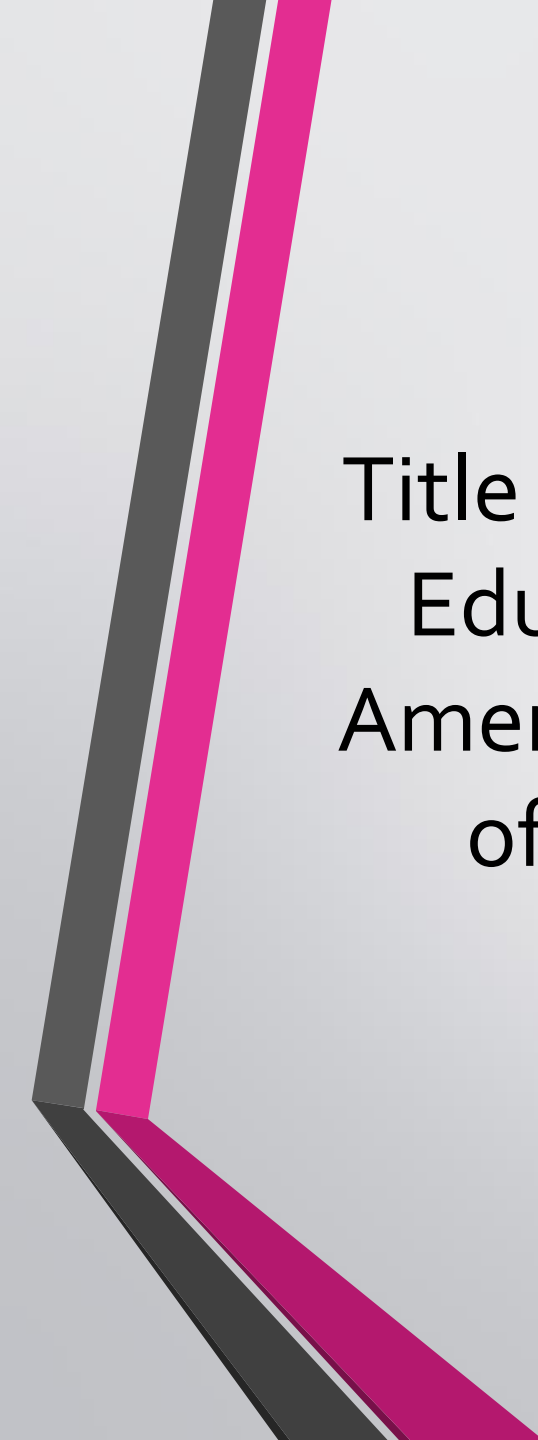


TITLE IX

The 2024 Amendments
effective

August 1, 2024



Title IX of the Education Amendments of 1972

Prohibits sex discrimination in education programs that receive federal funding.

Sexual harassment, including sexual assault, is a type of sex discrimination that is banned by Title IX.

Administrative Requirements:

- Designate Title IX Coordinator
- Adopt, publish, and implement nondiscrimination policy
- Recordkeeping - must maintain for seven years:
- Documentation of each complaint
- Documentation of actions school took to respond to notices of sex discrimination
- Title IX training materials
- Must be made available upon request

Highlights of New Title IX Regs

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Administrative Requirements:

Provide Notice of Non-Discrimination to students, applicants, etc.

a) Statement school does not discriminate on basis of sex and prohibits sex discrimination

b) Statement that inquiries about Title IX can be made to Title IX

Coordinator, OCR, or both

c) Contact information for Title IX Coordinator

d) How to locate nondiscrimination policy & grievance procedures

e) How to report and make complaints of sex discrimination

Highlights of New Title IX Regs

Administrative Requirements: Training:



All employees-must be trained on school's obligation to address sex discrimination and the scope of conduct that constitutes sex discrimination



Investigators, decisionmakers, etc.-must also be trained on school's grievance procedures, how serve impartially and w/o bias, and understanding meanings of "relevant" evidence and types of impermissible evidence



Facilitators of informal resolutions- must be trained on school's informal resolution process and how to serve impartially w/o bias



Title IX Coordinators -must be trained in understanding their responsibilities as Title IX coordinators, school's recordkeeping policies & obligations, and any other training necessary for their role



All must receive training related to their responsibilities promptly upon hiring or change of position, and annually thereafter.

Institutional disciplinary hearings must be:

Conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the victims and promotes accountability”

20 USC 1092(f)(8)(iv)(I)(bb)

**VAWA (Clery
Act) Training
Requirements**



Highlights of New Title IX Regs

Definition of Sex-Based Harassment Includes:

- Quid pro quo harassment (*no change*) Definition:(a favor or advantage granted or expected in return for something)
 - VAWA offenses (*no change*); and/or
 - Hostile environment harassment
- **Hostile Environment:** 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
- *2020 Rule did not include "hostile environment," rather prohibited sex-based conduct only if it is "so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity"*

- Regulations apply to every recipient and to all sex discrimination occurring under a recipient's education program or activity in the United States. This includes:
 - ✓ Conduct that occurs in a building owned or controlled by approved student organization
 - ✓ Conduct subject to recipient's disciplinary authority
- A recipient has an obligation to address a sex-based **hostile environment** under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred

Highlights of New Title IX Regs

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Factors in considering whether a Hostile Environment exists:



1
The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;

2
The type, frequency, and duration of the conduct;

3
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;

4
The location of the conduct and the context in which the conduct occurred;
and

5
Other sex-based harassment in the recipient's education program or activity

Highlights of New Title IX Regs

Title IX Coordinator Response to Sex Discrimination:

Treat the complainant and respondent equitably

Offer and coordinate supportive measures, as appropriate, for the complainant.

Notify the complainant, the individual who reported the conduct, of the grievance procedures and the informal resolution process, if available and appropriate.

If a complaint is made, notify the respondent of the grievance procedures and the informal resolution process (if applicable)

In response to a complaint, initiate the school's grievance procedures or informal resolution process

In the absence of a complaint or the withdrawal, make a fact-specific determination that, based on factors listed in the regulation, the Title IX Coordinator may/should initiate a complaint

If the Title IX Coordinator initiates a complaint, notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others.

Regardless of whether a complaint is initiated, take other appropriate prompt and effective steps to ensure that sex discrimination does not continue, in addition to providing remedies to an individual complainant

Highlights of New Title IX Regs

Grievance Procedures for All Sex Discrimination Complaints:

Notice of allegations to the parties

Dismissals permitted in certain circumstances as long as the recipient offers an appeal and, as appropriate, supportive measures and remedial steps

Consolidation permitted for complaints arising out of the same facts or circumstances

Investigation requirements:
(§ 106.45(f))

A process that enables the decisionmaker to question parties and witnesses to adequately assess credibility

Clear processes for the determination of whether sex discrimination occurred

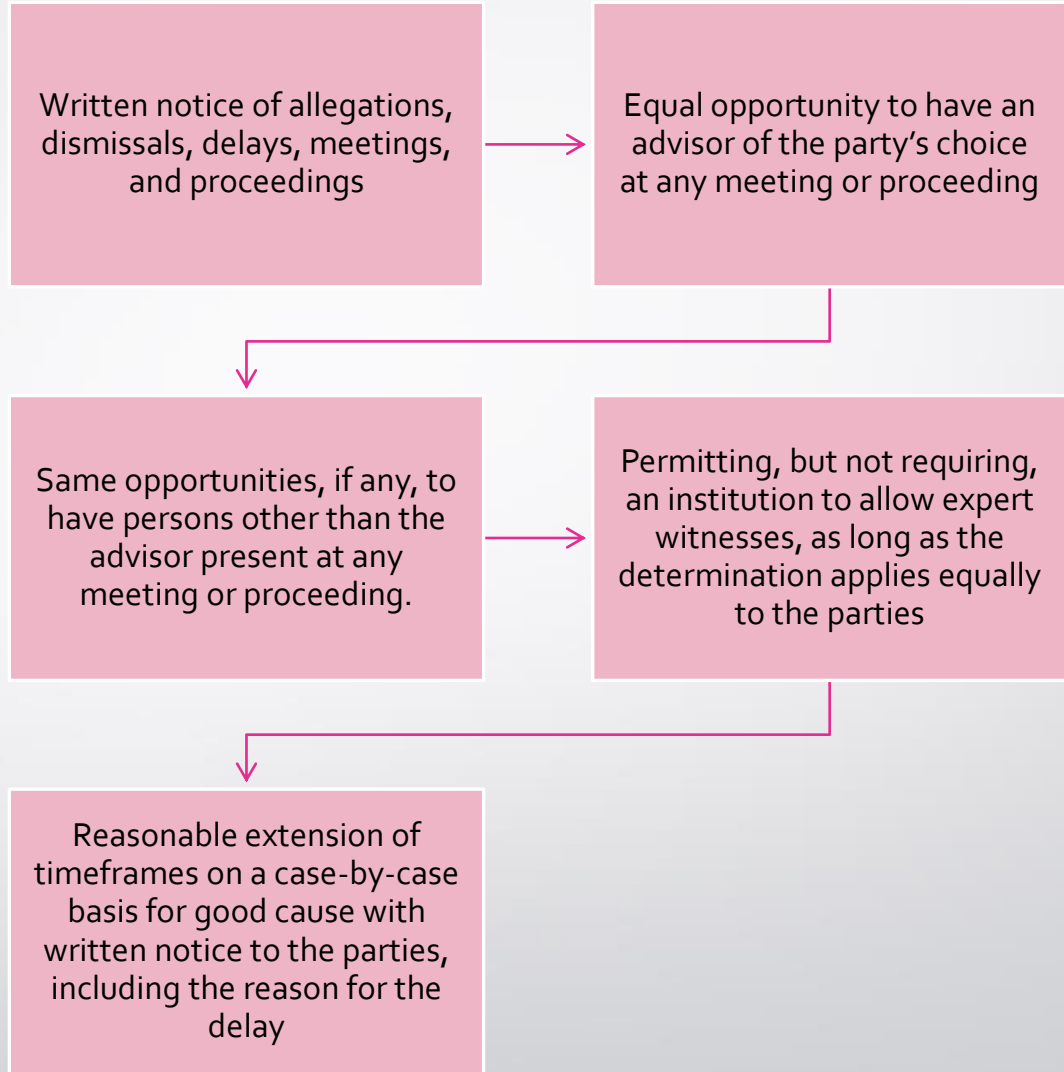
An appeal process

Parties permitted to participate in an informal resolution process if school has one

Describe range of possible supportive measures and disciplinary sanctions & remedies

Highlights of New Title IX Regs

Additional Requirements for Grievance Procedures Involving Postsecondary Students:



Highlights of New Title IX Regs

Additional Requirements for Grievance Procedures Involving Postsecondary Students:



Equal opportunity to access relevant and not otherwise impermissible evidence or a written report summarizing the evidence



A process enabling the decisionmaker to question parties and



witnesses to adequately assess a party's or witness's credibility when credibility is in dispute and relevant



Permitting, but not requiring, a live hearing



Permitting a decisionmaker to weigh the credibility of a party or witness, including when party or witness refuses to respond



Simultaneous written notice of determination to parties



Appeal opportunity

Highlights of New Title IX Regs

Retaliation is prohibited

- Retaliation is defined as 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 the regulations, or because the person has reported possible sex discrimination, made a sex-discrimination complaint, or participated or refused to participate in any way in a recipient's Title IX process.
- Peer retaliation, which is defined as retaliation by one student against another student, is also prohibited

Provide reasonable modifications for students
Ensure access to clean, private space for lactation

Must also provide employees with reasonable break
time for lactation and ensure they can access a clean
and private lactation space

Highlights of
New Title IX
Regs

Pregnancy &
Related
Conditions –
School must:

Transgender Students

Joint Dear Colleague Letter issued by DOJ & ED on
5/13/16

- Treated a student's gender identity as the student's sex for Title IX purposes
- School could not treat a transgender student differently from the way it treated other students of the same gender identity
- • A school's failure to treat students consistent with their gender identity may have created or contributed to a hostile environment in violation of Title IX

JOINT DOJ & ED LETTER WITHDRAWN BY TRUMP
ADMINISTRATION 2/17/17

EXECUTIVE ORDER 14021, 86 Fed. Reg. 13,803 (March
11, 2021)

- [A]ll students should be guaranteed an educational environment free from discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity.

Transgender Students

OCR Notice of Interpretation
– Published in Federal Register

June 22, 2021

In 2020, the Supreme Court in *Bostock v. Clayton County*, 140 S.

Ct. 1731, 590 U.S. ____ (2020), concluded that discrimination

based on sexual orientation and discrimination based on gender identity inherently involve treating individuals differently because of their sex.

- It reached this conclusion in the context of Title VII of the Civil Rights Act, which prohibits sex discrimination in employment.

The Department issued this Interpretation to make clear that the Department interprets Title IX's prohibition on sex discrimination to encompass discrimination based on sexual orientation and gender identity.

Final regulations prohibit separating or treating any person differently based on sex in a manner that subjects that person to more than de minimis harm (except in very limited circumstances)

Final regulations clarify that policies and practices that prevent a student from participating in a school's education program or activity consistent with their gender identity impose more than de minimis harm on that student on the basis of sex, and therefore generally violate Title IX's nondiscrimination mandate.



**Sexual
Orientation
& Gender**

State Policies

State legislatures have also addressed the issues of sexual misconduct on

college campuses, including:

- Affirmative Consent
- Transcript Notations
- Mandatory Reporting
- Access to Medical Attention
- Memorandums of Understanding (MOU)
- Climate Surveys
- Good Samaritan Provisions

To the extent of a conflict between State or local law and Title IX, the obligation to comply with Title IX takes priority

Things to Consider:

- Review Non-Discrimination Policy
- Notice of Non-Discrimination
- ✓ *Publication in catalog, website, applications, etc.*
- Training
- ✓ *All need some, some need more*
- Update Grievance Policies & Procedures-Consider VAWA overlap

