




TRAINING ON TITLE IX 2024 REGULATIONS

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Before we begin

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Today we will discuss

- The expanded scope of the new regulations and the revised definitions
- Mandatory reporting requirements of various institutional employees
- Different grievance process requirements and options for different kinds of sex discrimination matters
- Training requirements for campus members

Where we are today

- Institutions are currently operating under the 2020 sexual harassment regulations
- Institutions will change to operating under the new 2024 regulations for sex discrimination on August 1 unless subject to an injunction
- New regulations were issued in April 2024
- New regulations go into effect August 1, 2024
- Old regulations still apply to conduct occurring before August 1, 2024

Expansion: Sex Discrimination

- Includes but is not limited to:
 - *Sex-based harassment*
- Sex discrimination includes discrimination on the basis of:
 - *Sex stereotypes*
 - *Sex characteristics*
 - *Sexual orientation*
 - *Gender identity*
 - *Pregnancy or related conditions*
- Also: clarification of retaliation

Gender identity and the 2024 Regulations

- Discrimination based on gender identity is explicitly identified as a form of discrimination based on sex
- Where Title IX permits separation on the basis of sex, institution cannot do so in a manner that subjects a person to more than de minimus harm
- Preventing a person from participating in a program or activity consistent with their gender identity subjects a person to more than de minimus harm

Sex-Based Harassment:

Three categories of conduct

- Category One: Quid Pro Quo

- *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*
- *Broadened to include acts of an employee, agent, or other person authorized by the institution to provide an aid, benefit, or service of the institution*

Sex-Based Harassment:

Three categories of conduct

- Category Two: 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).*
 - *Broadened definition to conduct that is severe OR pervasive*
 - *Provides factors to assess for hostile environment*
 - The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
 - The type, frequency, and duration of the conduct;
 - 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;
 - The location of the conduct and the context in which the conduct occurred; and
 - Other sex-based harassment in the recipient's education program or activity

Sex-Based Harassment:

Three categories of conduct

- Category Three: Clery crimes
 - *Sexual assault, dating/domestic violence, and stalking*

Additional expansion: Pregnancy and related conditions

- Institution must not discriminate in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions
- Institutions may not adopt or implement any policy, practice, or procedure concerning a student's current, potential, or past parental, family, or marital status that treats students differently on the basis of sex
- Institution must provide reasonable modifications based on individualized needs but don't have to fundamentally alter programs
- Student has a right of reinstatement to academic status after leave of absence
- Includes an explicit requirement for lactation space for students other than a bathroom
- **Pregnancy disclosures by a student and the requirement of providing information**

Notification and information requirements (i.e., “mandatory reporting”)

- Differ, based on category of employees
- Officials with authority, or employees who have responsibility for administrative leadership, teaching, or advising: must report to TIXC
- All other non-confidential employees: must either report to TIXC or provide reporting party the TIXC’s contact info
- Confidential employees: must explain to any disclosing/reporting person:
 - *Their status as confidential*
 - *The circumstances in which they are not required to notify the TIXC about possible sex discrimination*
 - *How to contact the TIXC*
 - *How to make a complaint of sex discrimination*
 - *That the TIXC may be able to offer and coordinate supportive measures, initiate informal resolution, and conduct an investigation*

Other expansions worth noting

- Definition of student: a person who has gained admission
- Response obligations: expands to include conduct that occurred outside the institution's program or activity or outside the U.S., if it contributes to a sex-based hostile environment
- Investigation obligations: definition of complaint
- Duties of TIXC
- Appeal rights at various stages
- Availability of informal resolution

QUESTIONS? AND A BREAK



Complaints initiated by Title IX Coordinator

- Factors to consider:

- *The Complainant's request not to proceed with initiation of a complaint*
- *The Complainant's reasonable safety concerns regarding initiation of a complaint*
- *The risk that additional acts of sex discrimination would occur if a complaint is not initiated*
- *The severity of the alleged sex discrimination*
- *The age and relationship of the parties, including whether the Respondent is an employee*
- *The scope of the alleged sex discrimination, including whether there is information to suggest there is a pattern, ongoing sex discrimination, or that multiple people were impacted*
- *The availability of evidence to assist a decisionmaker in their determination*
- *Whether the institution could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures*

Grievance procedures: two sets

- Complaints of sex discrimination
- Complaints of sex-based harassment involving a student party

Procedures for complaints of sex discrimination (§106.45)

- Fewer elements in written notice of allegations
- No mandatory dismissals; only permissive dismissals
- Evidence review: must provide opportunity to access relevant evidence OR a description of the evidence with reasonable opportunity to respond
- No requirement of investigation report
- Doesn't require institution to permit advisors
- No requirement of a hearing

Procedures for complaints of sex discrimination (§106.45) (cont'd)

- Decisionmaker (who may be the same investigator who conducted investigation) must be allowed to question parties and witnesses where credibility in issue
- Preponderance of the evidence, unless ...
- Written notice of determination must include rationale for determination
- Appeals

Procedures for complaints of sex-based harassment involving a student party (§106.46)

- More detailed notice letter
- Must allow advisors
- Evidence review: must provide access to relevant evidence OR a written investigation report summarizing that evidence, with reasonable opportunity to respond
- Written determination must include decisionmaker's evaluation of the relevant evidence and determination of whether sex-based harassment occurred

Procedures for complaints of sex-based harassment involving a student party (§106.46) (cont'd)

■ Must include mechanism that permits decision maker to question parties and witnesses. Can, in theory, do this in one of three ways:

- *Single investigator model (modified)*
- *Nonhearing decisionmaker model*
- **Hearing decisionmaker model**

QUESTIONS? AND A BREAK



Training for all employees

- Institution's obligation to address sex discrimination
- The scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment
- All applicable notification and information requirements related to pregnancy and related conditions

Training for all Title IX implementers (including investigators, decisionmakers, and those who handle supportive measures)

- (Training for all employees, plus)
- Institution's obligations to respond to sex discrimination (including mandatory reporting)
- Institution's grievance procedures under 106.45 and, if applicable 106.46
- How to serve impartially, including not pre-judging the facts, conflicts of interest, and bias
- The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance

Training for facilitators of informal resolution

- (Training for all employees, plus)
- The rules and practices associated with the institution's informal resolution process
- How to serve impartially, including by avoiding conflicts of interest and bias

Training for Title IX Coordinator and designees

- (Training for all employees, training for all implementers, training for facilitators of informal resolution, plus)
- Their specific responsibilities to coordinate efforts to comply with Title IX, all duties of the TIXC spelled out in the regulations
- The recordkeeping requirements of the regulations

QUESTIONS?

AND
THANK YOU!

