

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

Session 1: The New Grievance Process – Part I

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Meet Your Speaker Panel



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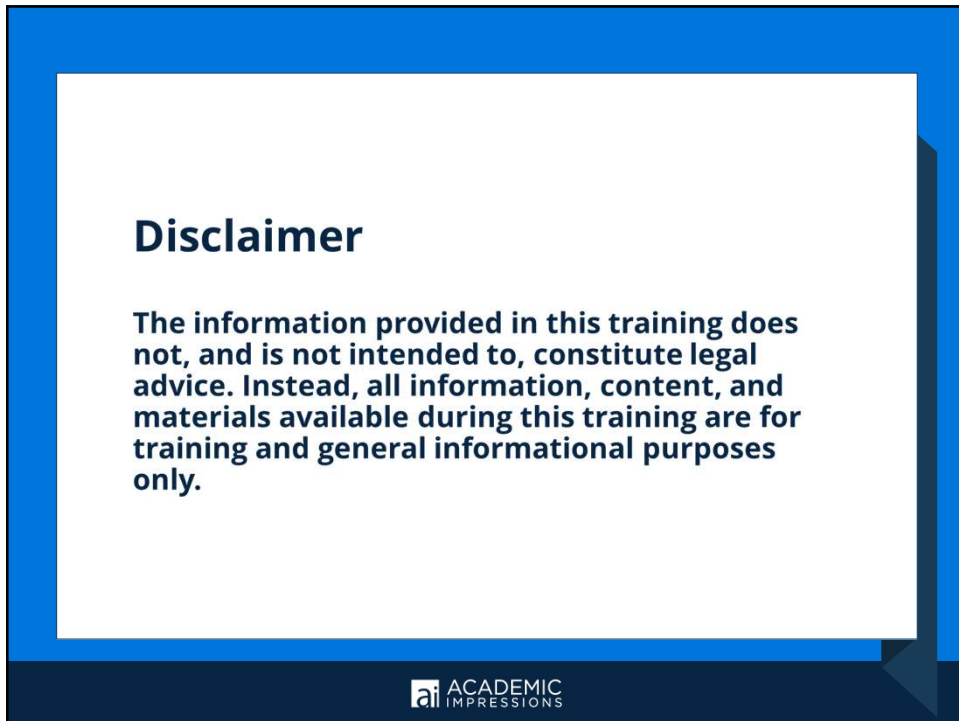
A background image of a library aisle with bookshelves on both sides, receding into the distance. The lighting is soft and even. A dark blue rectangular box is overlaid on the left side of the image, containing the text 'learning OUTCOME'. To the right of this box, on a white background, is the main text of the slide.

**learning
OUTCOME**

Learn about the amendments to the new regulations that will directly impact your Title IX grievance process.

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A slide with a white background and a thick blue border. The text is centered and reads 'Disclaimer' followed by a paragraph of text. At the bottom center, there is a logo for 'ACADEMIC IMPRESSIONS' consisting of a stylized 'ai' icon and the text 'ACADEMIC IMPRESSIONS'.

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.

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AGENDA

- 1) Welcome
- 2) New Discretion in the Grievance Process
- 3) Introduction to Four Stages of the Grievance Process
- 4) Stage 1: Evaluation

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#1

Welcome

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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.

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The 2024 Title IX Regulations: How We Got Here

- July 12, 2022: Title IX NPRM published
- April 13, 2023: TIX Athletics NPRM published
- April 19, 2024: Final Rule announced
- April 29, 2024: Final Rule [published in Federal Register](#)
- August 1, 2024: Final Rule will be effective and will apply to complaints of sex discrimination regarding alleged conduct that occurs on or after that date

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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](#)

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New Discretion in Grievance Procedures

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■ 2024 Final Rule: “Sex Discrimination” and “Sex-Based Harassment”

- **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

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■ The New Grievance Procedures

106.45: Grievance procedures for the prompt and equitable resolution of complaints of sex discrimination

- Includes sex discrimination other than sex-based harassment
- Includes sex-based harassment where no party is a student.

106.46: Grievance procedures for complaints of sex-based harassment involving student complainants or student respondents

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■ Which Grievance Process Applies?

- **Are you a postsecondary institution?**
 - YES: Go to next question
 - NO: 106.45 applies

- **Is one of the parties a student?**
 - YES: Go to next question
 - NO: 106.45 applies

- **Do the allegations include sex-based harassment?**
 - YES: Both 106.45 and 106.46 apply
 - NO: 106.45 applies

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■ Choose Your Adventure: Grievance Procedure(s)

- Flexibility and discretion in shaping your policy and procedures
- Options:
 - **1 Policy 1 Process** for all sex discrimination including sex-based harassment
 - **1 Policy 2 Processes** (one process for sex-based harassment involving a student; one process for everything else)
 - * *Pregnancy*

- *Whatever grievance process you choose, it must be: Fair, neutral, unbiased, adequate, equitable, reliable*

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■ 106.45(b): Basic Requirements for Grievance Procedures

1. Treat complainants and respondents equitably
2. Informed of allegations and applicable grievance procedure
3. Presumption that respondent is not responsible
4. Protection against retaliation
5. Reasonably prompt timeframes
6. TIX personnel must be trained, neutral, and objective
7. Institutional burden to gather evidence and assess credibility
8. Party participation and opportunity to be heard
9. Determination based on relevant and permissible evidence.
10. Written decisions with rationale delivered to the parties with option to appeal, if applicable.

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ACTIVITY

SCENARIO: Employing the 106.45 grievance procedure

- Complaint involves two university employees.
- Allegation of hostile environment sex-based harassment.
- Credibility is not in dispute.
- Title IX Coordinator or designee serves as the decision-maker.


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106.46 Grievance Requirements


106.45 requirements PLUS:

1. Written notice of allegations, process, determination 106.46(c), (d), (e)(1), (e)(5); 106.46(h)
2. Equal opportunity to have an advisor of choice and other people present 106.46(e)(2); 106.46(e)(3)
3. May permit expert witnesses 106.46(e)(4)
4. Process for decisionmakers to question Ps and Ws
5. Process for parties to propose questions and follow-up questions to Ps and Ws (questioning must be "live").
 - Effectively "cross-examination"
6. Written determination that includes required information under 106.46(h)(1)
7. Equal opportunity to appeal 106.46(i)

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POLL



Will your institution employ...

1. One policy, one process (compliant with 106.46)
2. One policy, two processes (separating 106.45 and 106.46)

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■ Choose Your Adventure: Adjudication

1. Investigator as adjudicator

- The same individual investigates and determines the outcome.
- Sole determiner of relevant evidence and credibility.

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■ Adjudication (con't)

2. Adjudication by hearing

- Investigator gathers and provides access to relevant information for party review and response
- Separate decision-maker(s) determine the outcome following a live hearing with real-time live questioning. (Must decide who asks the questions).
 - Option 1: Party advisor asks questions and/or
 - Option 2: Decision-maker asks questions

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■ Adjudication models (con't)

3. Adjudication no hearing

- Investigator gathers and provides access to relevant information for party review and response
- Separate decision-maker(s) determine the outcome without a hearing
- Investigator or decision-maker has individual meetings with parties and witnesses to fulfill the live questioning requirement.

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 A graphic for a poll. On the left, a dark blue square contains the word "POLL" in white, bold, sans-serif font, with a white bar chart icon below it. To the right, a white box contains the question "What adjudication model will your institution employ?" in bold, dark blue font, followed by a numbered list of three options: "1. Investigator as adjudicator", "2. Adjudication by hearing", and "3. Adjudication no hearing". The background of the entire graphic shows several hands raised in a voting gesture.

POLL

What adjudication model will your institution employ?

1. Investigator as adjudicator
2. Adjudication by hearing
3. Adjudication no hearing

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#3

Introduction to Four Stages of the Grievance Process

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■ Four Stages of the Grievance Process

- 1: Evaluation
- 2: Investigation
- 3: Determination
- 4: Appeal



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Stage 1: Evaluation

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Grievance Process Stage 1: Evaluation

Evaluation is a “major stage” of the grievance process that includes the recipient’s decision whether to dismiss or investigate a complaint of sex discrimination 106.45 (b)(4).

Upon allegation receipt, TIXCO must: 106.44(f)(1)(i)-(iv)

1. Treat parties equitably;
2. Offer and coordinate supportive measures;
3. Notify complainant of grievance procedures and the IR process;
4. Determine whether to initiate a complaint

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■ Initiation of Complaint by TIXCO

Considerations: 106.44(f)(1)(v)-(vi)

1. Complainant's request not to proceed;
2. Complainant's reasonable safety concerns;
3. Risk that additional acts of sex discrimination would occur;
4. Severity of alleged sex discrimination;
5. Age and relationship of parties;
6. Scope of alleged sex discrimination;
7. Availability of evidence; and
8. Whether recipient could end the alleged sex discrimination and prevent its recurrence without initiating its grievance process

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■ Evaluation of Complaints/Allegations


- a. Outreach to potential complainant/s
- b. Jurisdiction assessment: TIX, other policies
- c. Which policy provisions?
- d. Clery reporting requirement?
- e. Other appropriate notifications?
- f. Identify available supportive measures
- g. Identify appropriate informal resolution options
- h. Any critical information needed to evaluate the allegation?

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Evaluation Conclusions

1. Supportive measures 106.2, 106.44g
 - May be coordinated and offered by TIXCO
2. Dismiss
 - All dismissal is discretionary under 106.45; notice required under 106.46
3. Informal Resolution 106.44(k)
 - Permitted upon receiving information about conduct that reasonably may constitute sex discrimination, and no constraints for higher ed
4. Formal Resolution
 - See 106.45 and 106.46
5. Initiation of complaint by TIXCO 106.44(f)

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TAKEAWAYS



Today we covered:

- Critical areas of discretion in the new TIX grievance process
- An introduction to the four stages of the grievance process
- Stage 1: Evaluation

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