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Overview of Major Title IX Changes

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Disclaimer

Please note that this presentation is intended for informational and educational purposes and to provide general statements from federal law, state law, and agency guidance. Federal and state law may differ on particularized areas and this outline does not include all legal considerations. Each situation varies based on the individualized facts and the law is constantly evolving.

Please consult with your attorney for specific legal information, advice, or individualized inquiries.





TOPICS

Remind Me: What is Title IX?

- Basic Requirements
- Enforcement Considerations
- A Brief History

Major Changes in New Regulations

- Scope of Title IX Coverage
- Responding to Title IX Conduct
- Other Changes

Remind Me: What is Title IX?

- Prohibits discrimination “on the basis of sex”
- Education programs and federally funded schools (whether or not sponsored by the educational institution)
- Protects students, employees, applicants, & all other persons

The U.S. Department of Education’s Office of Civil Rights (“OCR”) interprets Title IX to prohibit sexual violence and harassment as forms of “sex discrimination.”

Basic Requirements

1. Designate Title IX Coordinator to coordinate the recipient's responsibilities in complying with Title IX
2. Publish Notice of Non-Discrimination and Title IX Grievance Procedures
3. Utilize grievance procedures to respond to complaints of conduct that could violate Title IX
4. Ensure educational environment is free from sex discrimination that prevents individuals from accessing the education programs and/or activities

Definitions



Sex discrimination:

- Separating or treating any person differently in a manner that subjects that person to more than minimal harm based on sex, sex stereotypes or characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Sex-based harassment:

- Sexual harassment (see next slides)
 - Harassment based on sex stereotypes or characteristics
 - Harassment based on pregnancy or related conditions
 - Harassment based on gender identity and sexual orientation
- or
- “Other sex-based conduct”

Definitions



Sex-based harassment:

- Quid pro quo: employee, agent, or other authorized person explicitly or implicitly conditions provision of aid, benefit, or service on a person's participation in unwelcome sexual conduct
- Hostile environment: unwelcome sex-based conduct that "based on the totality of the circumstances" so subjectively and objectively offensive and so severe or pervasive that it limits or denies a person's ability to participate in or benefit from program or activity.

Definitions

Specific offenses: Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation



Definitions



Specific offenses: Dating violence meaning violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - the length of the relationship
 - the type of relationshipand
 - the frequency of interaction between the persons involved in the relationship

Definitions



Specific Offenses: Domestic violence meaning felony or misdemeanor crimes committed by a person who:

- Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim
- Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner
- Shares a child in common with the victim

or

- Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction

Definitions

Specific Offenses: Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for the person's safety or the safety of others
- or
- Suffer substantial emotional distress



Enforcement Considerations

1. Agency Enforcement – OCR

- Voluntary resolution
- Equitable relief



2. Private Litigation – Court

- Monetary damages
- Equitable relief
- Consider Complainant or Respondent as Plaintiff

A Brief History

- **June 23, 1972** – Title IX (20 U.S.C. § 1681) initially signed into law by President Nixon.
- **1975** – U.S. Department of Health, Education, and Welfare published Title IX regulations.
- **1998/1999** – U.S. Supreme Court has landmark decisions in *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998) and *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999)
- **August 14, 2020** – U.S. Department of Education published updated Title IX regulations.
- **August 1, 2024** – U.S. Department of Education publishing updated Title IX regulations.

Major Changes in New Regulations

- Scope of Title IX Coverage
 - Sex-Based Harassment and Discrimination
 - Conduct subject to Recipient's disciplinary authority
 - Recipient has "knowledge" of conduct
- Responding to Title IX Conduct
 - Recipient must respond promptly and effectively
 - Complainant's decision about filing complaint
 - Recipient's decision regarding appropriate grievance procedures
 - Informal resolution permitted broadly
- Other Changes

Scope of Title IX Coverage



Scope of Title IX Coverage

1. Type of Conduct Covered by Title IX

Old 2020 Regulations

- Sexual Harassment that is so “severe, pervasive, and objectively offensive” it effectively denies a person equal access to the education program or activity.
- No specific statement if it covers claims of harassment on the basis of sexual orientation and gender identity.

New 2024 Regulations

- Sexual Harassment that is unwelcome, subjectively and objectively offensive, and so severe or pervasive it limits or denies a person’s ability to participate in or benefit from the education program or activity.
- Covers discrimination on the basis of sex characteristics, sexual orientation, and gender identity.

Scope of Title IX Coverage

2. Where Conduct Covered by Title IX Occurs

Old 2020 Regulations

- Conduct occurred within recipient's "education program or activity."
- Recipient had control over the environment where the conduct occurred and the respondent at the time the conduct occurred.

New 2024 Regulations

- Conduct occurred within the recipient's "education program or activity."
- Includes conduct that is "subject to the recipient's disciplinary authority." Also includes conduct that occurred in building owned/controlled by recipient or officially recognized student organization.

Scope of Title IX Coverage

3. Who Has Knowledge of Conduct Covered by Title IX

Old 2020 Regulations

- Recipient with “actual knowledge” of allegations of sexual harassment must address conduct.
- Who can have actual knowledge:
 - (a) K-12 setting = any employee;
 - (b) Post-Secondary setting = Title IX Coordinator and employee “with authority to institute corrective measures.”

New 2024 Regulations

- Recipient with “knowledge” of conduct that reasonably may constitute sexual discrimination must address conduct.
- Who can have knowledge: when Title IX Coordinator is notified by non-confidential employee obligated to report the conduct.

Responding to Title IX Conduct



Responding to Title IX Conduct

4. General Response Required to Title IX Conduct

Old 2020 Regulations

- Recipient must respond in a manner that is not “deliberately indifferent.”
- Complainant or Title IX Coordinator may file complaint to initiate the “formal grievance process.”
- Formal grievance procedures

New 2024 Regulations

- Recipient must respond “promptly and effectively.”
- Complainant initiates filing a complaint. Title IX Coordinator only files complaint in limited circumstances.
- Grievance procedures

Responding to Title IX Conduct

5. Communication with Complainant

Old 2020 Regulations

- Title IX Coordinator could file complaint contrary to complainant's wishes.
- Title IX Coordinator required to speak with Complainant regarding supportive measures.

New 2024 Regulations

- Title IX Coordinator only files complaint if the conduct presents "imminent and serious threat to someone's health or safety" or prevents recipient from ensuring equal access based on sex.
- Title IX Coordinator required to speak with Complainant regarding supportive measures and grievance process.

Responding to Title IX Conduct

6. Grievance Procedures – General Information

Old 2020 Regulations

- Formal Grievance Procedures vs. Informal Report
- Formal grievance procedures apply only when formal complaint is filed.
- Formal grievance procedures outlined in Title IX regulations

New 2024 Regulations

- General Grievance Procedures
- General grievance procedures apply to any complaint that is submitted.
- General grievance procedures primarily determined by recipient

Responding to Title IX Conduct

6. Grievance Procedures – General Information, *continued*

Old 2020 Regulations

- “Prompt” timelines
- Equitable treatment of parties
- Presumption that respondent is not responsible until conclusion
- No conflict of interest or bias

New 2024 Regulations

- Reasonably prompt timeframes
- Equitable treatment of parties
- Presumption that respondent is not responsible until conclusion
- No conflict of interest or bias

Responding to Title IX Conduct

7. Grievance Procedures – Dismissal/Consolidation

Old 2020 Regulations

- Dismissals permitted in certain circumstances
- Consolidation permitted for complaints arising out of the “same facts and circumstances.”

New 2024 Regulations

- Dismissals permitted in certain circumstances, provided recipient takes prompt and effective steps to ensure sex discrimination does not continue or recur
- Consolidation permitted for complaints arising out of the “same facts or circumstances.”

Responding to Title IX Conduct

8. Grievance Procedures – Investigation

Old 2020 Regulations

- Formal notice to parties
- Investigation by Investigator
- 10 days to review all evidence and provide response
- Investigation report issued

New 2024 Regulations

- Notice of allegations to parties
- Equal opportunity for parties to present fact witnesses and other relevant evidence
- Equal opportunity for parties to access evidence or receive description of evidence provided must prevent unauthorized disclosure of information/evidence
- Reasonable opportunity for parties to respond to evidence

Responding to Title IX Conduct

9. Grievance Procedures – Decision

Old 2020 Regulations

- Investigation report issued
- 10 days to review investigation report, provide response/question

- Decision by Decision-Maker
- Appeal to Appellate Decision-Maker

New 2024 Regulations

- Process that enables the Decision-Maker to question parties and witnesses
- Process for the determination of whether sex discrimination in violation of Title IX occurred
- Decision by Decision-Maker
- Appeal to Appellate Decision-Maker if provided in other proceedings

Responding to Title IX Conduct

10. Informal Resolution

Old 2020 Regulations

- Informal resolution process only available if formal grievance procedures were initiated.
- Must be voluntary by both parties.

New 2024 Regulations

- Informal resolution process available any time recipient receives complaint or has information about conduct that could constitute sex discrimination.
- Must be voluntary by both parties.

Other Changes



Scope of Title IX Coverage

11. Title IX Roles

Old 2020 Regulations

- Title IX Coordinator
 - *Could also be Investigator*
- Title IX Investigator
- Title IX Decision-Maker
- Title IX Appellate Decision-Maker

New 2024 Regulations

- Title IX Coordinator
 - *Could also be Investigator/Decision-Maker*
- Title IX Investigator/Decision-Maker
 - *Could also be single person fulfilling both roles or two people each fulfilling one part of role*

Scope of Title IX Coverage

11. *K-12 Setting*: Title IX Interplay with IDEA

Old 2020 Regulations

- Title IX had no specific requirements regarding interplay with IDEA
- General requirements under the IDEA to follow a student's IEP and provide appropriate due process prior to issuing disciplinary consequences

New 2024 Regulations

- Title IX Coordinator required to “consult with one or more members of the IEP team” to help ensure IDEA compliance during grievance process
- General requirements under the IDEA to follow a student's IEP and provide appropriate due process prior to issuing disciplinary consequences

Scope of Title IX Coverage

12. Title IX Training Requirements

Old 2020 Regulations

- Title IX Coordinator, Investigator, Decision-Makers Training → required
- Employee Training → highly recommended
- Student Training → not required

New 2024 Regulations

- Title IX Coordinator, Investigator, Decision-Makers Training → required
- Employee Training → required
- Student Training → required

Required Training

All employees must be trained on:

- 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 sex-based harassment)

and

- All applicable notification and information requirements under rules 106.40 and 106.44.

Required Training

Notification and information requirements for all employees:

- If any employee becomes aware of a student's pregnancy or related condition, that employee must provide that student, parent, or guardian with the Title IX Coordinator's contact information and notify that person that the Title IX Coordinator can coordinate specific actions to prevent discrimination and ensure the student's equal access to program/activity.

Required Training

Notification and information requirements for all employees:

- All K-12 employees who are not confidential employees must notify the school district's Title IX Coordinator when they have information about conduct that may reasonably constitute sex discrimination.
- For all other recipients, an employee who is not a confidential employee and who has either the authority to institute corrective measures or responsibility for administrative leadership, teaching, or advising must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination.

Required Training

Notification and information requirements for all employees:

- All other non-K-12 employees must:
 - Notify the Title IX coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IXor
 - Provide the contact information for the Title IX Coordinator and information on how to make a complaint of sex discrimination to any person who provides the employee with information about conduct that reasonably may constitute sex discrimination under Title IX.

Required Training

All investigators, decision-makers, and other persons who are responsible for implementing grievance procedures or with authority to modifying or terminating supportive measures must be trained on:

- the recipient's obligations under 106.44
- the recipient's grievance procedures
- how to serve impartially, including avoiding prejudice, conflicts of interest, and bias
- the meaning and application of the term "Relevant" in questions and evidence

and

- the types of evidence that are impermissible regardless of relevance

Elements of a Title IX Investigation

Bias: Prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair. (*Oxford English Dictionary*)

Conflict of interest: A situation in which the concerns or aims of two different parties are incompatible.” (*Oxford English Dictionary*). For example, the investigator has a personal relationship or a relationship beyond a normal administrator-student relationship.

Impartiality: Not supporting or taking the side of any party involved in the complaint. (*See Cambridge Dictionary*)

Impartiality & Bias

An unconscious attitude or stereotype which affects perceptions and interactions without intent or recognition

Types:

- Confirmation Bias – Paying more attention to information which affirms existing belief systems, and disregarding contradictory information
- Attribution Bias: More favorable assessments of behaviors and circumstances of those in “your” groups
- Availability Bias: Default to information/assumptions from our knowledge or experience base (“leader” = male)
- Affinity Bias: Tendency to gravitate towards those like us; demographics and experience

Impartiality & Avoiding Prejudgment

- Avoid focusing on early “gut reactions”
- Avoid developing internal factual narratives early in the process
- Keep an open mind – do not dismiss additional information or witnesses
- Ask consistent and repeated questions of parties and witnesses – hear all angles
 - Ex. Five people were present for an important interaction – interview all five, and approach each like it is the first time you have heard about the interaction.

Impartiality & Conflict of Interest

- Disclose and recognize conflicts of interest:
 - Familiarity with parties?
 - Personal knowledge about situation?
 - Stake in outcome?
- Divorce yourself from stereotypes or generalizations about groups of people
 - Do not use or consider stereotypes or generalizations based on gender, sexual orientation, or gender identity – e.g., “believe all women/men”
 - Other potential protected class bias
 - Campus groups bias and assumptions – athletes, certain employment positions, etc.

Q&A



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