAs would be considered “small.”

**Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Regulations (Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record)**

The final regulations require recipients, including small entities, to maintain documentation regarding their Title IX activities for a period of at least seven years: (1) for each complaint of sex discrimination, records documenting the informal resolution process under § 106.44(k), or the grievance procedures under § 106.45, and if applicable § 106.46, and the resulting outcome; (2) for each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or this part, including notifications under § 106.44(c)(1) or (2), records documenting the actions the recipient took to meet its obligations under § 106.44; and (3) all materials used to provide training under § 106.8(d), which the recipient must make available upon request for inspection by members of the public. These requirements are specified in §106.8(f).

**Other Resources**

The final regulations can be found at [2023-20385.pdf \(govinfo.gov\)](#). The Department released a [fact sheet](#) and [summary](#) of the major provisions of the final regulations; a [resource](#) for drafting Title IX nondiscrimination policies, notices of nondiscrimination; and a [resource](#) that provides schools pointers for implementing key components of the final regulations. Any additional resources or technical assistance will be published on [the OCR website](#).

**Contacting the Department of Education**

The Department of Education is available to assist small entities with questions regarding the Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance regulations. Please direct questions via email to [OCR@ed.gov](mailto:OCR@ed.gov).