

Updated 7/16/2024

SDI's Title IX Regulations

Title IX prohibits sex discrimination in education programs and activities that receive Federal financial assistance. Title IX obligates all recipients to comply with Title IX and the Department's Title IX regulations, with some limited exceptions set out in the statute and regulations.

The 2024 amendments require recipients to adopt and publish grievance procedures for the prompt and equitable resolution of complaints of sex-based harassment involving a student complainant or student respondent at a postsecondary institution. This Resource addresses the applicable regulatory requirements in §§ 106.8(b)–(c), 106.45 and 106.46 as detailed below:

- Sections 106.8(b) and (c) require all recipients to adopt, publish, and implement a nondiscrimination policy and publish a notice of nondiscrimination.
- Section 106.45 requires all recipients to adopt, publish, and implement grievance procedures for complaints of sex discrimination.
- Section 106.46 requires all postsecondary institutions that are recipients to adopt, publish, and implement grievance procedures for complaints of sex-based harassment involving student complainants or student respondents at postsecondary institutions.

TABLE OF CONTENTS

Nondiscrimination Policy & Notice of Nondiscrimination (§ 106.8(b)–(c))	3
Grievance Procedures for Complaints of Sex Discrimination (§ 106.45).....	4
Grievance Procedures for Complaints of Sex-Based Harassment Involving Student Complainants or Student Respondents at Postsecondary Institutions (§ 106.46)	10
Appendix: Definitions (106.2)	18

Nondiscrimination Policy & Notice of Nondiscrimination (§ 106.8(b)–(c))

Section 106.8(b) of the 2024 amendments requires each recipient to adopt, publish, and implement a **nondiscrimination policy**. A recipient has discretion over the content of its nondiscrimination policy. The following sample nondiscrimination policy meets the minimum requirements of the 2024 amendments:

Sonoran Desert Institute does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX, including in admission and employment.

Section 106.8(c) of the 2024 amendments also requires each recipient to provide a **notice of nondiscrimination** to students; parents, guardians, or other authorized legal representatives of elementary school and secondary school students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the recipient. Nothing prevents a recipient from including in its notice of nondiscrimination information about any exceptions or exemptions applicable to the recipient under Title IX.

The following sample notice of nondiscrimination meets the minimum requirements of the 2024 amendments:

Sonoran Desert Institute does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its regulations, including in admission and employment.

Inquiries about Title IX may be referred to Sonoran Desert Institute’s Title IX Coordinator, the U.S. Department of Education’s Office for Civil Rights, or both. Sonoran Desert Institute’s Title IX Coordinator is Teresa Speicher, Compliance Manager, 1555 W. University Drive #103, Teresa.speicher@sdi.edu, 480-378-6848.

Sonoran Desert Institute’s nondiscrimination policy can be located at <https://sdi.edu/about-us/non-discrimination-non-harrassment-policy/>.

To report information about conduct that may constitute sex discrimination or make a complaint of sex discrimination under Title IX, please refer to the following: <https://sdi.edu/current-students/titleix/>

Complaints:

The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that Sonoran Desert Institute investigate and make a determination about alleged discrimination under Title IX:

A “complainant,” which includes:

- A student or employee of Sonoran Desert Institute who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
- A person other than a student or employee of Sonoran Desert Institute who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in Sonoran Desert Institute’s education program or activity.
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- Sonoran Desert Institute’s Title IX Coordinator.

Note that a person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 C.F.R. § 106.44(f)(1)(v).

With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint:

- Any student or employee of Sonoran Desert Institute; or
- Any person other than a student or employee who was participating or attempting to participate in Sonoran Desert Institute’s education program or activity at the time of the alleged sex discrimination.

Sonoran Desert Institute may consolidate complaints of sex discrimination 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 arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

Basic Requirements of Title IX Grievance Procedures:

Sonoran Desert Institute will treat complainants and respondents equally.

Sonoran Desert Institute requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A decisionmaker may be the same person as the Title IX Coordinator or investigator.

Sonoran Desert Institute presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

Sonoran Desert Institute will decide within 15 business days whether to dismiss or investigate a complaint. Sonoran Desert Institute will act in a prompt but judicious manner during the investigation, determination and appeal phases. Sonoran Desert Institute allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay.

Sonoran Desert Institute will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses, consulting with their family members or advisors; or otherwise preparing for or participating in the grievance procedures.

Sonoran Desert Institute will objectively evaluate all evidence that is relevant and not otherwise impermissible including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by Sonoran Desert Institute to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege 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.
- 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 Sonoran Desert Institute obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

Notice of Allegations:

Upon initiation of Sonoran Desert Institute's Title IX grievance procedures, Sonoran Desert Institute will notify the parties of the following:

- Sonoran Desert Institute's Title IX grievance procedures and any informal resolution process;
- Sufficient information available at the time to allow the parties to respond to the

allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s); and

- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. If Sonoran Desert Institute provides a description of the evidence the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

If, during an investigation, Sonoran Desert Institute decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided or that are included in a complaint that is consolidated, Sonoran Desert Institute will notify the parties of the additional allegations.

Dismissal of a Complaint:

Sonoran Desert Institute may dismiss a complaint of sex discrimination if:

- Sonoran Desert Institute is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in Sonoran Desert Institute's education program or activity and is not employed by Sonoran Desert Institute;
- The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and Sonoran Desert Institute determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- Sonoran Desert Institute determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, Sonoran Desert Institute will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, Sonoran Desert Institute will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then Sonoran Desert Institute will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

Sonoran Desert Institute will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then Sonoran Desert Institute will also notify the respondent that the dismissal may be appealed. Dismissals may be appealed on the following basis:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or

respondent that would change the outcome.

If the dismissal is appealed, Sonoran Desert Institute will:

- Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Implement appeal procedures equally for the parties;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;
- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, Sonoran Desert Institute will, at a minimum:

- Offer supportive measures to the complainant as appropriate;
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within Sonoran Desert Institute's education program or activity.

Investigation:

Sonoran Desert Institute will provide for adequate, reliable, and impartial investigation of complaints. The burden is on Sonoran Desert Institute—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred. Sonoran Desert Institute will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.

Sonoran Desert Institute will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

Sonoran Desert Institute will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

- Sonoran Desert Institute will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence.
- Sonoran Desert Institute will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
- Sonoran Desert Institute will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative

proceedings or litigation related to the complaint of sex discrimination are authorized.

Questioning the Parties and Witnesses:

Sonoran Desert Institute will provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.

Determination Whether Sex Discrimination Occurred:

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, Sonoran Desert Institute will:

- Use the clear and convincing standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
- Notify the parties in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal.
- Not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
 - Coordinate the provision and implementation of remedies to a complainant and other people Sonoran Desert Institute identifies as having had equal access to Sonoran Desert Institute's education program or activity limited or denied by sex discrimination;
 - Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
 - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within Sonoran Desert Institute's education program or activity.
- Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent; and

Appeal of Determinations:

Sonoran Desert Institute offers the following process for appeals from a determination whether sex discrimination occurred: This appeal process will be, at a minimum, the same as Sonoran Desert Institute offers in all other comparable proceedings, including proceedings relating to other discrimination complaints.

Informal Resolution:

In lieu of resolving a complaint through Sonoran Desert Institute's Title IX grievance procedures, if agreed to by the Title IX coordinator, the parties may instead elect to participate in an informal resolution process. Sonoran Desert Institute does not offer informal resolution to resolve a complaint that includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or when such a process would conflict with Federal, State, or local law.

Supportive Measures:

Sonoran Desert Institute will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person's access to Sonoran Desert Institute's education program or activity or provide support during Sonoran Desert Institute's Title IX grievance procedures or during the informal resolution process. For complaints of sex-based harassment, these supportive measures may include but not be limited to: counseling; extension of deadlines and other course-related adjustments; leaves of absence; involuntary or voluntary changes in class, work, housing or extracurricular activities regardless of whether there is a comparable alternative; and training and education programs related to sex-based harassment.

Disciplinary Sanctions and Remedies:

Following a determination that sex-based harassment occurred, Sonoran Desert Institute may impose disciplinary sanctions, which may include a warning to expulsion.

Grievance Procedures for Complaints of Sex-Based Harassment Involving Student Complainants or Student Respondents at Postsecondary Institutions (§ 106.46)

The 2024 amendments require each postsecondary institution to adopt, publish, and implement grievance procedures consistent with the requirements of §§ 106.45 and 106.46 for the prompt and equitable resolution of complaints of sex-based harassment involving a student complainant or student respondent at a postsecondary institution.

Sonoran Desert Institute has adopted Title IX grievance procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator. These grievance procedures address complaints of sex-based harassment that involve a student party.

When a party is both a student and an employee of a postsecondary institution, the 2024 amendments require an institution to make a fact-specific inquiry to determine whether the requirements of § 106.46 apply. In making this determination, a postsecondary institution must, at a minimum, consider whether the party's primary relationship with the postsecondary institution is to receive an education and whether the alleged sex-based harassment occurred while the party was performing employment-related work.

The information in the following statements incorporates the requirements of the Title IX grievance procedures:

Complaints:

The following individuals have a right to make a complaint of sex-based harassment, requesting that Sonoran Desert Institute investigate and make a determination about alleged sex-based harassment under Title IX:

- A “complainant,” which includes:
 - A student or employee of Sonoran Desert Institute who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
 - A person other than a student or employee of Sonoran Desert Institute who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in Sonoran Desert Institute's education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- Sonoran Desert Institute Title IX Coordinator.

Note that a person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 C.F.R. § 106.44(f)(1)(v).

Sonoran Desert Institute may consolidate complaints of sex discrimination 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 arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

Basic Requirements of Title IX Grievance Procedures:

Sonoran Desert Institute will treat complainants and respondents equitably.

Sonoran Desert Institute requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. As long as there is no conflict of interest or bias, a decisionmaker may be the same person as the Title IX Coordinator or investigator.

Sonoran Desert Institute presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

Sonoran Desert Institute will act in a prompt but judicious manner during the investigation, determination and appeal phases. Sonoran Desert Institute allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay.

Sonoran Desert Institute allows for the reasonable extension of timeframes on a case-by-case basis for good cause with written notice of any extension to the parties that includes the reason for the delay.

Sonoran Desert Institute will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses.

Sonoran Desert Institute will objectively evaluate all evidence that is relevant and not otherwise impermissible including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by Sonoran Desert Institute to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege 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;

- 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 Sonoran Desert Institute obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

Written Notice of Allegations:

Upon initiation of these Title IX grievance procedures, Sonoran Desert Institute will notify the parties in writing of the following with sufficient time for the parties to prepare a response before any initial interview:

- Sonoran Desert Institute's Title IX grievance procedures and any informal resolution process;
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex-based harassment, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited;
- The respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the grievance procedures. Prior to such a determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker;
- The parties may have an advisor of their choice who may be, but is not required to be, an attorney;
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigative report that accurately summarizes this evidence.

If, during an investigation, Sonoran Desert Institute decides to investigate additional allegations of sex-based harassment by the respondent toward the complainant that are not included in the written notice or that are included in a consolidated complaint, it will provide written notice of the additional allegations to the parties.

Dismissal of a Complaint:

Sonoran Desert Institute may dismiss a complaint if:

- Sonoran Desert Institute is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in Sonoran Desert Institute's education program or activity and is not employed by Sonoran Desert Institute;

- Sonoran Desert Institute obtains the complainant’s voluntary withdrawal in writing of any or all of the allegations, the Title IX Coordinator declines to initiate a complaint, and Sonoran Desert Institute determines that, without the complainant’s withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- Sonoran Desert Institute determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, Sonoran Desert Institute will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, Sonoran Desert Institute will promptly notify the complainant in writing of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then Sonoran Desert Institute will notify the parties simultaneously in writing.

Sonoran Desert Institute will notify the complainant that a dismissal may be appealed on the basis outlined in the *Appeals* section. If dismissal occurs after the respondent has been notified of the allegations, then Sonoran Desert Institute will also notify the respondent that the dismissal may be appealed on the same basis. If a dismissal is appealed, Sonoran Desert Institute will follow the procedures outlined in the *Appeals* section.

When a complaint is dismissed, Sonoran Desert Institute will, at a minimum:

- Offer supportive measures to the complainant as appropriate;
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within Sonoran Desert Institute’s education program or activity.

Investigation:

Sonoran Desert Institute will provide for adequate, reliable, and impartial investigation of complaints.

The burden is on Sonoran Desert Institute—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

Sonoran Desert Institute will provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare to participate.

Sonoran Desert Institute will provide the parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.

- Sonoran Desert Institute will not limit the choice or presence of the advisor for the complainant or respondent in any meeting or proceeding.

- Sonoran Desert Institute may establish restrictions regarding the extent to which the advisor may participate in these grievance procedures, as long as the restrictions apply equally to the parties.

Sonoran Desert Institute will provide the parties with the same opportunities, if any, to have people other than the advisor of the parties' choice present during any meeting or proceeding.

Sonoran Desert Institute will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.

Sonoran Desert Institute will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

Sonoran Desert Institute will provide each party and the party's advisor, if any, with an equal opportunity to access the evidence that is relevant to the allegations of sex-based harassment and not otherwise impermissible, in the following manner:

- Sonoran Desert Institute will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or the same written investigative report that accurately summarizes this evidence;
- Sonoran Desert Institute will provide a reasonable opportunity to review and respond to the evidence or the investigative report. If Sonoran Desert Institute conducts a live hearing as part of its grievance procedures, it will provide this opportunity to review the evidence in advance of the live hearing, and;
- Sonoran Desert Institute will take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the sex-based harassment grievance procedures.

Questioning the Parties and Witnesses:

Sonoran Desert Institute will provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment.

When Sonoran Desert Institute chooses not to conduct a live hearing: Sonoran Desert Institute's process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses, including questions challenging credibility, will:

- Allow the investigator or decisionmaker to ask such questions during individual meetings with a party or witness;
- Allow each party to propose such questions that the party wants asked of any party or witness and have those questions asked by the investigator or decisionmaker during one or more individual meetings, including follow-up meetings, with a party or witness, subject to the procedures for evaluating and limiting questions discussed below; and
- Provide each party with an audio or audiovisual recording or transcript with enough time for the party to have a reasonable opportunity to propose follow-up questions.

Procedures for the decisionmaker to evaluate the questions and limitations on questions:

The decisionmaker will determine whether a proposed question is relevant and not otherwise impermissible before the question is posed and will explain any decision to exclude a question as not relevant or otherwise impermissible. Questions that are unclear or harassing of the party or witness being questioned will not be permitted. The decisionmaker will give a party an opportunity to clarify or revise a question that the decisionmaker determines is unclear or harassing. If the party sufficiently clarifies or revises the question, the question will be asked.

Refusal to respond to questions and inferences based on refusal to respond to questions: The decisionmaker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The decisionmaker will not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

Determination Whether Sex-Based Harassment Occurred:

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, Sonoran Desert Institute will:

- Use the clear and convincing standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
- Notify the parties simultaneously in writing of the determination whether sex-based harassment occurred under Title IX including:
 - A description of the alleged sex-based harassment;
 - Information about the policies and procedures that Sonoran Desert Institute used to evaluate the allegations;
 - The decisionmaker's evaluation of the relevant and not otherwise impermissible evidence and determination whether sex-based harassment occurred;
 - When the decisionmaker finds that sex-based harassment occurred, any disciplinary sanctions Sonoran Desert Institute will impose on the respondent, whether remedies other than the imposition of disciplinary sanctions will be provided by Sonoran Desert Institute to the complainant, and, to the extent appropriate, other students identified by Sonoran Desert Institute to be experiencing the effects of the sex-based harassment; and
 - Sonoran Desert Institute's procedures and permissible bases for the complainant and respondent to appeal.
- Sonoran Desert Institute will not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the Title IX grievance procedures that the respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, as appropriate, the Title IX Coordinator will:
 - Coordinate the provision and implementation of remedies to a complainant and other

- people Sonoran Desert Institute identifies as having had equal access to Sonoran Desert Institute's education program or activity limited or denied by sex discrimination;
 - Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
 - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within Sonoran Desert Institute's education program or activity.
- Comply with the Title IX grievance procedures before the imposition of any disciplinary sanctions against a respondent; and
- Not discipline a party, witness, or others participating in the Title IX grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.²⁶

The determination regarding responsibility becomes final either on the date that Sonoran Desert Institute provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.

Appeals:

Sonoran Desert Institute will offer an appeal from a dismissal or determination whether sex-based harassment occurred on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the determination or dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

If a party appeals a dismissal or determination whether sex-based harassment occurred, Sonoran Desert Institute will:

- Notify the parties in writing of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Implement appeal procedures equally for the parties;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;
- Communicate to the parties in writing that Sonoran Desert Institute will provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties in writing of the result of the appeal and the rationale for the result.

Any additional procedures or bases for appeal Sonoran Desert Institute offers will be equally available to all parties.

Informal Resolution

In lieu of resolving a complaint through Sonoran Desert Institute Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. Sonoran Desert Institute will inform the parties in writing of any informal resolution process it offers and determines is appropriate, if any. Sonoran Desert Institute will not offer informal resolution to resolve a complaint when such a process would conflict with Federal, State, or local law. Before the initiation of an informal resolution process, Sonoran Desert Institute will explain in writing to the parties:

- The allegations;
- The requirements of the informal resolution process;
- That any party has the right to withdraw from the informal resolution process and initiate or resume grievance procedures at any time before agreeing to a resolution;
- That if the parties agree to a resolution at the end of the informal resolution process, they cannot initiate or resume grievance procedures arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- What information Sonoran Desert Institute will maintain and whether and how Sonoran Desert Institute could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed.

Supportive Measures:

Sonoran Desert Institute will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person's access to the Sonoran Desert Institute's education program or activity or provide support during Sonoran Desert Institute's Title IX grievance procedures or during the informal resolution process. For complaints of sex-based harassment, these supportive measures may include any items that comply with 106.44(g).

Disciplinary Sanctions and Remedies:

Following a determination that sex-based harassment occurred, Sonoran Desert Institute may impose disciplinary sanctions, which may include warnings up to expulsion.

Appendix: Definitions (106.2)

Complainant means:

- (1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations; or
- (2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations and who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.

Complaint means an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or its regulations.

Disciplinary sanctions means consequences imposed on a respondent following a determination under Title IX that the respondent violated the recipient's prohibition on sex discrimination.

Party means a complainant or respondent.

Relevant means related to the allegations of sex discrimination under investigation as part of these grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

Remedies means measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the recipient's education program or activity after a recipient determines that sex discrimination occurred.

Respondent means a person who is alleged to have violated the recipient's prohibition on sex discrimination.

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 aid, benefit, or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, 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 the Title IX regulations.

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, that is:

(1) *Quid pro quo harassment*. An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

(2) *Hostile environment harassment*. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (*i.e.*, creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(i) The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;

(ii) The type, frequency, and duration of the conduct;

(iii) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(iv) The location of the conduct and the context in which the conduct occurred; and

(v) Other sex-based harassment in the recipient's education program or activity; or

(3) *Specific offenses*.

(i) Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;

(ii) Dating violence meaning violence committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(1) The length of the relationship;

(2) The type of relationship; and

(3) The frequency of interaction between the persons involved in the relationship;

(iii) Domestic violence meaning felony or misdemeanor crimes committed by a person who:

(A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;

(B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

- (C) Shares a child in common with the victim; or
- (D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction; or
- (iv) Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - (A) Fear for the person's safety or the safety of others; or
 - (B) Suffer substantial emotional distress.

Supportive measures means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

- (1) Restore or preserve that party's access to the recipient's education program or activity, including measures that are designed to protect the safety of the parties or the recipient's educational environment; or
- (2) Provide support during the recipient's grievance procedures or during an informal resolution process.