



The RESPECT Title IX Act

A Model Law for Title IX

Annotated Version



DFI

Defense of
Freedom Institute

dfipolicy.org

United States Code, Title 20, Chapter 38, Sections 1661–1684*

§ 1661. Definitions¹

As used in this title, the term:

(a) *Actual knowledge* means notice of sex discrimination, sexual harassment, or sexual misconduct, or of allegations of such behavior, to any official of the educational institution who has authority to institute corrective measures on behalf of the educational institution, or to any employee of an elementary or secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent.

(b) *Administratively separate unit* means a school, department, or college of an educational institution (other than a local educational agency), admission to which is independent of admission to any other component of such institution.

(c) *Admission* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(d) *Applicant*, as used in the definition of educational institution in this section and as used in section 1679 of this title, means one who submits an application, request, or plan required to be approved by the Department, or by a recipient, as a condition to becoming a recipient.

(e) *Athletic program or activity* means any interscholastic, intercollegiate, club, or intramural athletics program offered by an educational institution, including all programs or activities that are provided upon the condition of participating with any athletic team.

¹The existing Title IX statutory code does not include a section defining key terms used throughout the law. This model law would introduce a new section that would clearly define such terms and bind government officials, school employees, and educational institutions to its definitions.

For the most part, these definitions parallel the definitions of terms set out in Title IX regulations issued by the U.S. Department of Education (“ED”) under Secretary Betsy DeVos in 2020, along with definitions that predate those regulations. This annotated version of DFI’s model law notes instances where definitions are in addition to or differ significantly from the regulatory definitions.

*This model law would replace all sections of the existing Title IX statute, which currently appears at 20 U.S.C. §§ 1681–1689. The law would remove those sections from the statutory code and place the new statutory provisions at 20 U.S.C. §§ 1661–1684.

(f) *Complainant* means a person who is alleged to have been subjected to conduct that could constitute sex discrimination, sexual harassment, or sexual misconduct under this title.

(g) *Confidential employee* means an employee of a recipient whose communications are privileged or confidential under Federal or State law. The employee's confidential status, for purposes of this title, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies.

(h) *Dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant.

(i) *Department* means the United States Department of Education.

(j) *Disciplinary sanctions* means consequences imposed on a respondent following a determination under this title that the respondent engaged in sex discrimination, sexual harassment, or sexual misconduct.

(k) *Domestic violence* means felony or misdemeanor crimes committed against a complainant by a person who:

(1) is a current or former spouse, intimate partner, or person similarly situated to a spouse of the complainant;

(2) is cohabitating, or has cohabitated, with the complainant as a spouse or intimate partner;

(3) shares a child in common with the complainant; or

(4) commits acts against a complainant who is protected from those acts under the family or domestic violence laws of the jurisdiction where the acts took place.

(l) *Educational institution* means a local education agency as defined by section 8101 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (20 U.S.C. § 7801(30)); a preschool, a private elementary or secondary school; or an applicant for or recipient of Federal financial assistance that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education. In the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

(m) *Elementary school* has the meaning given the term in section 8101 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (20 U.S.C. § 7801(19)), and includes a public or private preschool.

(n) *Faith-based institution* means an educational institution which is controlled by a religious organization.²

(o) *Father* means a male parent of a person who has been born or is unborn. The term “father” includes any male who is a biological father, adoptive father, foster father, stepfather, or legal custodian or guardian.³

(p) *Federal financial assistance* means the following:

(1) A grant or loan authorized or extended under Federal law, including scholarships, loans, grants, wages, or other funds extended directly to students for payment to any entity;

(2) A grant of Federal real or personal property or any interest in that property;

(3) Sale or lease of Federal property or any interest in that property at nominal or reduced consideration;

(4) Permission to use Federal property or any interest in that property without consideration;

(5) Provision of the services of Federal personnel; or

(6) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

The exemption of an entity from Federal taxation under section 501 of the Internal Revenue Code (26 U.S.C. § 501) does not constitute Federal financial assistance under this title.⁴

(q) *Female* means a person belonging, at conception, to the sex that produces the large reproductive cell.⁵

(r) *Formal complaint* means a document filed by a complainant or signed by the Title IX Coordinator

²With the goal of employing more commonly used terms, the model law refers to a “faith-based institution” rather than an “educational institution which is controlled by a religious organization.” This change in terminology does not alter the exemptions the law offers to such institutions with religious tenets that are contrary to Title IX.

³The model law would define “father” to refer only to people who are male at birth. This term specifically includes the father of an unborn child.

⁴Contrary to the plain meaning of Title IX, plaintiffs in recent lawsuits have attempted to establish that educational institutions’ tax-exempt status under federal law is a form of federal financial assistance binding such institutions to Title IX’s mandates. The model law would specify that institutions are not subject to Title IX merely because they are exempt from federal taxation under the Internal Revenue Code.

⁵The model law would define “female” as used in Title IX as a biological fact established at birth. This definition matches the definition of “female” in President Trump’s Executive Order 14168, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government” (“EO 14168”).

alleging sex discrimination, sexual harassment, or sexual misconduct against the institution or a respondent and requesting that the educational institution investigate the allegation(s). At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail.

⁶ The model law would define “gender identity” to reflect the definition of this term in EO 14168. This definition would apply to provisions of the model law disapproving the use of the term “gender identity” as a synonym for or a part of “sex.”

(s) *Fringe benefits* means any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of subsection (d) of section 1673.

(t) *Gender identity* means a fully internal and subjective sense of self, disconnected from biological reality and sex and existing on an infinite continuum.⁶

(u) *Housing* means a structure or portions of a structure that offers sleeping accommodations. This term includes both long-term and short-term accommodations, such as a hotel room or dormitory room, in any location.

(v) *Institution of graduate higher education* means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences;

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(w) *Institution of professional education* means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary.

(x) *Institution of undergraduate higher education* means:

- (1)** An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree;
- (2)** An institution offering academic study leading to a baccalaureate degree; or
- (3)** An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(y) *Institution of vocational education* means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(z) *Institution of higher education* has the meaning given the term in section 102 of the Higher Education Act of 1965 (20 U.S.C. § 1002).

(aa) *Intimate facilities* means a location designated for individuals to dress or undress with a reasonable expectation of privacy, including bathrooms, locker rooms, showers, changing rooms, and lactation spaces.

(bb) *Male* means a person belonging, at conception, to the sex that produces the small reproductive cell.⁷

(cc) *Mother* means a female parent of a person who has been born or is unborn. The term “mother” includes any female who is a biological mother, adoptive mother, foster mother, stepmother, or legal custodian or guardian.⁸

(dd) *Parental status* means status as a mother or father. Parental status includes status as the mother or father of an unborn child.⁹

(ee) *Party* means a complainant or respondent.

(ff) *Pregnancy* means a mother’s carrying a developing embryo, fetus, or other unborn offspring within her body.¹⁰

⁷ The model law would define “male” as used in Title IX as a biological fact established at birth. This definition matches the definition of “male” in EO 14168.

⁸ The model law would define “mother” to include only people who are female at birth. This term specifically includes the mother of an unborn child.

⁹ The model law would define “parental status” in Title IX as a mother or father. This term includes status as the mother or father of an unborn child.

¹⁰ The model law would define “pregnancy” in Title IX for the purpose of preventing discrimination against women on the basis of their pregnancy.

(gg) *Pregnancy or related conditions* means:

- (1)** Pregnancy, childbirth, termination of pregnancy, or lactation;
- (2)** Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- (3)** Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.¹¹

(hh) *Program or activity* and *program* mean all of the operations of—

(1) any instrumentality of a State or local government; college, university, or other postsecondary institution, or a public system of higher education; or local educational agency (as defined in 20 U.S.C. § 7801), system of vocational education, or other school system;

(2)

(A) an entire corporation, partnership, sole proprietorship, or other private organization to which assistance is extended as a whole; or

(B) an entire private facility to which assistance is extended; or

(3) any other entity that is established by two or more of the entities described in paragraph (1) or (2), of this definition, any part of which is extended assistance.

This term does not include any operation of a faith-based educational institution if the application of any provision of this title to that operation would not be consistent with the religious tenets, beliefs, or teachings of the institution.

(ii) *Recipient* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.

¹¹The model law would incorporate into Title IX prohibitions against discrimination on the basis of pregnancy, recovery from pregnancy, termination of pregnancy, lactation, or similar conditions. Longstanding Title IX regulations have prohibited discrimination on these bases (referred to in the regulatory text as “pregnancy and related conditions”). Importantly, as set out in section 1674, the model law specifies that nothing in this definition or in any other provision of Title IX requires an institution to pay for or otherwise facilitate an abortion.

(jj) Relevant means related to the allegations of sex discrimination, sexual harassment, or sexual misconduct under investigation as part of the grievance procedures under this title. Questions are relevant when they seek evidence that may aid in showing whether the alleged conduct occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged conduct occurred.

(kk) Remedies means measures provided, as appropriate, to a complainant to restore or preserve that person's access to the recipient's education program or activity after a recipient determines under this title that the complainant was subject to sex discrimination, sexual harassment, or sexual misconduct in an education program or activity.

(ll) Respondent means a person who has been reported to have committed conduct that could constitute sex discrimination, sexual harassment, or sexual misconduct under this title.

(mm) Retaliation means intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by this title, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this title.

(nn) Secondary school has the meaning given the term in section 8101 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (20 U.S.C. § 7801(45)), or an institution of vocational education that serves secondary school students.

(oo) Secretary means the United States Secretary of Education.

(pp) Sex means an individual's immutable biological classification as either male or female. As used in this title, the term "sex" is not a synonym for and does not relate to or include the concept of "gender identity."¹²

(qq) Sexual assault means any sexual act directed against another person, forcibly or against that person's will; or not forcibly or against the person's will where the person is incapable of giving consent.

(rr) Sexual harassment means conduct on the basis of sex that satisfies one or both of the following:

- (1)** an employee, agent, or other person authorized by an educational institution to provide an aid, benefit, or service under its education program or activity conditioning the provision of such an aid, benefit, or service of the educational institution

¹² The model law would include in Title IX a definition of "sex" based solely on biology—the fact of being male or female at birth. This definition parallels the definition of "sex" in EO 14168.

on a person's participation in unwelcome sexual conduct; or

(2) unwelcome sex-based conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.

(ss) *Sexual misconduct* means sexual assault, dating violence, domestic violence, or stalking as defined in this section.¹³

(tt) *Stalking* means engaging in a course of conduct of a sexual nature directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

(uu) *Student* means a person who has gained admission.

(vv) *Student with a disability* means a student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 705(9)(B), (20)(B)), or a child with a disability as defined in the Individuals with Disabilities Education Act (20 U.S.C. § 1401(3)).

(ww) *Supportive measures* means non-disciplinary, non-punitive individualized services designed to restore or preserve equal access to the educational institution's education program or activity without unreasonably burdening any individual.

(xx) *This title* means Title IX of the Education Amendments of 1972, as amended, codified at 20 U.S.C. §§ 1661–1684.

§ 1662. Sex

(a) *Prohibition against discrimination; exceptions.* No person shall,¹⁴ 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, except that:

¹³ Recognizing that the terms sex-based discrimination, sexual harassment, and sexual misconduct refer to different kinds of behavior, the model law defines these terms separately and requires educational institutions that receive federal financial assistance to address any instances of such behavior in their education programs or activities.

¹⁴ The model law would remove the words “in the United States” from the current prohibition against discrimination in Title IX. This change would make educational institutions that receive federal financial assistance responsible for addressing sex-based discrimination, sexual harassment, and sexual misconduct in all of their programs or activities, including those (like study-abroad programs) that are located outside the United States.

(1) *Classes of educational institutions subject to prohibition.* In regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) *Educational institutions commencing planned change in admissions.* In regard to admissions to educational institutions, this section shall not apply for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes;

(3) *Permissible sex-based admissions policies.* This section shall not prohibit any sex-based admissions policy that is based on an exceedingly persuasive justification, serves important objectives, and is substantially related to the achievement of those objectives. The justification for such a policy must be genuine and must not rely on overbroad generalizations about the different talents, capacities, or preferences of the two sexes;¹⁵

(4) *Faith-based educational institutions with contrary religious tenets, beliefs, or teachings.* This section shall not apply to a faith-based educational institution if the application of this subsection would not be consistent with the religious tenets, beliefs, or teachings of the institution;

(5) *Educational institutions training individuals for military services or merchant marine.* This section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(6) *Public educational institutions with traditional and continuing admissions policy.* In regard to admissions, this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(7) *Social fraternities or sororities; voluntary youth service organizations; and faith-based organizations.* This section shall not apply to membership practices—

(A) of a social fraternity or social sorority

¹⁵ The model law would apply the constitutional standard of the U.S. Supreme Court's decision in *United States v. Virginia* to sex-based admissions practices of institutions of vocational education, professional education, and graduate higher education, and to public undergraduate educational institutions under Title IX. The purpose of this provision is to permit such sex-based admissions practices only when they are based on an exceedingly persuasive justification and are substantially related to achieving important objectives.

which is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(a)), the active membership of which consists primarily of students in attendance at an institution of higher education;

¹⁶ The model law would exempt from Title IX's nondiscrimination requirements the membership practices of all faith-based organizations.

(B) of voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age; or

(C) of the Young Men's Christian Association, Young Women's Christian Association, and faith-based organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex;¹⁶

(8) *Boy or Girl conferences.* This section shall not apply to—

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for—

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

(9) *Father-son or mother-daughter activities at educational institutions.* This section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex;

(10) *Institution of higher education scholarship awards in "beauty" pageants.* This section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law;

(11) Separation of male and female students in physical education, human sexuality, and other classes or activities.¹⁷ This section shall not apply to—

(A) the separation of male and female students by sex within physical education classes or during any activities that are part of such classes;

(B) the grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex;

(C) the separation of male and female students by sex in classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality or sex education, or conducting such classes or portions of such classes in separate sessions for male and female students; or

(D) keeping or operating a chorus or choruses that are composed entirely of students of one sex, but if the recipient keeps such chorus or choruses, the recipient shall make provision for the keeping or operating of a comparable chorus or choruses for students of the other sex; and

(12) Assistance administered by a recipient to study at a foreign institution. This section shall not apply to a recipient's administration or assistance in the administration of scholarships, fellowships, or other awards restricted to members of one sex which are designed to provide opportunities to study abroad, but if the recipient does administer or assist in the administration of such scholarships, fellowships, or other awards, it must make available reasonable opportunities for similar studies for members of the other sex.

(b) Discriminatory treatment because of societal discrimination or imbalance prohibited. Sex discrimination prohibited by subsection (a) of this section includes any action or policy of any recipient excluding any person from participation in, denying any person the benefits of, or discriminating against any person under an education program or activity on the basis of sex in order to remedy societal discrimination or on account of a perceived imbalance between individuals of each sex participating in or receiving the benefits of any federally supported program or activity.¹⁸

¹⁷ The model law would specify that Title IX does not apply to the separation of students by sex for physical education classes, sex education classes, or choruses.

¹⁸ In line with the Equal Protection Clause of the U.S. Constitution and the U.S. Supreme Court's recent decision in *Student for Fair Admissions v. Harvard* invalidating race-based higher education admissions policies, the model law would prohibit discrimination against any individuals for the purpose of responding to "societal discrimination" (i.e., affirmative action).

(c) *Aid, benefits, or services not provided by the recipient.*

(1) It shall constitute discrimination prohibited by this section for a recipient to aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit, or service to students or employees.

(2) Any recipient that requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or that facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments:

(A) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient which this title would prohibit such recipient from taking; and

(B) Shall not facilitate, require, permit, or consider such participation if such action occurs.

(d) *Interpretation of “discrimination on the basis of sex.”* For purposes of this title, discrimination on the basis of sex does not include discrimination on the basis of gender identity. The Supreme Court’s interpretation in *Bostock v. Clayton County*, 590 U.S. 644 (2020), of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e §§ et seq.) to prohibit discrimination on the basis of an individual’s transgender status is hereby disapproved for purposes of this title.¹⁹

§ 1663. Housing and intimate facilities

(a) *Sex-separated housing and intimate facilities permitted.* Nothing in this title shall be construed to prohibit any recipient from maintaining separate housing or separate intimate facilities for each sex.²⁰

¹⁹ The model law would specify that “discrimination on the basis of sex” is not the same as and does not include discrimination on the basis of “gender identity.” It provides that the U.S. Supreme Court’s conclusion in *Bostock v. Clayton County* that a different federal civil rights law, Title VII of the Civil Rights Act of 1964, prohibits discrimination on the basis of transgender status does not apply to educational institutions through Title IX.

²⁰ The model law would retain Title IX’s existing provision that the law does not prohibit educational institutions from maintaining sex-separated living facilities. The model law would also make clear that this rule of construction extends to the ability of institutions to offer any housing or intimate facilities like bathrooms and locker rooms that are separated on the basis of sex.

(b) Housing.

(1) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(A) Proportionate in quantity to the number of students of that sex applying for such housing; and

(B) Comparable in quality and cost to the student.

(2) Any recipient that provides housing to students must notify any person applying to reside in its housing, or requesting to take part in an education program or activity that includes the provision of housing, of its policies with regard to who may access such housing and under what circumstances they are permitted to access such housing.

(A) A recipient that provides housing to students that is separated on the basis of sex must include in its policies regarding access to such housing a policy prohibiting students of one sex from being offered or assigned to housing that is designated for the opposite sex and must comply with that policy.

(B) If a recipient maintains a policy restricting access to any housing or part of that housing to a single sex, then it must enforce that policy by taking reasonable steps to prohibit access to such housing by members of the opposite sex.²¹

(C) Notwithstanding subparagraph (B) of this paragraph, a recipient that maintains a policy restricting access to any housing to a single sex may permit access to such housing by members of the opposite sex for any purpose clearly identified in its policy regarding access to sex-separated housing.

(3) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

(4) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(A) Proportionate in quantity; and

(B) Comparable in quality and cost to the student.

²¹ The model law would require educational institutions that receive federal funding to enforce any policies prohibiting access to housing by members of the other sex.

²² The model law would require educational institutions that receive federal funding to enforce policies prohibiting access to sex-separated intimate facilities by members of the other sex.

(5) A recipient that assists any agency, organization, or person in making housing available to students only of one sex must ensure that the agency, organization, or person providing such housing does not offer or assign to it a student of the opposite sex and maintains and enforces clear policies with regard to access to all or part of sex-separated housing by members of the opposite sex that it provides to applicants for such housing.

(6) A recipient that assists any agency, organization, or person in making housing available to any of its students must ensure that such agency, organization, or person promptly complies with the request of any student to whom it provides housing, or who is entitled to and has applied for such housing, not to share a bedroom or intimate facilities with a member of the opposite sex, and that no request for housing is denied on the basis of such a request.

(c) *Intimate facilities.*

(1) Intimate facilities provided by a recipient to individuals of one sex shall be proportionate in quantity and comparable in quality to those provided to individuals of the other sex.

(2) A recipient that offers intimate facilities that are separated on the basis of sex must maintain and enforce a policy prohibiting any person from entering any intimate facilities designated for the opposite sex.²²

(3) Notwithstanding paragraph (2) of this subsection, a recipient that offers intimate facilities that are separated on the basis of sex may include in its policy concerning access to such facilities permission for any person to enter intimate facilities designated for the opposite sex for the purpose of responding to an emergency and for employees or contractors of the recipient to enter intimate facilities designated for the opposite sex for the purpose of performing repairs, inspections, maintenance, renovations, or similar activities.

(4) Notwithstanding paragraph (2) of this subsection, a recipient that is not an elementary or secondary school and that provides housing to students may include in its policy concerning access to the intimate facilities of that housing permission for a visitor staying in that housing to access intimate facilities that are not designated for the visitor's sex, but if the recipient does so, it must ensure the availability of alternative, convenient intimate facilities for students who do not wish to use such facilities in the presence of a member of the opposite sex.

(d) Failure to provide sex-separated facilities as discrimination.²³

(1) It shall constitute discrimination prohibited by this title for any recipient that offers housing, including overnight accommodations offered as part of the institution's education program or activity, to require as a condition of using such housing that any student share a bedroom or other intimate facilities with a member of the opposite sex.

(2) It shall constitute discrimination prohibited by this title for a recipient that maintains intimate facilities to require any person to use such facilities in the presence of a member of the opposite sex.

(3) Any recipient that does not offer intimate facilities separated on the basis of sex must comply with paragraph (2) of this subsection by offering a convenient, clean, and comparable alternative facility, which does not include portable facilities, for any person who does not wish to use such facilities in the presence of a member of the opposite sex.

§ 1664. Admission and recruitment²⁴

(a) Preference in admission. A recipient that is an institution of vocational education, professional education, or graduate higher education or is a public institution of undergraduate higher education shall not give preference to applicants for admission on the basis of attendance at any educational institution or other school or entity which admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this title.

(b) Recruitment. A recipient that is an institution of vocational education, professional education, or graduate higher education or is a public institution of undergraduate higher education shall not:

(1) Discriminate on the basis of sex in the recruitment of students; or

(2) Recruit primarily or exclusively at educational institutions, schools or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this title.

²³ The model law would prohibit educational institutions that receive federal funding from forcing anyone to share a bathroom, bedroom, locker room, or changing area with a member of the other sex.

²⁴ Because the model law would prohibit ED from issuing regulations under Title IX (see section 1679), this section and others that follow would incorporate current Title IX regulations into the law. In some cases, DFI has modified the existing regulatory language with the aims of simplifying legal obligations, reducing burdens on institutions, and making clear that Title IX prohibits intentional discrimination—not practices that merely have an incidental disparate impact on the two sexes.

§ 1665. Classes and extracurricular activities

(a) General standard. Subject to the requirements in this subsection, a recipient that operates a nonvocational coeducational elementary or secondary school may provide nonvocational single-sex classes or extracurricular activities, if:

- (1)** Each single-sex class or extracurricular activity is based on the recipient's objective to improve educational achievement of its students or to meet the particular, identified educational needs of its students;
- (2)** The recipient implements its objective in an evenhanded manner;
- (3)** Student enrollment in a single-sex class or extracurricular activity is completely voluntary; and
- (4)** The recipient provides to students of the excluded sex, a substantially equal coeducational class or extracurricular activity in the same subject or activity.

(b) Single-sex class or extracurricular activity for the excluded sex.

- (1)** A recipient that provides a single-sex class or extracurricular activity, in order to comply with paragraph (a)(2) of this section, may be required to provide a substantially equal single-sex class or extracurricular activity for students of the excluded sex.
- (2)** In determining whether to require a recipient to provide a substantially equal single-sex class or extracurricular activity for students of the excluded sex, the Department will consider factors including evidence that the academic performance of students of the excluded sex lags that of members of the sex to whom the recipient offers enrollment in the single-sex class or extracurricular activity.

(c) Substantially equal factors. Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether classes or extracurricular activities are substantially equal include, but are not limited to:

- (1)** The policies and criteria of admission;
- (2)** The educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology;
- (3)** The qualifications of faculty and staff;
- (4)** Geographic accessibility;

(5) The quality, accessibility, and availability of facilities and resources provided to the class;

(6) The academic performance of students enrolled in each class or extracurricular activity; and

(7) Intangible features, such as reputation of faculty.

(d) *Scope of coverage.* The provisions of this section do not apply to interscholastic, club, or intramural athletics, which are subject to the provisions of section 1669 of this title.

§ 1666. Schools

(a) *General Standard.* A recipient may operate a single-sex public nonvocational elementary or secondary school.²⁵

(b) *Single-sex school for the excluded sex.*

(1) A recipient that provides a single-sex public nonvocational elementary or secondary school may be required to provide a substantially equal single-sex public nonvocational elementary or secondary school for students of the excluded sex.

(2) In determining whether to require a recipient to provide a substantially equal single-sex public nonvocational elementary or secondary school for students of the excluded sex, the Department will consider factors including evidence that the academic performance of students of the excluded sex lags that of members of the sex to whom the recipient offers enrollment in the public nonvocational elementary or secondary school.

(c) *Substantially equal factors.* Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether schools are substantially equal include, but are not limited to:

(1) The policies and criteria of admission;

(2) The educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology;

(3) The quality and range of extracurricular offerings;

²⁵ The model law would diverge from current Title IX regulations by loosening restrictions regarding the operation of single-sex public nonvocational elementary or secondary schools, recognizing that educational agencies should be able to offer such single-sex programs as long as they are not doing so for a discriminatory purpose.

- (4) The qualifications of faculty and staff;
- (5) Geographic accessibility;
- (6) The quality, accessibility, and availability of facilities and resources;
- (7) The academic performance of students enrolled in each class or extracurricular activity; and
- (8) Intangible features, such as reputation of faculty.

(d) *Definition.* For the purposes of this section, the term “school” includes a “school within a school,” which means an administratively separate school located within another school.

§ 1667. Counseling and use of appraisal and counseling materials

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis.

§ 1668. Financial and employment assistance; health and insurance benefits and services

(a) *General.* Except as provided in subsections (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

- (1) Provide different amounts or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate on the basis of sex;
- (2) Through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient’s students in a manner which discriminates on the basis of sex; or
- (3) Apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.*

(1) Subject to the requirements of paragraph (2) of this subsection, a recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments which require that awards be made to members of a particular sex specified therein.

(2) Any recipient that administers or assists in the administration of a legal instrument that restricts benefits to a particular sex, as described in paragraph (1) of this subsection, must ensure that no student is denied, on the basis of sex, financial assistance for which they qualify based on nondiscriminatory criteria.

(c) *Athletic scholarships.*

(1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this section and section 1669 of this title.

(d) *Employment assistance to students.* A recipient which assists any agency, organization, or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(e) *Employment of students by recipients.* A recipient which employs any of its students shall not do so in a manner which violates section 1673 of this title.

(f) *Health and insurance benefits and services.*

(1) In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate section 1673 of this title if it were provided to employees of the recipient.

(2) This subsection shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other.

(3) Any recipient which provides full coverage health service shall provide gynecological care.

(4) Nothing in this section or in this title shall be interpreted to require any recipient to provide or pay for any benefit or service related to an abortion.²⁶

§ 1669. Athletics

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of subsection (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport; however, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, the recipient must allow members of the excluded sex to try out for the team offered unless the sport involved is a contact sport. For the purposes of this title, contact sports include boxing, wrestling, rugby, ice hockey, field hockey, volleyball, lacrosse, football, basketball, martial arts, and other sports, the purpose or major activity of which involves bodily contact.²⁷

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the Department will consider, among other factors:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (2) The provision of equipment and supplies;
- (3) Scheduling of games and practice time;
- (4) Travel and per diem allowance;
- (5) Opportunity to receive coaching and academic tutoring;

²⁶ The model law would specify that its prohibition against discrimination in health benefits offered to students does not require any institution to provide or pay for a benefit or service related to an abortion.

²⁷ The model law would specify that educational institutions that receive federal funding are permitted to maintain separate sports teams for males and females in contact and other sports, and it would include a non-exhaustive list of contact sports to include field hockey, volleyball, lacrosse, and martial arts.

- (6) Assignment and compensation of coaches and tutors;
- (7) Provision of locker rooms, practice and competitive facilities;
- (8) Provision of medical and training facilities and services;
- (9) Provision of housing and dining facilities and services;
- (10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Department may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Certification to participate.* A recipient may require a student who is pregnant to provide certification from a healthcare provider or any other person that the student is physically able to participate in the recipient's interscholastic, intercollegiate, club, or intramural athletics activity if the certified level of physical ability or health is necessary for participation in the activity and the information obtained is not used as a basis for discrimination prohibited by this title.

(e) *Male participation in female sports prohibited.* Other than activities permitted in subsection (f) of this section, it shall be a violation of subsection (a) of section 1662 of this title for a recipient that operates, sponsors, facilitates, or otherwise supports athletic programs or activities to permit a person whose sex is male to participate in an athletic program or activity that is designated only for females.

(f) *Exception for training or practice.* Nothing in subsection (e) of this section shall preclude or prohibit a recipient from permitting a person whose sex is male to train or practice with an athletic program or activity that is designated for females so long as such training or practice does not result in the deprivation of a female's opportunity to participate in or denial of any benefit that accompanies participation in the athletic program or activity.²⁸

§ 1670. Standards for measuring skill or progress in physical education classes

If use of a single standard of measuring skill or progress in physical education classes has an adverse effect on members of one sex, a recipient shall use appropriate standards that do not have that effect.

²⁸ The model law would prohibit recipients from allowing biological males to participate on girls' and women's sports teams, except for the limited purpose of training or practicing with such teams.

§ 1671. Books and curricular materials

Nothing in this title shall be interpreted as requiring, prohibiting, or abridging in any way the use of particular textbooks or curricular materials or the availability of particular books or other materials in libraries.²⁹

§ 1672. Parental, family, or marital status; pregnancy or related conditions³⁰

(a) *Parental, family, or marital status.*

(1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient that is an institution of vocational education, professional education, or graduate higher education or is a public institution of undergraduate higher education must not:

(A) Adopt or implement any policy, practice, or procedure concerning the current, potential, or past parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex; or

(B) Make a pre-admission inquiry as to the marital status of an applicant for admission. A recipient may ask an applicant to state his or her sex, but only if this question is asked of all applicants and if the response is not used as a basis for discrimination prohibited by this title.

(2) It shall constitute discrimination prohibited by this title for any recipient to adopt any policy, practice, or procedure concerning a student's current, potential, or past parental, familial, or marital status that treats students differently on the basis of sex in its education program or activity.

(b) *Pregnancy or related conditions.*

(1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient that is an institution of vocational education, professional education, or graduate higher education or is a public institution of undergraduate higher education:

²⁹ The model law would prevent ED from investigating or penalizing a school district under Title IX over the use of certain textbooks or curricular materials or over the removal of sexually explicit books from school libraries.

³⁰ This section of the model law would include in Title IX protections against discrimination on the basis of parental or marital status (including pregnancy). It would require educational institutions that receive federal funding to provide reasonable modifications to their programs for students who are pregnant or have related conditions. This section's requirements would be bounded by section 1674 of the model law, which specifies that Title IX does not require institutions to provide, pay for, or otherwise facilitate any abortions.

(A) Must treat pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions; and

(B) Must not discriminate against any person on the basis of current, potential, or past pregnancy or related conditions, or adopt or implement any policy, practice, or procedure that so discriminates.

(2) It shall constitute discrimination prohibited by this title for any recipient to discriminate in its educational program or activity against any student based on her current, potential, or past pregnancy or related conditions.

(c) *Notification of pregnancy or related conditions.* Once a student, or a person who has a legal right to act on behalf of the student, notifies a recipient's Title IX Coordinator of a student's pregnancy or related conditions, the recipient must promptly:

(1) Inform the student, and if applicable the person who notified the educational institution, of reasonable modifications and other measures available to the student under this section;

(2) Provide the student with reasonable modifications to the recipient's policies, practices, or procedures because of the pregnancy or related conditions on an individualized and voluntary basis when necessary to ensure equal access to the recipient's education program or activity;

(3) Allow the student a voluntary leave of absence from the recipient's education program or activity to cover, at minimum, the period of time deemed medically necessary by the student's physician or other licensed healthcare provider, followed by the reinstatement of the student, as practicable, to the status she held when the leave began; and

(4) Ensure the availability to the student of a clean, private lactation space, which must be a space other than a bathroom, that may be used for expressing breast milk or breastfeeding.

(d) *Limitation to reasonable modification requirement.* Reasonable modifications to the recipient's policies, practices, or procedures described in paragraph (c)(2) of this section are not required if the recipient can demonstrate that making the modification would fundamentally alter its education program or activity.

§ 1673. Employment.

(a) *General.*

(1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection for employment, whether full-time or part-time, under any education program or activity operated by a recipient.

(2) A recipient shall not discriminate on the basis of sex in making any employment decisions in any education program or activity operated by such recipient and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which the recipient knows will subject employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this title.

(b) Application. The provisions of this section apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy or related conditions, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional

meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including those that are social or recreational; and

(10) Any other term, condition, or privilege of employment.

(c) *Recruitment.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this section.

(d) *Job classification and structure.* A recipient shall not:

(1) Classify a job as being for males or for females;

(2) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(3) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in subsection (h) of this section.

(e) *Fringe benefits.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

(f) *Effect of State or local law or other requirements.* A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(g) *Pre-employment inquiries.*

(1) A recipient must not make a pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is “Miss or Mrs.”

(2) A recipient may ask an applicant for employment to state his or her sex, but only if this question is asked of all applicants and if the response is not used as a basis for discrimination prohibited by this title.

(h) *Sex as a bona-fide occupational qualification.*

(1) A recipient may take action otherwise prohibited by this section provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned.

(2) A recipient shall not take action pursuant to paragraph (1) of this subsection which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons.

(3) Nothing contained in this section shall prevent a recipient from considering an employee’s sex in relation to employment requiring access to housing or intimate facilities used only by members of one sex.

(i) *Parental, family, or marital status; pregnancy or related conditions.*

(1) A recipient must not adopt or implement any policy, practice, or procedure, or take any employment action, on the basis of sex:

(A) Concerning current, potential, or past parental, family, or marital status of an employee or applicant for employment, which treats persons differently; or

(B) That is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee’s or applicant’s family unit.

(2) A recipient must not discriminate against any employee or applicant for employment on the basis of her current, potential, or past pregnancy or related conditions.

(3) A recipient must treat pregnancy or related conditions as any other temporary medical conditions for all job-related purposes, including commencement, duration, and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; and reinstatement; and under any fringe benefit offered to employees by virtue of employment, provided that nothing in this section or in this title shall be interpreted to require any recipient to provide or pay for any benefit or service related to an abortion.

(4) In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient must treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment, provided that nothing in this section or in this title shall be interpreted to require any recipient to allow a leave of absence for the purpose of obtaining an abortion.³¹

(5) A recipient must provide reasonable break time for an employee to express breast milk or breastfeed as needed and must ensure that she can access a lactation space, which must be a space other than a bathroom that is clean, shielded from view, free from intrusion from others, and may be used by her for expressing breast milk or breastfeeding as needed.

§ 1674. Neutrality with respect to abortion

(a) *Neutrality.* Nothing in this title shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion, or provide a modification to or allow a leave of absence from any education program or activity for the purpose of obtaining an abortion.³²

(b) *Construal with respect to penalties.* Nothing in this section shall be construed to permit a penalty to be imposed on any person because such person is seeking or has received any benefit or service related to a legal abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person because such person refused to provide or pay for any benefit or service, including facilities, related to an abortion.

§ 1675. Designation of coordinator, nondiscrimination policy, grievance procedures, notification and publication of nondiscrimination policy, training, students with disabilities, and recordkeeping³³

(a) *Designation of a Title IX Coordinator.* Each recipient must designate and authorize at least one employee, referred to herein as a Title IX Coordinator, to coordinate

³¹ The model law clarifies that nothing in Title IX requires an educational institution to provide or pay for an employee's abortion, or provide for an employee's leave of absence for the purpose of obtaining an abortion.

³² The model law would continue to provide that nothing in Title IX requires an educational institution to provide or pay for any benefit or service related to an abortion. It would specify that nothing in Title IX requires such an institution to offer reasonable modifications to or a leave of absence from an education program or activity for the purpose of obtaining an abortion.

³³ The model law would incorporate into Title IX the requirements of ED's 2020 Title IX regulations pertaining to nondiscrimination policies, training, and records retention.

its efforts to comply with its responsibilities under this title and to receive formal complaints of sex discrimination, sexual harassment, and sexual misconduct in the recipient's education program or activities. If a recipient has more than one Title IX Coordinator, it must designate one of its Title IX Coordinators to retain ultimate oversight over those responsibilities.

(b) *Adoption, publication, and implementation of nondiscrimination policy and grievance procedures.*

(1) Each recipient must adopt, publish, and implement a policy stating that the recipient does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by this title.

(2) Each recipient must adopt, publish, and implement grievance procedures consistent with section 1677 of this title that provide for the prompt and equitable resolution of formal complaints of sex discrimination, sexual harassment, or sexual misconduct in the recipient's education program or activity.

(c) *Notification of nondiscrimination policy.* Each 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 that the recipient does not discriminate on the basis of sex in the education program or activity that it operates, that it is required by this title not to discriminate in such a manner, and that any person may report sex discrimination, sexual harassment, or sexual misconduct to the Title IX Coordinator.

(d) *Publication of Title IX Coordinator's contact information and nondiscrimination policy.* Each recipient must prominently display the contact information of its Title IX Coordinator and the policy described in subsection (b) 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 subsection (c). 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 this title.

(e) *Training.* Each recipient must ensure that the persons described in paragraphs (e)(1) through (3) of this section receive training related to their duties under this title promptly upon hiring or change of position that alters their duties under this title, and annually thereafter. This training must not rely on sex stereotypes.

(1) *Investigators, decisionmakers, and other persons who are responsible for implementing the recipient's grievance procedures.* All investigators, decisionmakers, including decisionmakers for appeals, and other persons who are responsible for implementing the recipient's grievance procedures must be trained on the following topics to the extent related to their responsibilities:

(A) The definitions of sex discrimination, sexual harassment, and sexual misconduct under this title;

(B) The scope of the recipient's education program or activity;

(C) The recipient's obligations under section 1676 of this title;

(D) The recipient's grievance procedures under section 1677 of this title, including, for decisionmakers, any technology to be used at any live hearings offered by the recipient as part of such grievance procedures;

(E) How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and

(F) The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under section 1677 of this title.

(2) *Facilitators of informal resolution processes.* All facilitators of an informal resolution process under section 1677 of this title must be trained on the rules and practices associated with the recipient's informal resolution process and on how to serve impartially, including by avoiding conflicts of interest and bias.

(3) *Title IX Coordinator.* In addition to the training requirements in paragraphs (e)(1) and (2) of this section, the Title IX Coordinator must be trained on the specific responsibilities set out under sections 1672 and 1676 of this title, the recipient's recordkeeping system and the requirements of subsection (g) of this section, and any other training necessary to coordinate the recipient's compliance with this title.

(f) *Students with disabilities.* If a complainant or respondent is an elementary or secondary student with a disability, the recipient must require the Title IX Coordinator to consult with one or more members, as appropriate, of the student's Individualized Education Program (IEP) team (34 C.F.R. § 300.321), if any, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision under 34 C.F.R. § 104.35(c), if any, to determine how to comply with the requirements of the Individuals with Disabilities Education Act (20 U.S.C. §§ 1400 et seq.), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) throughout the recipient's implementation of grievance procedures under section 1677 of this title. If a complainant or respondent is a postsecondary student with a disability, the Title IX Coordinator may consult, as appropriate, with

³⁴ The model law would include specific provisions on complaints relating to a student with a disability, requiring educational institutions that receive federal funding to work with the student's Individualized Education Program (IEP) team or other professionals to ensure compliance with federal law.

the individual or office that the recipient has designated to provide support to students with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794).³⁴

(g) Recordkeeping.

(1) Each recipient must maintain for a period of at least seven years records of:

(A) The details of all grievance procedures initiated in response to a formal complaint under section 1677 of this title, including any determination regarding responsibility and any audio or audiovisual recording or transcript of any hearing, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant;

(B) Any appeal under section 1677 of this title and the result of that appeal;

(C) Any informal resolution processes carried out under section 1677 of this title and the result of those informal resolution processes; and

(D) All materials used to provide training under subsection (e) of this section. A recipient must make these training materials publicly available on its website; if the recipient does not maintain a website, the recipient must make these materials available upon request for inspection and copying by members of the public.

(2) For each response required under section 1676 of this title, a recipient must create, and maintain for a period of seven years, records of any actions taken, including the provision of supportive measures.

(A) In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity.

(B) If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

³⁵ The model law would incorporate into Title IX the requirements of ED's 2020 Title IX regulations pertaining to the duties of educational institutions and Title IX Coordinators with respect to responding to notice of sexual harassment in their education programs or activities. It extends these responsibilities to notice of any sex-based discrimination, sexual harassment, or sexual misconduct covered by the model law.

§ 1676. Duty to respond to sex discrimination, sexual harassment, and sexual misconduct³⁵

(a) General.

(1) A recipient with actual knowledge of sex discrimination, sexual harassment, or sexual misconduct in its education program or activity must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to such discrimination, sexual harassment, or sexual misconduct is clearly unreasonable in light of the known circumstances.

(2) A recipient's response to actual knowledge of sex discrimination, sexual harassment, or sexual misconduct in its education program or activity must treat complainants and respondents equitably by offering supportive measures to any complainant and by following grievance procedures that comply with section 1677 of this title before imposing any disciplinary sanctions or other actions that are not supportive measures against any respondent.

(3) With respect to a recipient's duty under paragraph (1) of this subsection to respond to sex discrimination, sexual harassment, or sexual misconduct, a recipient's education program or activity extends to locations, events, or circumstances where the recipient exercises substantial control over both the respondent and the context in which any sex discrimination, sexual harassment, or sexual misconduct occurs, including conduct that occurs in a building owned, leased or controlled by a student organization that is officially recognized by a postsecondary institution.

(b) Title IX Coordinator requirements.

(1) A recipient with actual knowledge of sex discrimination, sexual harassment, or sexual misconduct in its education program or activity must require its Title IX Coordinator to promptly contact the complainant to discuss the availability of supportive measures with or without the filing of a formal complaint, consider the complainant's wishes with respect to supportive measures, and explain to the complainant the process for filing a formal complaint.

(2) A recipient's restriction of rights protected under the U.S. Constitution shall not satisfy its duty to respond to sex discrimination, sexual harassment, and sexual misconduct under this title.

(c) Response to a formal complaint. In response to a formal complaint, a recipient must follow grievance procedures that comply with section 1677 of this title.

(d) Emergency removal. Nothing in this title precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the

recipient undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any individual justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision must not be construed to modify any rights under the Individuals with Disabilities Education Act (20 U.S.C. §§ 1400 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), or the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.).

(e) *Administrative leave.* Nothing in this title precludes a recipient from placing an employee respondent on administrative leave from employment responsibilities during the pendency of the recipient's grievance procedures. This provision must not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) or the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.).

(f) *Prohibited disclosures of personally identifiable information.* A recipient must not disclose personally identifiable information obtained in the course of complying with this title, except in the following circumstances:

- (1)** When the recipient has obtained prior written consent from a person with the legal right to consent to the disclosure;
- (2)** When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- (3)** To carry out the purposes of this title, including action taken to respond to actual knowledge of sex discrimination, sexual harassment, or sexual misconduct in the recipient's education program or activity;
- (4)** As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or other funding agreement; or
- (5)** To the extent such disclosures are not otherwise in conflict with this title, when required by State or local law or when permitted under FERPA (20 U.S.C. § 1232g) or its implementing regulations (34 C.F.R. part 99).³⁶

³⁶ The model law would provide that, in complying with Title IX, federally funded educational institutions may only disclose personally identifiable information in certain defined circumstances, such as when the institution has the prior written consent of a person who may consent to the disclosure, when the information goes to a parent or legal guardian who has a right to access the information, and when federal law requires the disclosure. The model law would provide for the disclosure of information for the purpose of complying with Title IX, including when an institution must disclose the identity of a complainant to a respondent as part of Title IX grievance procedures.

§ 1677. Grievance procedures³⁷

(a) *General.*

(1) A recipient's grievance procedures for the prompt and equitable resolution of formal complaints of sex discrimination, sexual harassment, and sexual misconduct must be in writing and include provisions that incorporate the requirements of this section.

(2) When a formal complaint alleges that a recipient's policy or practice discriminates on the basis of sex, the recipient is not considered a respondent.

(3) Any provisions, rules, or practices other than those required by this section that a recipient adopts as part of its grievance procedures for handling formal complaints must apply equally to both parties.

(b) *Basic requirements for grievance procedures.* A recipient's grievance procedures must:

(1) Treat complainants and respondents equitably, including by providing remedies to a complainant where a determination of responsibility has been made against the respondent and by following grievance procedures that comply with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to the recipient's education program or activity;

(2) Require that any person designated as a Title IX Coordinator, investigator, decisionmaker, or facilitator of an informal resolution process not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;

(3) Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance procedures;

(4) Establish reasonably prompt timeframes for the major stages of the grievance procedures, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with written notice to the parties that includes the reason for the delay. Major stages include, for example, evaluation (*i.e.*, the

³⁷ This section of the model law would incorporate into Title IX the requirements of ED's 2020 Title IX regulations pertaining to the grievance procedures federally funded educational institutions must follow before they discipline anyone over allegations of sexual harassment. It extends these procedures to any allegations of sex-based discrimination, sexual harassment, or sexual misconduct covered by the model law.

recipient's decision whether to dismiss or investigate a complaint of sex discrimination); investigation; determination; and appeal;

(5) Require an objective evaluation of all evidence that is relevant, as defined in section 1661 of this title, and not otherwise impermissible under paragraph (b)(6) of this section—including both inculpatory and exculpatory evidence—and provide that credibility determinations must not be based on a person's status as a complainant, respondent, or witness;

(6) Exclude the following types of evidence, and questions seeking that evidence, as impermissible (*i.e.*, must not be accessed or considered, except by the recipient to determine whether an exception in paragraphs (A) or (B) applies; must not be disclosed; and must not otherwise be used), regardless of whether they are relevant:

(A) Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality; and

(B) A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the recipient obtains that party's or witness's voluntary, written consent for use in the recipient's grievance procedures;

(7) Describe the range of supportive measures available to complainants and respondents;

(8) Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility;

(9) State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard and apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty;

(10) Include the procedures and permissible bases for the parties to appeal; and

(11) If a recipient adopts grievance procedures that apply to the resolution of some, but not all, formal complaints, articulate consistent principles for how the recipient will determine which procedures apply.

(c) Notice of allegations. Upon initiation of the recipient's grievance procedures, a recipient must provide written notice of the allegations to the parties whose identities are known.

(1) The notice must include:

(A) The recipient's grievance procedures under this section and any informal resolution process under subsection (j) of this section;

(B) Sufficient information available at the time to allow the parties to respond to the allegations. Sufficient information includes the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, sexual harassment, or sexual misconduct, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to the recipient;

(C) A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance procedures;

(D) A statement that retaliation is prohibited;

(E) A statement that parties are entitled to an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (f)(4) of this section;

(F) A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence as set out in paragraph (f)(6) of this section; and

(G) Any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance procedures.

(2) If, in the course of an investigation, the recipient decides to investigate allegations about the complainant or respondent that are not included in the notice provided under subsection (c) of this section or that are included in a complaint that is consolidated under subsection (e) of this section, the recipient must provide notice of the additional allegations to the parties whose identities are known.

(d) Dismissal of a formal complaint.

(1) If the conduct alleged in the formal complaint would not constitute sex discrimination, sexual harassment, or sexual misconduct even if proved, or did not occur in the recipient's education program or activity, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of this title.

(2) A recipient may dismiss a formal complaint, or any allegations therein, if at any time during the grievance procedures:

(A) The recipient is unable to identify the respondent after taking reasonable steps to do so;

(B) The respondent is not participating in the recipient's education program or activity and is not employed by the recipient;

(C) The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any of its allegations; or

(D) Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or its allegations.

(3) Upon dismissal, a recipient must promptly send written notice of the dismissal and the reasons for the dismissal to the complainant. If the dismissal occurs after the respondent has been notified of the allegations, then the recipient must simultaneously send written notice of the dismissal and the reasons for the dismissal to the complainant and the respondent. This written notice must include a statement that a dismissal may be appealed and set out the bases on which an appeal may be made as required in subsection (i) of this section and procedures to be used in such an appeal.

(e) Consolidation of complaints. A recipient may consolidate formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination, sexual harassment, or sexual misconduct arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references in this section to a party, complainant, or respondent include the plural, as applicable.

(f) Complaint investigation. A recipient must provide for adequate, reliable, and impartial investigations of formal complaints. To do so, the recipient must:

(1) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient—not on the parties;

(2) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

(3) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

(4) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either party in any meeting or grievance proceeding. The recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;

(5) Provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;

(6) Provide each party with an equal opportunity to access the evidence obtained as part of the investigation that is directly related to the allegations in the formal complaint prior to the conclusion of the investigation, in the following manner:

(A) Prior to the completion of the investigative report required by paragraph (f) (7) of this section, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic or hard-copy format; and

(B) The parties must have at least 10 days to submit a written response to the evidence, which the investigator will consider prior to completion of the investigative report.

(7) Create an investigative report that fairly summarizes relevant evidence that is not otherwise impermissible and, at least 10 days prior to any hearing or, in case there is no hearing, determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic or hard-copy format, for their review and written response.

(g) *Evaluating allegations and assessing credibility.*

(1) For postsecondary institutions, the recipient's grievance procedures must provide for a live hearing.³⁸

(A) At the live hearing, the decisionmaker(s) must permit each party or the party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time. The recipient must permit an advisor to conduct such cross-examination, notwithstanding its discretion under paragraph (f)(4) of this section to otherwise restrict the extent to which advisors may participate in the proceedings. If the live hearing concerns a formal complaint of sexual harassment or sexual misconduct, cross-examination

must be conducted by the party's advisor of choice and never by a party personally.³⁹

(B) If a party does not have an advisor present at a live hearing concerning a formal complaint of sexual harassment or sexual misconduct, the postsecondary institution must provide, without fee or charge to that party, an advisor of the postsecondary institution's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

(C) The recipient must make all evidence subject to the parties' inspection and review under subparagraph (f)(6)(A) of this section available at the live hearing to give each party an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

(D) Only relevant cross-examination and other questions may be asked of a party or witness. Before any question is answered, the decisionmaker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

(E) Questions and evidence about the complainant's sexual predisposition or prior sexual conduct are not relevant, unless such questions and evidence about the complainant's prior sexual conduct are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual conduct with respect to the respondent and are offered to prove consent.

³⁸ Like ED's 2020 Title IX regulations, the model law would only require federally funded postsecondary institutions (e.g., colleges and universities) to offer a live hearing with cross-examination by party advisors as part of their Title IX grievance procedures. In recognition of factors including the youth of the parties and flexibility traditionally granted to elementary and secondary schools in exercising disciplinary authority over their educational communities, the model law would allow K-12 schools to decide whether to offer live hearings but would require them to abide by basic requirements of a fair and balanced process in resolving allegations.

³⁹ In grievance procedures related to sexual harassment and sexual misconduct in postsecondary institutions, the model law would require that cross-examination be conducted by each party's advisor and never by a party personally. The model law would allow parties to conduct cross-examination personally in grievance procedures addressing allegations solely of sex-based discrimination, in recognition that such matters are less severe and trauma-inducing for the parties than allegations involving, for instance, sexual assault or *quid pro quo* harassment. If a hearing covers both allegations of discrimination and harassment or misconduct, then the model law would require an advisor to conduct cross-examination.

(F) If a party or witness does not submit to cross-examination at the live hearing, the decisionmaker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decisionmaker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

(G) Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location, or, at the postsecondary institution's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

(H) For live hearings concerning a formal complaint of sexual harassment or sexual misconduct, at the request of either party, the postsecondary institution must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decisionmaker(s) and parties to simultaneously see and hear the party or the witness answering questions.⁴⁰

(I) Postsecondary institutions must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

(2) For recipients that are not postsecondary institutions, the recipient's grievance procedures may, but need not, provide for a hearing.

(A) With or without a hearing, after the recipient has sent the investigative report to the parties pursuant to paragraph (f)(7) of this section and before reaching a determination regarding responsibility, the decisionmaker(s) must afford each party the opportunity to submit written, relevant questions directed to any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

⁴⁰ In grievance procedures related to sexual harassment and sexual misconduct in postsecondary institutions, the model law would require institutions to honor requests to conduct live hearings with the parties located in separate rooms. Like cross-examination, the model law would not require institutions to provide such separate rooms in hearings covering only allegations of sex-based discrimination. If a hearing covers both allegations of discrimination and harassment or misconduct, then the model law would mandate separate rooms upon the request of either party.

(B) With or without a hearing, questions and evidence that relate to the complainant's sexual predisposition or prior sexual conduct are not relevant, unless such questions and evidence about the complainant's prior sexual conduct are offered to prove that someone other than the respondent committed the alleged conduct, or if the questions and evidence concern specific incidents of the complainant's prior sexual conduct with the respondent and are offered to prove consent.

(C) The decisionmaker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

(D) At any live hearing to evaluate a formal complaint of sex discrimination, sexual harassment, or sexual misconduct, the recipient must make all evidence subject to the parties' inspection and review under subparagraph (f)(6)(A) of this section available at the hearing to give each party an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

(h) *Determination regarding responsibility.*

(1) Following an investigation and evaluation of all relevant and not otherwise impermissible evidence under subsections (f) and (g) of this section, the decisionmaker, who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. This written determination must:

(A) Be based on the application of the standard of evidence described in paragraph (b)(9) of this section;

(B) Identify the allegations of sex discrimination, sexual harassment, or sexual misconduct;

(C) Describe the procedural steps taken from the receipt of the formal complaint through the determination;

(D) Identify the findings of fact supporting the determination;

(E) Set out conclusions regarding the application of the recipient's code of conduct to the facts;

(F) Include a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and

(G) Provide notice to the parties of the recipient's procedures and permissible bases for an appeal.

(2) The recipient must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

(3) The Title IX Coordinator is responsible for coordinating any remedies provided to a complainant and any disciplinary sanctions imposed on a respondent.

(4) The Department will not deem a recipient's determination regarding responsibility to be evidence of deliberate indifference by the recipient, or otherwise evidence of discrimination under this title by the recipient, solely because the Department would have reached a different determination based on an independent weighing of the evidence.⁴¹

(i) Appeals.

(1) A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any of its allegations, on the following bases:

(A) Procedural irregularity that affected the outcome of the matter;

(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

(C) A conflict of interest or bias on the part of anyone designated to carry out the recipient's grievance procedures that affected the outcome of the matter.

(2) A recipient may offer an appeal equally to both parties on additional bases, provided that the recipient includes such bases with its grievance procedures under this section.

⁴¹ Like ED's 2020 Title IX regulations, the model law would prevent ED from unduly interfering in an educational institution's grievance procedures by finding that the institution was deliberately indifferent to allegations of discrimination, harassment, or misconduct merely because it would have reached a different determination regarding such allegations. ED would have to rely on additional evidence of deliberate indifference to support a determination that an institution is not in compliance with Title IX.

(3) As to all appeals, the recipient must:

(A) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for all parties;

(B) Ensure that the decisionmaker(s) for the appeal is not the same person as the decisionmaker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;

(C) Ensure that the decisionmaker(s) for the appeal does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;

(D) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;

(E) Issue a written decision describing the result of the appeal and the rationale for the result; and

(F) Provide the written decision simultaneously to both parties.

(j) *Informal resolution.*⁴²

(1) At any time after the filing of a formal complaint and before reaching a determination regarding responsibility, the recipient may facilitate an informal resolution process that does not involve a full investigation and adjudication as otherwise required in this section. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance procedures with respect to the formal complaint. Prior to facilitating such a process, the recipient must provide to the parties written notice disclosing:

(A) The allegations in the formal complaint;

(B) The requirements of the informal resolution process;

(C) The right of any party to withdraw from the informal resolution process and resume grievance procedures; and

⁴² Like ED's 2020 Title IX regulations, in lieu of the formal grievance procedures, the model law would allow federally funded educational institutions to offer parties an informal process to address allegations of sex-based discrimination, sexual harassment, or sexual misconduct. Both parties would need to provide voluntary, written consent to the informal process, and it could not be used to resolve allegations that an employee committed sexual harassment or sexual misconduct against a student.

(D) Any consequences resulting from participating in the informal resolution process, including the circumstances under which, at the conclusion of the process, it precludes the parties from resuming grievance procedures with respect to the formal complaint and the records that will be maintained or could be shared.

(2) Prior to facilitating an informal resolution process, the recipient must obtain the parties' voluntary, written consent to the process.

(3) Notwithstanding any other provision of this title, a recipient must not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to participate in the recipient's grievance procedures with respect to formal complaints of sex discrimination, sexual harassment, or sexual misconduct.

(4) A recipient must not offer or facilitate an informal resolution process to resolve allegations that an employee engaged in sexual harassment or sexual misconduct against a student.

§ 1678. Retaliation

(a) *General.* A recipient must prohibit retaliation in its education program or activity.

(b) *Procedures for resolving formal complaints of retaliation.* Upon receiving a formal complaint alleging retaliation, a recipient must initiate its grievance procedures under section 1677 under this title, or, as appropriate, an informal resolution process under subsection (j) of section 1677 of this title.⁴³

(c) *Specific circumstances.*

(1) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under subsection (a) of this section.

(2) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this title does not constitute retaliation prohibited under subsection (a) of this section; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude

⁴³ The model code would require a federally funded educational institution to prohibit retaliation against a person for exercising Title IX rights and to initiate its Title IX grievance procedures in response to a formal complaint of such retaliation. This section would make clear that merely exercising one's constitutional right to free expression does not constitute prohibited retaliation.

that any party made a materially false statement in bad faith.

(3) Nothing in this section or this title precludes a recipient from requiring an employee or other person authorized by a recipient to provide an aid, benefit, or service under the recipient's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this title.

⁴⁴ In light of this section's prohibition of agency regulations and similar rules under Title IX, the model law would require federal agencies to follow their procedures under Title VI of the Civil Rights Act of 1964 in enforcing Title IX.

§ 1679. Federal administrative enforcement; assurance of nondiscrimination; report to Congressional committees

(a) *Federal administrative enforcement.* Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 662 of this title with respect to such program or activity as follows:

(1) by the termination of or refusal to grant or to continue all or any portion of the assistance under such program or activity to any to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with this title; or

(2) by any other means authorized by law.

(b) *Procedural provisions.* Each Federal department and agency empowered to effectuate this title under subsection (a) of this section shall do so pursuant to the requirements of this title and that department or agency's procedural provisions applicable to title VI of the Civil Rights Act of 1964.⁴⁴

(c) *Notice of noncompliance.* No action shall be taken under subsection (a) of this section until the department or agency concerned has advised the appropriate person or persons of the failure to comply with this title, has granted such person or persons 30 days to respond to this notice, and has determined that compliance cannot be secured by voluntary means. Prior to taking action under subsection (a) of this section, the department or agency concerned may require a recipient to take such remedial action as the department or agency deems necessary to remedy noncompliance with this title.

(d) *Assurance required.*

(1) Except as provided in section 1682 of this title, every application for Federal financial

assistance shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Department, that the education program or activity operated by the applicant or recipient and to which this title applies will be operated in compliance with this title.

(A) An assurance of compliance with this title shall not be satisfactory to the Department if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with subsection (c) of this section to eliminate existing discrimination on the basis of sex.

(B) The assurance of compliance required by this subsection shall include an assurance that the recipient will ensure, to the extent required by this title, that the recipient's contractors, subcontractors, subgrantees, or others with whom it arranges to provide services or benefits are not taking any action that would violate this title if taken by the recipient.

(2) The assurance required under paragraph (1) of this subsection shall obligate the recipient or, in the case of a subsequent transfer, the transferee, as follows:

(A) In the case of Federal financial assistance extended to provide real property or structures thereon, for the period during which the real property or structures are used to provide an education program or activity.

(B) In the case of Federal financial assistance extended to provide personal property, for the period during which the recipient retains ownership or possession of the property.

(C) In all other cases, for the period during which Federal financial assistance is extended.

(e) *Notice to Congressional committees.* In the case of any action terminating, or refusing to grant or continue, all or any portion of assistance under a program or activity because of failure to comply with this title, the head of the Federal department or agency shall report in writing to the committees of the House and Senate having legislative jurisdiction over the program or activity involved the circumstances and the grounds for such action.

(f) *Limitation of enforcement to particular recipient and program.* Any termination of or refusal to grant or to continue assistance under subsection (a) of this section shall be limited to the particular recipient, or part of the recipient, as to which such a finding has been made, and shall be limited in its effect to the particular program, or part of the program, in which such noncompliance has been so found.

(g) Rules, regulations, and orders of general applicability prohibited.⁴⁵

(1) Notwithstanding any rulemaking authority granted to any entity or individual pursuant to 20 U.S.C. § 1221e-3, 20 U.S.C. § 3474, or any other law or provision of law, no Federal department or agency shall issue any rule, regulation, or order of general applicability to effectuate this title or any of its provisions.

(2) As of the effective date of this title, any existing rules, regulations, or orders of general applicability issued to effectuate this title or any of its provisions are hereby void and shall have no effect.

§ 1680. Judicial review

Any person or entity aggrieved by the termination of or refusal to grant or to continue financial assistance pursuant to section 1679 of this title may obtain judicial review of such action in accordance with chapter 7 of title 5, United States Code (5 U.S.C. §§ 701 et seq.), and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.

§ 1681. Authority under other laws unaffected; effect of other requirements; preservation of rights

(a) Authority under other laws unaffected. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended.

(b) Effect of other Federal provisions. The obligations imposed by this title are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by any other Act of Congress.

(c) Effect of State or local law or other requirements. The obligation to comply with this title is not obviated or alleviated by any State or local law or other requirements that conflict with this title.⁴⁶

(d) Effect of rules or regulations of private organizations. Aside from rules and regulations exempted from the application of this title, the obligation to comply with this title is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association.

⁴⁵ The model law would prohibit any federal agency from issuing any rule, regulation, or order of general applicability to implement or interpret Title IX; it would also void such existing rules. Agencies would be expected to enforce the law as directed by the statutory text and not as directed by the policy of a particular president or agency head.

⁴⁶ The model law would make clear that Title IX's obligations override any contrary state or local laws or policies.

(e) *Constitutional protections.*⁴⁷ Nothing in this title 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;

(3) Deny to any parent the liberty, guaranteed by the U.S. Constitution, to direct the upbringing and education of children under their control; or

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

(f) *Effect of Section 444 of General Education Provisions Act (GEPA)/Family Educational Rights and Privacy Act (FERPA).* The obligation to comply with this title is not obviated or alleviated by FERPA (20 U.S.C. § 1232g) or any regulations promulgated under FERPA.

(g) *Title VII of the Civil Rights Act of 1964.* Nothing in this title 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 under that law.

(h) *Exercise of rights by parents.* Nothing in this title may be read in derogation of any legal right of a parent to act on behalf of a complainant, respondent, or other person, subject to subsection (f) of this section, including but not limited to making a formal complaint of sex discrimination, sexual harassment, or sexual misconduct through the recipient's grievance procedures.

§ 1682. Assurance of and eligibility for exemption for faith-based institutions

(a) *Exemption from assurance of compliance requirement.* Faith-based educational institutions are not required to submit the assurance of compliance with this title described in subsection (d) of section 1679 of this title as a condition of approval of Federal financial assistance if the application of this title to any of its programs or activities would not be consistent with the religious tenets, beliefs, or teaching of the institution, as contemplated under paragraph (a)(3) of section 1662 of this title. Such an institution must include with any application for Federal financial assistance a statement explaining that it is not required to submit an assurance of compliance with this title and identifying the provision or provisions of this title that conflict

⁴⁷ The model law would specify that Title IX does not require any recipient to restrict constitutional rights, including the freedom of speech, the right to due process, or the right of parents to direct the upbringing and education of their children.

with a specific religious tenet, belief, or teaching of the institution. This exemption does not apply to any assurances required of educational institutions as a condition of approval of Federal financial assistance outside of this title.⁴⁸

(b) Assurance of exemption for faith-based institutions.⁴⁹

(1) An educational institution that seeks assurance of the exemption from the requirements of this title with respect to faith-based institutions may do so by submitting in writing to the Department a statement by the highest-ranking official of the educational institution identifying the provision or provisions of this title, or of any rules, regulations, or orders issued pursuant to this title, that conflict with a specific religious tenet, belief, or teaching of the educational institution.

(2) In response to any statement submitted under paragraph (1) of this subsection, the Department shall promptly determine the institution's eligibility for an exemption under this section. The institution's eligibility for an exemption is considered approved 20 days following the date of the submission of the statement under paragraph (1) of this subsection unless, before that date, the Department submits to the institution a written determination that the institution is not eligible for the exemption, including an explanation of the grounds for denying the assurance.

(3) The Department shall retain a record of the assurances of exemption it has issued pursuant to paragraph (2) of this subsection. The Department shall not disclose its issuance of an assurance of exemption or any record of such issuance except as required under the Freedom of Information Act (5 U.S.C. § 552).

(4) The Department may rescind an assurance of exemption it previously issued under paragraph (2) of this subsection if it determines at any time that the educational institution is no longer entitled to the exemption or that the assurance of exemption was invalidly issued, in which case it shall promptly notify the institution of the rescission and the grounds for the rescission.

(5) An educational institution is not required to seek assurance from the Department in order to assert such an exemption.

⁴⁸ Because faith-based institutions with contrary religious tenets are not required to comply with Title IX, the model law would exempt them from the requirement that they submit an assurance to federal agencies that they will comply with Title IX as a condition of receiving federal funding. This provision would have no impact on the need for these institutions to submit such an assurance of compliance with regard to other federal laws.

⁴⁹ The model law would specify the process through which faith-based institutions may obtain an assurance of exemption from Title IX's requirements and set out the factors ED must consider in deciding whether an institution is a faith-based institution under Title IX.

(c) *Response to notification of investigation.*

(1) In the event the Department notifies an educational institution that it is under investigation for noncompliance with this title, and the educational institution wishes to assert an exemption from the requirements of this title, the educational institution may at that time raise its exemption by submitting in writing to the Department a statement by the highest-ranking official of the educational institution, identifying the provision or provisions that conflict with specific tenets, beliefs, or teachings of the educational institution.

(2) Upon receiving any statement received under paragraph (1), prior to submitting to the educational institution any notice of noncompliance under subsection (c) of section 1679 of this title, the Department shall determine the institution's eligibility for an exemption under this section. If the Department determines that the institution is eligible for the exemption, it shall inform the institution that it is exempt from complying with the relevant provision or provisions. If the Department determines that the institution is not eligible for the exemption, it shall submit to the institution a written explanation as to why the institution is not eligible for an exemption and may proceed to issuing a notice of noncompliance.

(d) *Eligibility.* Any of the following in paragraphs (d)(1) through (6) of this section shall be sufficient to establish that an educational institution is a faith-based educational institution, as contemplated under paragraph (a)(3) of section 1662 of this title, and is therefore eligible to assert a religious exemption to the extent application of this title would not be consistent with its religious tenets:

(1) That the educational institution is a school or department of divinity.

(2) That the educational institution requires its faculty, students, or employees to be members of, or otherwise engage in religious practices of, or espouse a personal belief in, the religion of an organization that claims to control the institution.

(3) That the educational institution, in its charter or catalog, or other official publication, contains an explicit statement that it is a faith-based educational institution, or is committed to the doctrines or practices of a particular religion, and the members of its governing body are appointed by any religious organization or an organ thereof, and it receives a significant amount of financial support from any religious organization or an organ thereof.

(4) That the educational institution has a doctrinal statement or a statement of religious practices, along with a statement that members of the institution community must engage in the religious practices of, or espouse a personal belief in, the religion, its practices, or the doctrinal statement or statement of religious practices.

(5) That the educational institution has a published institutional mission that is approved by the governing body of an educational institution and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings.

(6) Other evidence sufficient to establish that an educational institution is a faith-based educational institution pursuant to paragraph (a)(3) of section 1662 of this title.

(e) *Disclosure of assurance.* An institution that seeks and receives an assurance of the exemption set forth in subsection (a) of this section must disclose on its website, if any, and in its handbooks and catalogs that the institution has received an assurance from the Department.⁵⁰

§ 1683. Federal Commission on Sexual Misconduct in K–12 Schools⁵¹

(a) *Federal Commission on Sexual Misconduct in K–12 Schools.* Not later than 120 days after the effective date of this title, the Secretary shall establish a commission to be known as the “Federal Commission on Sexual Misconduct in K–12 Schools” that shall—

(1) provide pertinent information to the Secretary, Congress, and the public with respect to the prevalence of sexual misconduct in K–12 schools and what laws and policies are currently in place at the school, district, state, and federal levels for preventing, investigating, and responding to such sexual misconduct;

(2) assess the extent of compliance with the requirements of this title regarding sexual misconduct in elementary and secondary schools receiving Federal financial assistance and with the provision of section 8546 of the Every Student Succeeds Act (20 U.S.C. § 7926) requiring

⁵⁰ While the model law would prohibit ED from maintaining a centralized, public-facing list of faith-based institutions that have received assurances of exemption from Title IX, it would require each institution that receives such an assurance of exemption to display it on its website and in its published materials. Such a disclosure requirement would promote predictability and help students and employees at every faith-based institution understand their rights under the law.

⁵¹ This section of the model law would create a new Federal Commission on Sexual Misconduct in K–12 Schools that would provide much-needed data on the issue and offer recommendations regarding how local, state, and federal lawmakers can address the nationwide epidemic of sexual misconduct against students and employees in K–12 schools. For more on the urgent need for action on this issue, see DFI’s report [*Catching the Trash: Holding Teacher Unions, School Districts, and the U.S. Department of Education Accountable for the Epidemic of Sexual Abuse in Public Schools*](#).

policies prohibiting the aiding or abetting of school employees who engaged in sexual misconduct with a minor or student in violation of the law in obtaining a new job;

(3) solicit perspectives and proposals from sexual assault survivors, students, parents, teachers and other school staff members, school district officials, law enforcement officers, state and federal legislators and education officials, researchers, and others who can offer first-hand knowledge of or expertise on sexual misconduct in K–12 schools and who may suggest effective policies at the school, district, state, or federal levels that would protect students and school employees from sexual misconduct; and

(4) develop recommendations to address and prevent sexual misconduct in K–12 schools; to collect and publish more information from local and State education agencies regarding sexual misconduct; and, when necessary, to require officials to address such sexual misconduct in compliance with State and Federal law.

(b) *Secretary or Secretary’s designee as commission chair.* The Secretary or the Secretary’s designee shall serve as the Chair of the Federal Commission on Sexual Misconduct in K–12 Schools.

(c) *Appointment of commission members.* The Secretary shall appoint the members of the Federal Commission on Sexual Misconduct in K–12 Schools and consider the following categories or persons when making those appointments:

(1) Secondary school students;

(2) Elementary or secondary school parents;

(3) Elementary or secondary school classroom teachers;

(4) Elementary or secondary school confidential employees, including counselors;

(5) Elementary or secondary school principals;

(6) Local education agencies;

(7) State education agencies;

(8) Attorneys representing clients in lawsuits involving allegations of sexual misconduct in K–12 schools;

(9) Civil rights organizations and support or advocacy organizations for sexual assault survivors;

(10) Experts on the issue of sexual misconduct in schools;

(11) State attorneys general; and

(12) Law enforcement personnel.

The Commission shall be exempt from the requirements of the Federal Advisory Committee Act (5 U.S.C. §§ 1001 et seq.).

(d) Report. No later than one year after the effective date of this title, the Federal Commission on Sexual Misconduct in K–12 Schools shall submit to Congress, and make publicly available, a written report that includes the following information and recommendations:

(1) a description of its activities;

(2) data available with regard to:

(A) the prevalence of sexual misconduct in K–12 schools in the United States against students, faculty, and other staff;

(B) responses to and investigations of allegations of sexual misconduct in K–12 schools at the school or local education agency level;

(C) laws and policies adopted at the local or State levels whose purpose is to prevent sexual misconduct in K–12 schools, including laws or policies that prevent the suppression of information from employee records or that prohibit the aiding or abetting employees who have committed sexual misconduct against students or minors in violation of the law to obtain new employment in compliance with section 8546 of the Every Student Succeeds Act (20 U.S.C. § 7926);

(D) complaints filed with the Department alleging that a school or local education agency did not comply with this title or any other federal law in responding to allegations of sexual misconduct, and the Department’s responses to such complaints; and

(E) any other data that will assist Congress and the public in understanding the prevalence of sexual misconduct in K–12 schools, any gaps in such data, and any obstacles to laws and policies that effectively prevent sexual misconduct in K–12 schools or to any other effective action on such misconduct at the local, State, and Federal levels;

(2) an assessment to identify gaps or challenges confronting the Department in carrying out investigations of complaints alleging sexual misconduct in elementary schools and secondary schools receiving Federal financial assistance or enforcement;

(3) an assessment of the impact of collective bargaining agreements on the reporting and investigation of allegations of sexual misconduct in K–12 schools;

(4) recommendations to local, State, and Federal officials on best practices for preventing, investigating, and responding to sexual misconduct in K–12 schools; collecting additional data to understand the prevalence of such sexual misconduct and any gaps in responding to allegations of such sexual misconduct; and, when appropriate, initiating enforcement actions, including those authorized in subsection (a) of section 1679 of this title, with regard to the failure to address such sexual misconduct as required by this title, including recommendations regarding how the Department should address any investigatory or enforcement gaps or challenges related to—

(A) complaints alleging sexual misconduct by faculty and staff who resign or retire from their positions before any final disciplinary action is taken with regard to the allegations against them; and

(B) complaints alleging sexual misconduct by faculty and staff who receive a duty reassignment prior to final disciplinary action or termination with regard to the allegations against them.

(e) *Disbandment.* Following the submission to Congress and publication of the report described in subsection (d) of this section, the Federal Commission on Sexual Misconduct in K–12 Schools shall disband.

§ 1684. Blindness or visual impairment; prohibition against discrimination

No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity, but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.⁵²

⁵² The model law would retain existing protections against the denial of admission to educational institutions receiving federal funding on the basis of blindness or visual impairment.

