

2024 Title IX Education Series: Translating the New Regulations into Your Title IX Policies and Procedures

Session 3: Expansion of Title IX Protections and
Definitions

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Meet Your Speaker Panel



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The background of the slide is a grayscale photograph of a library. It shows rows of bookshelves filled with books, with a person sitting at a table in the distance, reading. The lighting is soft, and the focus is slightly blurred, creating a calm and studious atmosphere.

learning **OUTCOME**

Learn what new or revised obligations will be required by Title IX teams to eliminate sex discrimination in their programs and activities.

Disclaimer

The information provided in this training does not, and is not intended to, constitute legal advice. Instead, all information, content, and materials available during this training are for training and general informational purposes only.



#1

Welcome & Quick Recap

A collection of tools including a wrench, pliers, a hammer, a tape measure, and a caliper. The tools are arranged on a dark surface. The wrench is at the top, pliers are below it, a hammer is in the middle, a tape measure is below the hammer, and a caliper is at the bottom. The word 'AGENDA' is written in large, bold, dark blue letters on a white background that is partially overlaid by the tools.

AGENDA

- 1) Welcome & Quick Recap**
- 2) Key Definition Changes**
- 3) Reporting/ Notification Requirements**
- 4) Training Requirements**

Welcome

These sessions will get you ready for compliance through a framework that emphasizes tips for operationalizing the 2024 regulations through real talk from a variety of institutional perspectives.

Recap

- Session 1: The Grievance Process Part I
- Session 2: The Grievance Process Part II
- **Session 3: Expansion of Title IX Protections and Definitions**

RESOURCE

- 2024 Final Rule: [Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance](#)
- 2024 Final Rule [Fact Sheet](#)
- Office for Civil Rights [Resource for Drafting Title IX Policies and Grievance Procedures](#)
- NPRM on [Sex-Related Eligibility Criteria for Male and Female Athletic Teams](#)



#2

Key Definition Changes

■ Complaint (§ 106.2)

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 and this part

■ Comparison

2020 Regulations: **Complaint** must be written & signed

2024 Final Regulations: **Complaint** may be oral or written

■ Practical Implications

- Report & intake
- Complaint / desire to initiate an investigation

** However, the Title IX Officer cannot require the Complainant to put their report or desire for an investigation in writing

Complainant

- **2020 Regulations:** An individual must be affiliated or participating in an education program or activity when the report was filed
- **2024 Final Regulations:** An individual must be affiliated or a former affiliate participating or attempting to participate in an education program or activity when the incident occurred.

Practical Implications

- An individual's right to initiate a Title IX complaint is no longer extinguished because they graduated, transferred or moved onto to another opportunity
- Similarly, an individual on campus for a day:
 - guest speaker
 - volunteer
 - students on a college visit are either attempting to or participating in an educational program or activity and therefore have a right to file a Title IX report or
 - sports, theater or fine arts fan

*Please note-this new regulation change is applied to all matters stemming from incidents August 1st moving forward. It will **not** be retroactive.*

Sex Discrimination

- **Discrimination on the Basis of Sex:**
 - Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity
- **Sex-Based Harassment:**
 - Quid pro quo harassment
 - Hostile environment harassment
 - Specific offenses
 - Sexual assault
 - Dating violence
 - Domestic violence
 - Stalking

Hostile Environment

- 1) unwelcome,
- 2) sex-based,
- 3) subjectively and objectively offensive, as well as
- 4) so severe **or** pervasive
- 5) that it results in a limitation or denial of a person's ability to participate in or benefit from the recipient's education program or activity.

■ Practical Implications

- Increased delegation
- Increased campus partnerships

Peer Retaliation

Retaliation by a student against another student for the purpose of:

- Interfering with Title IX rights, or
- Because the person participated in some way in the Title IX grievance procedure

■ Practical Implications

- Applies only to student-to-student retaliation.
- May sometimes also constitute sex-based harassment.
- Does not apply to First Amendment speech.

#3

Reporting/Notification Requirements

■ Reporting Requirements - Status

Employee and Student Notification requirements are treated the same.

■ Practical Implications

- New Regs - may necessitate changes to existing notification category
- Increases the number of notifications

REPORTING REQUIREMENTS - Category

Status

- Non- Confidential Employee

Vs

- Confidential Employee

Duty

- Reporting to the Title IX Coordinator or sharing information with the reporter

Vs

- Sharing information with the reporter

■ Non-Confidential: Category 1

Category 1: Responsible for providing aid, benefits, or services to students.

- Examples:
 - Professors
 - Deans
 - Chairs
 - Supervisors
 - Managers
 - Human Resources

■ Non-Confidential: Category 2

Category 2: Any person who is provided with information about conduct that reasonably may constitute sex discrimination under Title IX or the regulations.

This category serves as the “catch all” – if they are not deemed a Category 1 member, they are in Category 2.

■ Non-Confidential Employee: The Options

Option 1:

All report to Title IX Coordinator or Designee

OR

Option 2:

Category 1: Required to report to Title IX Coordinator or Designee

Category 2: Required to inform reporter or Complainant of contact information , reporting process etc.

■ Practical Implications

Option 1

- Number of notifications to Title IX
- Accurate information
- Knowledge of hotspots and patterns

Option 2

- Reduced number of notifications to the Title IX Office
- Incorrect information
- Less supportive measures
- Decreased knowledge of hotspots and patterns

■ Confidential Employees (§ 106.2)

- (1) 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 part, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
- (2) An employee of a recipient whom the recipient has designated as confidential under this part for the purpose of providing services to persons related to sex discrimination.

Confidential Employees

3) An employee of a postsecondary institution who is conducting a human-subjects research study designed to gather information about sex discrimination that is approved by the Institutional Review Board (IRB) of another postsecondary institution (*i.e.*, not the institution that employs the individual who is conducting the study).

■ Confidential Employee: Notification Requirement

Required to share information about how to contact the Title IX Coordinator and make a complaint of sex discrimination

POLL



Will your institution employ...

1. A singular Non-Confidential Employee Notification requirement
2. The two category Non-Confidential Employee Notification requirement
3. Unsure



#4

Training Requirements

■ General Employee Training (§106.8d)

- The recipient's obligation to address sex discrimination in its education program or activity,
- The scope of conduct that constitutes sex discrimination under Title IX, including the definition of "sex-based harassment," and
- All applicable notification and information requirements under §§ 106.40(b)(2) and 106.44.

■ Title IX Coordinator and their Designees (§ 106.8(d)(3))

- Specific responsibilities under §§ 106.8(a), 106.40(b)(3), 106.44(f), 106.44(g),
- The recipient's recordkeeping system and the requirements of § 106.8(f),
- Any other training necessary to coordinate the recipient's compliance with Title IX.

Title IX Investigators, Decision Makers, Others (§ 106.8(d)(2))

- The recipient's obligations under § 106.44;
- The recipient's grievance procedures under § 106.45, and if applicable § 106.46;
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; § 106.8(d)(2) and § 106.45(b)(1)
- The meaning and application of the term "relevant" in relation to questions and evidence § 106.2
- The types of evidence that are impermissible regardless of relevance under § 106.45, and if applicable § 106.46

Facilitators of Informal Resolution Processes (§ 106.8(d)(3))

- The rules and practices associated with the recipient's informal resolution process and
- How to serve impartially, including by avoiding conflicts of interest and bias.

■ Frequency & Practical Implications

- Upon hire
- Annually thereafter
- Within six (6) months of promotion

POLL



Which training format will you employ for your campus?

1. Online only
2. Online and in-person
3. In-person only
4. Unsure

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TAKEAWAYS



Today we covered:

- Key Definition Changes
- Reporting / Notification Requirements
- Training Requirements

QUESTIONS?

Thank you!

Please remember to complete the *event evaluation*.
Your comments will help us continually improve the
quality of our programs.