Summary of Major Provisions of the Department of Education's Title IX Final Rule and Comparison to the NPRM

Issue	Provisions in Final Rule (Bold typeface indicates language added in the Final Rule, responsive to public comment)	Provisions in NPRM (Bold typeface indicates language not included in the Final Rule, responsive to public comment)
1. Notice to Schools, Colleges, Universities, and other Recipients of Federal Funds ("Schools"): Actual Knowledge	Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a school's Title IX Coordinator or any official of the school who has authority to institute corrective measures on behalf of the school, or to **any employee of an elementary and secondary school**. - **"Notice" includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in the Final Rule.**	Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a school's Title IX Coordinator or any official of the school who has authority to institute corrective measures on behalf of the school, or to **a teacher in the elementary and secondary context with regard to student-on-student harassment**.
2. Definition of Sexual Harassment for Title IX Purposes	Sexual harassment means **conduct on the basis of sex that satisfies one or more of the following**: (i) A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., *quid pro quo*); or (ii) Unwelcome conduct **that a reasonable person would determine** is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or (iii) Sexual assault (as defined in the Clery Act), **dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA)**.	Sexual harassment means: (i) A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., *quid pro quo*); or (ii) Unwelcome conduct **on the basis of sex**, that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or (iii) Sexual assault (as defined in the Clery Act **regulations**).

3. Sexual Harassment Occurring in a School's "Education Program or Activity" and "in the United States"	Schools must respond when sexual harassment occurs in the school's education program or activity, against a person in the United States. **Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.**	School must respond when sexual harassment occurs in the school's education program or activity, against a person in the United States.
4. Accessible Reporting to Title IX Coordinator; Adoption & Publication of Title IX Procedures	The Final Rule expands a school's obligations to ensure its educational community knows how to report to the Title IX Coordinator by stating: - Each school must designate **and authorize** at least one employee to coordinate its efforts to comply with its Title IX responsibilities, **which employee must be referred to as the "Title IX Coordinator."** - The school must notify **applicants for admission and employment**, students, **parents or legal guardians of elementary and secondary school students**, employees, and all **unions**, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated **as the Title IX Coordinator**. **- Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.**	The NPRM stated: - Each school must designate at least one employee to coordinate its efforts to comply with its Title IX responsibilities. - The school must notify **all its** students and employees of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated **pursuant to this paragraph**.

	- Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator. **- Schools must prominently display on their websites the required contact information for the Title IX Coordinator.**	
5. School's Mandatory Response Obligations: Deliberate Indifference Standard	A school must respond **promptly** to Title IX sexual harassment in a manner that is not deliberately indifferent, which means in a way that is not clearly unreasonable in light of the known circumstances. A school's mandatory response must include: - **Offering supportive measures to the complainant** (i.e., the person alleged to be the victim). - **The Title IX Coordinator promptly contacting the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.** **- Following a grievance process that complies with the Final Rule before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent.** **- Must not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, as a way of responding in a non-deliberately indifferent manner.**	A school must respond to Title IX sexual harassment in a manner that is not deliberately indifferent, which means in a way that is not clearly unreasonable in light of the known circumstances. The NPRM offered postsecondary institutions a "safe harbor" against a finding of deliberate indifference where, in the absence of a formal complaint, a postsecondary institution implemented supportive measures for the complainant. **This "safe harbor" has been removed in the Final Rule.** The Final Rule requires all schools to offer supportive measures to every complainant, eliminating the need to incentivize supportive measures through a safe harbor.

6. School's Mandatory Response Obligations: Investigating a Formal Complaint	The Final Rule requires schools to investigate formal complaints of sexual harassment and does not offer schools any safe harbors against the Department finding that a school responded deliberately indifferently or otherwise in a manner that constitutes sex discrimination or violates Title IX or Title IX regulations. **In response to a formal complaint, a recipient must follow a grievance process that complies with** the Final Rule**. With or without a formal complaint, a recipient must comply with** all the mandatory response obligations described in Issue #5 above.	The NPRM required schools to investigate and adjudicate formal complaints of sexual harassment **consistent with the grievance procedures described in** § 106.45. - The NPRM offered schools a "safe harbor" against a finding of deliberate indifference (or other finding that the school committed sex discrimination) if schools followed procedures consistent with § 106.45 in response to a formal complaint. **This "safe harbor" has been removed in the Final Rule.** - The NPRM required a school's Title IX Coordinator to file a formal complaint any time the school had notice of multiple reports of sexual harassment against a particular respondent (and then offered a "safe harbor" for following procedures consistent with § 106.45). **This mandate for the Title IX Coordinator to file a formal complaint, and corresponding "safe harbor," have been removed in the Final Rule.**

7. School's Mandatory Response Obligations: Defining "Complainant," "Respondent," "Formal Complaint" and "Supportive Measures"	When responding to sexual harassment (e.g., by offering supportive measures to a complainant, refraining from disciplining a respondent without following a Title IX grievance process, or investigating formal complaints of sexual harassment), the Final Rule clarifies the definitions of complainant, respondent, and formal complaint so that schools, students, and employees clearly understand how a school must respond to sexual harassment incidents in a way that supports the alleged victim and treats both parties fairly.	The NPRM defined complainant, respondent, formal complaint, and supportive measures as follows:
"Complainant"	The Final Rule defines "complainant" as an individual who **is alleged to be** the victim of conduct that could constitute sexual harassment. **- The Final Rule expressly recognizes the legal rights of parents and guardians to act on behalf of parties (including by filing formal complaints) in Title IX matters.**	The NPRM defined "complainant" as an individual who **has reported being** the victim of conduct that could constitute sexual harassment, **or on whose behalf the Title IX Coordinator has filed a formal complaint. For purposes of this definition, the person to whom the individual has reported must be the Title IX Coordinator or another person to whom notice of sexual harassment results in the school's actual knowledge**.
"Respondent"	The Final Rule defines "respondent" as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.	The NPRM defined "respondent" as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
"Formal Complaint"	The Final Rule defines "formal complaint" as a document **filed** by a complainant or **signed** by the Title IX Coordinator alleging sexual harassment against a respondent **and requesting that the school investigate the allegation of sexual harassment**. **- 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 school with which the formal complaint is filed**.	The NPRM defined "formal complaint" as a document **signed** by a complainant or by the Title IX Coordinator alleging sexual harassment against a respondent **about conduct within its education program or activity and requesting initiation of the school's grievance procedures consistent with § 106.45**. The Final Rule expands the definition of the kind of document that may constitute a formal complaint, and expands the ways in which a formal complaint may be

	- A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under the Final Rule, and by any additional method the school designates. **- The phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the school) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint**. **- Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party during a grievance process, and must comply with requirements for all Title IX personnel to be free from conflicts and bias**.	filed, so that the school and complainant clearly understand when a complainant desires the school to investigate sexual harassment allegations, and complainants (including parents and guardians, as applicable) have accessible options for filing a formal complaint.
"Supportive Measures"	The Final Rule retains the NPRM's definition of "supportive measures" but clarifies that the purpose of supportive measures is **equal access** to education. - The Final Rule clarifies that a school must treat a person as a complainant any time the school has notice that the person is alleged to be the victim of conduct that could constitute sexual harassment (regardless of whether the person themselves reported, or a third party reported the sexual harassment), and irrespective of whether the complainant ever chooses to file a formal complaint. - There is no time limit or statute of limitations on a complainant's decision to file a formal complaint. - When a Title IX Coordinator signs a formal complaint, such action is not taken on behalf of a complainant, and the Title IX Coordinator does not become a party.	The NPRM defined "supportive measures" to mean: - Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge, to the complainant or respondent, before or after the filing of a formal complaint or where no formal complaint has been filed. - Such measures are designed to restore or preserve **access** to the recipient's education program or activity, without unreasonably burdening the other party; protect the safety of all parties and the recipient's educational environment; and deter sexual harassment. - Supportive measures may include counseling, course-related adjustments, modifications of work or class schedules, campus escort services, increased security and monitoring of certain areas of campus, and mutual restrictions on contact between the parties.

8. Investigations	Similarly to the NPRM, the Final Rule states that the school must investigate the allegations in any formal complaint, send written notice to both parties of the allegations upon receipt of a formal complaint. The Final Rule adds the following privacy protection for parties during a Title IX sexual harassment investigation: **- The Final Rule states that the school cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the school obtains that party's voluntary, written consent to do so.**	The NPRM required school to investigate the allegations in a formal complaint, send written notice of the allegations to both parties upon receipt of a formal complaint, and investigate under specified procedures. The Final Rule retains those required procedures and adds protection against using a party's treatment records during a grievance process.
9. Hearings: (a) Live Hearings & Cross-Examination (for Postsecondary recipients)	The Final Rule adds provisions to the "live hearing with cross-examination" requirement for postsecondary institutions, and clarifies that hearings are optional for K-12 schools (and any other recipient that is not a postsecondary institution). (a) For **postsecondary institution recipients**, the school's grievance **process** must provide for a live hearing: - At the **live** hearing, the decision-maker(s) must permit **each 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** by the	Under the NPRM, adjudication of formal complaints differed for postsecondary institution recipients, and K-12 schools. The Final Rule retains this approach with clarifications. (a) For **institutions of higher education** the school's grievance **procedure** must provide for a live hearing: - At the hearing the decision-maker must permit each **party** to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. - Such cross-examination must be conducted by the party's advisor of choice; if a party does not have an advisor present at the hearing, the school must provide **that party**

	party's advisor of choice **and never by a party personally.** **-** At the request of either party, the recipient must provide for **the live hearing** to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party answering questions. - **Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.** - If a party does not have an advisor present at the **live** hearing, the recipient must provide **without fee or charge to that party, an advisor of the school's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party**. - If a party or witness does not submit to cross-examination at the **live** hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; **provided, however, that the decision-maker(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**. - **Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the school's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with**	**an advisor aligned with that party** to conduct cross-examination. - At the request of either party the recipient must provide for **cross-examination** to occur with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party answering questions. The Final Rule removes the "aligned with that party" language. If a school must provide a party with an advisor, such a provided advisor need not be an attorney providing legal representation to the party. No training or qualification is necessary for a person to serve as a provided advisor. Parties retain the opportunity to select their own advisor of choice. If a party does not exercise that opportunity then the school must provide an advisor of the school's own choosing, to that party, merely for the purpose of relaying the party's cross-examination questions to the other party and witnesses so that a party never personally conducts cross-examination. - If a party or witness does not submit to cross-examination at the hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility.

	technology enabling participants simultaneously to see and hear each other. **- Schools must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review**.	
(b) Hearings are Optional, Written Questions Required (for K-12 schools)	(b) For recipients that are elementary and secondary schools, **and other recipients that are not postsecondary institutions,** the school's grievance **process** may**, but need not, provide for a hearing**: - With or without a hearing, **after the school has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.** - The decision-maker(s) must explain to the party proposing the questions any decision to exclude questions as not relevant.	(b) For recipients that are elementary and secondary schools the school's grievance procedure may **require a live hearing**: - With or without a hearing, the decision-maker must, **after the school has incorporated the parties' responses to the investigative report, ask each party and any witnesses any relevant questions and follow-up questions, including those challenging credibility,** that a party wants asked of any party or witness. If no hearing is held, the decision-maker must afford each party the opportunity to submit written questions, provide each party with the answers, and allow for additional, limited follow-up questions. - The decision-maker must explain to the party proposing the questions any decision to exclude questions as not relevant.
(c) Rape Shield Protections for Complainants	(c) The Final Rule keeps the rape shield protections for complainants (as to all recipients whether postsecondary, K-12 or others), clarified to state: Questions and evidence about the complainant's sexual predisposition or prior sexual behavior **are not relevant**, unless such questions and evidence about the complainant's **prior** sexual behavior 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	(c) The NPRM provided rape shield protections for complainants in postsecondary institutions and K-12: All questioning **must exclude** evidence of the complainant's sexual behavior or predisposition, unless such evidence about the complainant's sexual behavior is offered to prove someone other than the respondent committed the conduct alleged by the complainant, or if the evidence concerns specific incidents of the complainant's

	complainant's **prior** sexual behavior with respect to the respondent and are offered to prove consent.	sexual behavior with respect to the respondent and is offered to prove consent.
10. Standard of Evidence	The Final Rule requires the school's grievance process to 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, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty. - The Final Rule removes the NPRM's restriction on use of the preponderance of the evidence standard.	The NPRM proposed that to reach the determination regarding responsibility, the decision-maker must apply either the preponderance of the evidence standard or the clear and convincing evidence standard, **although the recipient may employ the preponderance of the evidence standard only if the school uses that standard for conduct of code violations that do not involve sexual harassment but carry the same maximum sanction.**
11. Appeals	The Final Rule states that a school **must offer both parties** an appeal from a determination regarding responsibility, **and from a school's dismissal of a formal complaint or any allegations therein, on the following bases: procedural irregularity that affected the outcome of the matter; 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/or the Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome of the matter.** **- A school may offer an appeal equally to both parties on additional bases**.	The NPRM provided that **a school may choose to offer** an appeal: **- If a school offers an appeal**, it must allow both parties to appeal. **- Although a complainant may appeal on the ground that the remedies are not designed to restore or preserve the complainant's access to the school's education program or activity, a complainant is not entitled to a particular sanction against the respondent.** - The Final Rule removes the NPRM's restriction on complainants appealing the severity of sanctions.
12. Informal Resolution	The Final Rule retains a school's discretion to choose to offer informal resolution options, if both parties give voluntary, informed, written consent. The Final Rule adds: **- A school may 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 an investigation and adjudication of formal complaints.**	The NPRM allowed schools to choose to offer informal resolution options, only with the voluntary, informed, written consent of all parties.

	- A school may not require the parties to participate in informal resolution and may not offer informal resolution unless a formal complaint is filed. **- At any time prior to agreeing to a resolution, any party has the right to withdraw from informal resolution and resume the grievance process with respect to the formal complaint**. **- Schools must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student**.	
13. Retaliation Prohibited	The Final Rule expressly prohibits retaliation against any individual for exercising Title IX rights: **- No school or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing.** **- Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.** **- The school must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, or as required by law, or as necessary to carry out a Title IX proceeding.** **- Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination that schools must adopt and publish.**	

	- The exercise of rights protected under the First Amendment does not constitute retaliation. **- 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 part does not constitute retaliation; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.**	