

Title IX Training

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FIRST AAG LAUREN PEACH, SENIOR AAG NATALIE POWELL,
AAGS ANGELA ZIPPIN, AND WARREN BECK

HIGHER EDUCATION UNIT

COLORADO DEPARTMENT OF LAW

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Agenda

1. Background
2. Operational Requirements
3. Reportable Violations

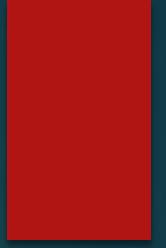
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4. Response to Sex Discrimination

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5. Informal Resolution
6. Grievance Procedures

Background



Background

Title IX of the Education Amendments of 1972 (Title IX) was signed into law more than 50 years ago. Prohibits discrimination on the basis of sex in education programs and activities and employment.

Background

- ▶ Mid-70s: Regulations implemented (34 C.F.R. Part 106)
- ▶ Early 2010s: Obama Administration issues guidance and "Dear Colleague" letters
- ▶ 2020: Trump Administration Rulemaking
- ▶ August 1, 2024: Biden Administration Rulemaking is effective
 - Not retroactive, so new regulations only apply to conduct after August 1, 2024

Background

- ▶ Title IX prohibits discrimination “on the basis of sex.” What that scope includes has changed over time
- ▶ 2024 changes include
 - ▶ Expansion of definitions of sex discrimination, including sexual orientation, gender identity, pregnancy and related conditions, and parental or marital status, and expanded definition of sexual harassment.

Background



Consider other existing laws, e.g.:

- Title VII and Pregnancy Discrimination Act
- Privacy laws under FERPA, HIPAA, FMLA/ADA, state law on PII
- Consult with HR
- CADA, POWR Act (added new definitions of harassment, protects marital status from discrimination)

Background

- Several federal lawsuits asking courts to enjoin (restrict) DOE and IHES from implementing 2024 Rule
- So far:
 - 2024 Rule enjoined in Louisiana, Mississippi, Montana, Idaho (W.D. Louisiana decision) and Kentucky, Indiana, Tennessee, Virginia, West Virginia, Ohio (E.D. Kentucky decision). U.S. Supreme Court declined to reverse those decisions. None apply to CO.
 - Suits also pending in Alabama, Kansas, Missouri, and Texas.
- So far, only Kansas impacts CO, and only for schools who have current or *future* members of plaintiff organizations.



Operational Requirements

Title IX Coordinator - Designation & Delegation

Must designate and authorize a “Title IX Coordinator”

May have 2+ but must designate one to:

- ▶ Retain ultimate oversight over Title IX compliance responsibilities; and
- ▶ Ensure consistent compliance

Title IX Coordinator may delegate specific duties, as appropriate

Policies, Procedures, and Notices



IHEs must adopt each of the following:

- ▶ Grievance Procedures
- ▶ Nondiscrimination Policy
- ▶ Notice of Nondiscrimination

Grievance Procedures

Must adopt, publish, and implement grievance procedures compliant with § 106.45, and if applicable § 106.46

Procedures must provide for prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX

Nondiscrimination Policy

Must adopt, publish, and implement policy stating the IHE does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX, including in admission and employment.

[ABC School] does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX, including in admission and employment.

Notice of Nondiscrimination - Contents

Required contents:

- ▶ Elements of non-discrimination policy
- ▶ Statement that inquiries re: Title IX's application to the IHE may be referred to the Title IX Coordinator, OCR, or both
- ▶ Name or title, office address, email address, and telephone number of the Title IX Coordinator
- ▶ How to locate the nondiscrimination policy and grievance procedures
- ▶ How to report possible sex discrimination
- ▶ How to make a complaint of sex discrimination

Notice of Nondiscrimination – OCR Example

[ABC School] does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its regulations, including in admission and employment.

Inquiries about Title IX may be referred to [ABC School's] Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights, or both. [ABC School's] Title IX Coordinator is [name or title, office address, email address, and telephone number].

[ABC School's] nondiscrimination policy and grievance procedures can be located at [include link to location(s) on website or otherwise describe location(s)].

To report information about conduct that may constitute sex discrimination or make a complaint of sex discrimination under Title IX, please refer to [include link to location(s) on website or otherwise describe location(s)].

Notice of Nondiscrimination - Publication

Must be provided to:

- ▶ Students
- ▶ Employees
- ▶ Applicants for admission and employment
- ▶ All unions and professional organizations holding collective bargaining or professional agreements with the IHE

Notice of Nondiscrimination - Publication

Required elements must be prominently included:

- ▶ On IHE website
- ▶ In each handbook, application form, etc., made available
- ▶ In any materials used in connection with student or employee recruitment

If formatting/size problems, may instead include:

- ▶ Statement that IHE prohibits sex discrimination in any education program or activity it operates
- ▶ Statement that concerns or questions can be reported to the Title IX Coordinator
- ▶ Location of the notice of nondiscrimination on the IHE's website

Training Requirements

Must ensure employee training on Title IX responsibilities

- ▶ Trainings may not rely on sex stereotypes

Employees must complete training according to the following schedule:

- ▶ Promptly upon hiring
- ▶ Promptly upon change of position that alters their duties under Title IX
- ▶ Annually thereafter

All Employee Training

All employees must be trained on:

- ▶ IHE's obligation to address sex discrimination in its education program or activity
- ▶ Scope of conduct that constitutes sex discrimination, including definition of sex-based harassment
- ▶ Applicable notification and reporting requirements re:
 - ▶ Notice of student pregnancy
 - ▶ Obligation to report sex discrimination.

Title IX Personnel Training

Title IX personnel: investigators, decisionmakers, & others implementing IHE's grievance procedures or with authority to modify/terminate supportive measures

All employee training + (to extent related to their responsibilities):

- ▶ IHE's obligations re: prompt & effective response
- ▶ IHE's grievance procedures
- ▶ How to serve impartially (avoiding prejudgment of the facts, conflicts of interest, and bias)
- ▶ Relevance, and evidence that is impermissible regardless of relevance

Informal Resolution Facilitators Training

All employee training +

- ▶ Rules and practices associated with IHE's informal resolution process
- ▶ How to serve impartially (avoiding conflicts of interest and bias)

Title IX Coordinator & Designees Training

All employee training + Title IX personnel training + IR facilitator training
+

- ▶ Specific responsibilities to:
 - ▶ Coordinate IHE's efforts to comply with Title IX;
 - ▶ Take prompt & effective action to end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects; and
 - ▶ Offer and coordinate supportive measures, as appropriate
- ▶ IHE's obligations, upon notice of a student's pregnancy or related conditions
- ▶ IHE's recordkeeping system and Title IX recordkeeping requirements
- ▶ Any other training necessary to coordinate the IHE's compliance with Title IX

Recordkeeping

IHEs must maintain the following records for at least seven years:

- ▶ For each complaint: documenting informal resolution process or grievance procedures and resulting outcome
- ▶ For each report of possible sex discrimination: documenting actions taken by IHE to meet obligations to respond promptly and effectively
- ▶ All Title IX training materials

Training materials must be available upon request by members of the public.



Reportable Violations

"On the Basis of Sex"

This is sex discrimination, recent interpretation expansion:

- ▶ *Bostock v. Clayton County Georgia* (Supreme Court): employment claims under Title VII, but court determined that sex discrimination includes transgender status or sexual orientation.
- ▶ DOE's Notice of Interpretation confirms *Bostock* should apply to Title IX
- ▶ New rule builds on this, prohibits discrimination against LGBTQI+ students, employees, and others.

De Minimus

Anything more than de minimus harm is a reportable violation.

Sex-based discrimination includes:

- ▶ Sex stereotypes
- ▶ Sex characteristics
- ▶ Pregnancy or related conditions
- ▶ Marital, family, parental status (if sex-based)
- ▶ Sexual orientation
- ▶ Gender identity
- ▶ Sex based harassment

Retaliation is also prohibited.

Defined as:

- intimidation, threats, coercion, or discrimination
- against any person by recipient, student, employee or other authorized agent of IHE
- for the purpose of interfering with any right or privilege secured by Title IX or its regulations,

or

- because person reported info, made complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing

Retaliation includes student on student

New definition includes peer retaliation (from one student to another).

If potential violation, treated same as other complaints, and initiate grievance process

Sex-based harassment

Includes any of the following:

- ▶ Quid pro quo
- ▶ Specific offenses (sexual assault, dating or domestic violence, stalking)
- ▶ Hostile environment

Hostile Environment

Defined as:

Unwelcome sex-based conduct that based on the totality of circumstances is so subjectively and objectively offensive and is so severe or pervasive that it limits individual's ability to access activities

Hostile Environment (continued)

Factors to consider

- Degree to which conduct affected complainant's ability to access program or activity
- Type, frequency and duration of conduct
- Location and context in which conduct occurred
- Parties ages, roles in the school, previous interactions and other factors for context to the current assessment

and

- Other sex-based harassment in the education program or activity

Pregnancy or Related Conditions

Includes:

- Pregnancy
- Childbirth
- Termination of pregnancy
- Lactation
- Medical conditions or recovery from any of the above

Pregnancy or Related Conditions: Student Rights

1. Treat pregnancy and related conditions same as other temp medical conditions
2. IHE must provide information, notice of non-discrimination
3. Reasonable Modifications
4. Voluntary Leaves of Absence
5. Voluntary Access to comparable portion of program or activity
6. Lactation breaks and space
7. Limit on request of supporting documentation and certifications
8. Restriction on disclosure of PII

Pregnancy or Related Conditions: Student Rights

- ▶ IHE must provide information and support when a student or their representative informs any EE of pregnancy or related condition, EE must promptly provide that person with the Title IX Coordinator's contact information and inform that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the recipient's education program or activity.
- ▶ Must provide notice of non-discrimination

Pregnancy or Related Conditions: Student Rights

Reasonable Modifications:

- ▶ Requires individualized assessment
- ▶ Student must be consulted
- ▶ Student has discretion to accept or decline modifications
- ▶ If student accepts, IHE can't revoke offer

Examples: carry or keep water nearby, counseling, changes in schedule or course sequence, breaks during class, intermittent absences, sit or stand or size of desk, access to online or home classwork, space to express breastmilk or breastfeed.

Pregnancy or Related Conditions: Student Rights

Voluntary Leaves of Absence:

- Must allow leave to cover, at a minimum, what is “medically necessary”
 - Medically necessary is determined by a student’s doctor
 - Must allow longest leave available
 - Must be returned to same status as before they left (academic and extracurricular).

Pregnancy or Related Conditions: Student Rights

Lactation Breaks and Space must be:

- ▶ Clean
- ▶ Not a bathroom
- ▶ Private, shielded from view, free from intrusion of others

Pregnancy or Related Conditions: Student Rights

Limit on IHE's request of supporting documentation and certifications:

- IHE **can only** ask for documentation necessary and reasonable to make determinations for action
 - e.g. lactation needs, carry keep water, take breaks.
- A certification cannot be required unless: either it is required for ALL students or A specific level of physical ability is required to participate

Pregnancy or Related Conditions: Employee Rights

1. Treat pregnancy and related conditions same as other temp medical conditions for all employment benefits (seniority, fringe, etc.)
2. Lactation breaks and space (same requirements as students)
3. Voluntary Leave of Absence
4. Restricts pre-employment inquiry to applicant for job

Pregnancy or Related Conditions: Employee Rights

Voluntary Leave of Absence:

- If no policy, and EE doesn't have sufficient leave, IHE must allow for unpaid leave of absence for reasonable amount of time
- Upon return, reinstated to status or comparable position



Response to Sex Discrimination

Jurisdiction



1. Expansion of education program or activity
2. Inclusion of conduct that contributes to hostile environment outside of an education program or activity

Education Program or Activity

§ 106.11 Application.

- Regulations apply to “...all sex discrimination occurring under recipient[IHE]’s education program or activity in the United States.”
- Conduct occurring under an education program or activity includes:
 - Conduct that occurs in building owned or controlled by an officially-recognized student organization
 - Conduct subject to recipient/IHE’s disciplinary authority

Contribution to Hostile Environment

§ 106.11 Application

- Recipient/IHE has obligation to address sex-based hostile environment under its education program or activity
- This even includes when some conduct alleged to be contributing to the hostile environment occurred:
 - Outside the recipient/IHE's education program or activity
 - Outside the United States

Duty to Respond to Sex Discrimination

- What triggers recipient/IHE's obligation to respond?
 - o Knowledge of conduct that reasonably may constitute sex discrimination in the education program or activity [§ 106.44(a)(1)]
- How must recipient/IHE respond?
 - o “Promptly and effectively”
 - o But specifically, in compliance with provisions outlined in § 106.44
- What does § 106.44 require a recipient/IHE to do in response to sex discrimination?

Reporting Requirements

§ 106.44(b)

- Title IX Coordinators must:
 - Monitor the education program or activity for barriers to reporting
 - Take steps to address such barriers

§ 106.44(c)

- Two broad categories of reporters:
 - Confidential employees
 - Everyone else – i.e., mandatory reporters

Confidential Employees

§ 106.44(d)

- Recipient/IHE must notify participants in its education program or activity of how to contact confidential employees
- Confidential employees must explain to anyone who informs them about conduct that reasonably may constitute sex discrimination of:
 - Employee's status as confidential for Title IX purposes;
 - How to contact Title IX Coordinator and how to make a complaint of sex discrimination; and
 - That Title IX Coordinator may be able to offer and coordinate supportive measures, and/or initiate an informal resolution process or investigation under grievance procedures

Mandatory Employees

- Non-confidential employees who have information about conduct that reasonably may constitute sex discrimination are mandatory reporters
- Two types:
 - Type 1 - § 106.44(c)(2)(i) – not a confidential employee and either:
 - Has authority to institute corrective measures on behalf of the recipient
 - Has responsibility for administrative leadership, teaching, or advising
 - Type 2 - § § 106.44(c)(2)(ii) – all other employees that are not confidential employees
- Responsibilities:
 - Type 1 must notify Title IX Coordinator
 - Type 2 may notify Title IX or must:
 - Provide contact info for Title IX coordinator and
 - Info about how to make a complaint

Mandatory Employees (Cont'd)

- Also note:
 - Under § 106.44(c)(3), an IHE must determine and specify when a person is both a student and an employee subject to mandatory reporting under (c)(2).
 - Under § 106.44(c)(4), the mandatory reporter requirements do not apply to an employee who is personally subjected to sex discrimination.

Public Awareness Events

§ 106.44(e)

- IHE is not obligated to act when its Title IX Coordinator is notified of conduct that may constitute sex-based harassment at a public event held on campus or online platform to raise awareness about sex-based harassment
- Unless such information indicates an imminent or serious threat to health or safety
- Either way, when the information indicates that multiple incidents of sex-based harassment may have occurred, then the IHE must use such information to prevent sex-based harassment in a particular part or at a specific location of its education program or activity
- Title IX Coordinator not required to attend such public awareness events

Title IX Coordinator Requirements



- Pursuant to § 106.44(f), an IHE's Title IX Coordinator responsible for coordinating recipient's compliance.
- Specifically, § 106.44(f)(1)(i) – (vii) outlines the duties and responsibilities of a Title IX Coordinator.

Title IX Coordinator – Responsibilities

§ 106.44(f)(1)(i) – (vii)

- When notified of possible sex discrimination in the education program or activity, the Title IX Coordinator must act promptly and effectively to:
 - o End sex discrimination
 - o Prevent its recurrence
 - o Remedy its effects
- The Regs lay out several specific things the Coordinator must do.

Title IX Coordinator – Responsibilities (Cont'd)

§ 106.44(f)(1)

- (i) Treat complainant and respondent equitably
- (ii) Offer and coordinate supportive measures
- (iii) Notify both parties of the grievance procedures and informal resolution process
- (iv) Initiate the grievance procedures or informal resolution process in response to a complaint

Title IX Coordinator – Responsibilities (Cont'd)

§ 106.44(f)(1)

- (v) In the absence or withdrawal of a complaint, determine whether to initiate a complaint of sex discrimination
 - o (v)(A) Fact-specific determination, taking into account:
 - Complainant's request not to proceed
 - Complainant's safety concerns regarding initiation of complaint
 - Risk of additional acts of sex discrimination would occur w/o complaint
 - Severity of alleged sex discrimination (e.g., would finding of discrimination require removal or imposition of other disciplinary action?)
 - Age and relationship of the parties (e.g., is respondent an employee?)
 - Scope of alleged sex discrimination (e.g., pattern, ongoing, multiple people impacted)
 - Availability of evidence to assist decisionmaker's determination
 - Whether initiating grievance process could end or prevent alleged sex discrimination
 - o (v)(B) Coordinator may initiate complaint after considering relevant factors if:
 - Alleged conduct presents imminent and serious threat to health and safety
 - Alleged conduct prevents recipient from ensuring equal access to its education program or activity

Title IX Coordinator – Responsibilities (Cont'd)

§ 106.44(f)(1)

- (vi) If initiating a complaint under (f)(1)(v), notify complainant prior to doing so and address complainant's concerns about safety and provide supportive measures
- (vii) Whether or not complaint is initiated, take prompt and effective steps to ensure sex discrimination does not continue or recur

Title IX Coordinator – Not Responsible For

§ 106.44(f)(2)

- NOT required to comply with (f)(1)(i) – (viii)
- When Coordinator is notified of conduct that may constitute sex discrimination BUT
- The conduct as alleged could not constitute sex discrimination under Title IX or the Regs

Supportive Measures

§ 106.44(g)

- IHE (recipient) must offer and coordinate supportive measures
- For allegations of sex discrimination *other than* sex-based harassment or retaliation, not required to alter the alleged discriminatory conduct to provide supportive measure

Types of Supportive Measures

§ 106.44(g)(1)

- Will vary depending on what is reasonably available
- Can include:
 - Counseling
 - Extensions of deadlines and other course-related adjustments
 - Protective escorts around campus
 - Increased security and monitoring of certain areas
 - Restrictions on contact
 - Leaves of absence
 - Changes in class, work, housing or extracurricular activities
 - Training and education programs related to sex-based harassment

Supportive Measures – Additional Notes

§ 106.44 (g)(2)-(3)

- Must not unreasonably burden either party
- Must be designed to protect safety or provide support during grievance procedures
- Must not be imposed for punitive or disciplinary reasons

Supportive Measures – Opportunity to Appeal

§ 106.44(g)(4)

- Complainant and respondent must be provided an opportunity to seek modification or reversal of decision to provide, deny, modify, or terminate supportive measures
- Modification or reversal must be reviewed by an “appropriate and impartial” employee
 - o Someone other than employee who made challenged decision
 - o Must have authority to modify or reverse
- Must also provide opportunity to seek additional modification or termination of supportive measures if circumstances materially change

Supportive Measures – Final Notes

§ 106.44(g)(5) – confidentiality

- Must not disclose information about supportive measures to anyone other than the person to whom they apply
- Unless disclosure is necessary to:
 - o Provide the supportive measure
 - o Restore or preserve a party's access to education program or activity
 - o Or when exception in § 106.44(j)(1) – (5) applies

§ 106.44(g)(6)(ii) – students with disabilities

- If complainant or respondent is a student with a disability, the Title IX Coordinator may consult with individual/office responsible for providing support to students with disabilities in order to comply with Section 504 in implementing supportive measures

Removal of Respondent – Student

§ 106.44(h) *Emergency removal.*

- May remove student respondent from education program or activity on emergency basis
- Process:
 - Undertake individualized safety & risk assessment;
 - Determine that imminent & serious threat to health or safety of complainant or any students, employees, or other persons arising from the allegations of sex discrimination that would justify removal; and
 - Provide respondent notice & opportunity to challenge removal decision.
- Threat includes physical *and* non-physical threats

Removal of Respondent – Employee

§ 106.441(i) *Administrative leave.*

- Employee respondent may be placed on administrative leave during pendency of grievance procedures

Personally Identifiable Information

§ 106.44(j) *Prohibited disclosures of personally identifiable information.*

- Recipient must not disclose PII obtained in course of complying with Regs
- Except:
 - With prior written consent
 - When the requestor has legal right to receive info (e.g., parent, guardian, legal rep)
 - To carry out purposes of Regs (e.g., necessary to address sex discrimination)
 - As required by federal law or regulations
 - If not otherwise in conflict with Title IX, the Regs, FERPA, or state/local law



Informal Resolution

§106.44(K)

Informal Resolution

Institutions have discretion to offer informal resolution at any time prior to determining whether sex discrimination occurred.

- ▶ Exceptions:
 - ▶ Complaint includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or
 - ▶ Informal resolution would conflict with Federal, State or local law

Informal Resolution Requirements

- Parties must voluntarily consent.
- Institution must not require waiver of the right to an investigation and determination of a complaint.
- Title IX Coordinator must, to the extent necessary, take appropriate steps to ensure that sex discrimination does not continue or recur.
- Facilitator must not be the same person as the investigator or the decisionmaker in the grievance procedures and must not have conflict of interest. Facilitator must be trained.

Informal Resolution Notice

Before initiation of informal resolution, the institution must provide notice of:

- The allegations;
- The requirements of the informal resolution process;
- That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the grievance procedures;
- That the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming grievance procedures arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties (*informal resolution agreement could result in remedies or sanctions that would follow a determination regarding responsibility*); and
- What information the institution will maintain and whether and how the institution could disclose such information for use in grievance procedures under § 106.45, and if applicable § 106.46, if grievance procedures are initiated or resumed.



Grievance Procedures

Two Tiered Title IX Grievance Procedures

2024 regulations outline procedural requirements for two types of Title IX cases:

- ▶ Type 1: sex discrimination (section 106.45)
- ▶ Type 2: sex-based harassment involving a student-party at a postsecondary institution (section 106.46)

For Type 2 cases, must comply with 106.45 requirements + heightened procedural requirements of 106.46

If a party is a student and employee, fact-specific inquiry: primary relationship

- ▶ Primary relationship with IHE
- ▶ Where alleged harassment occurred

General Procedural Requirements

Equitable treatment of complainants and respondents

Title IX Coordinator, investigator, or decisionmaker: no conflict of interest or bias

Decisionmaker **may be** the same person as the Title IX Coordinator or investigator

Presumption of non-responsibility

Reasonably prompt timeframes for major stages with reasonable extensions

Reasonable steps to protect privacy without restricting party rights

Objective evaluation of evidence & exclusion of irrelevant/impermissible evidence

The parties cannot engage in retaliation, including against witnesses

Who May Bring a Complaint

Sex Discrimination Type 1 Cases

1. A complainant:

- Student or employee allegedly subjected to sex discrimination under Title IX; or
- Other person allegedly subjected to sex discrimination under Title IX who was participating or attempting to participate at the time

2. A parent, guardian, or other legal representative authorized to act on behalf of a complainant;

3. Title IX Coordinator, after making fact-specific determination; or

4. Any student or employee

Sex-Based Harassment Type 2 Cases

1. A complainant:

- Student or employee allegedly subjected to sex discrimination under Title IX; or
- Other person allegedly subjected to sex discrimination under Title IX who was participating or attempting to participate at the time

2. A parent, guardian, or other legal representative authorized to act on behalf of a complainant;

3. Title IX Coordinator, after making fact-specific determination; or

~~4. Any student or employee~~

Notice of Allegations – Type 1 & 2 Cases

Upon initiating grievance procedures, must provide notice to the parties of:

- Grievance procedures and any informal resolution process
- Sufficient information available at the time to allow parties to respond
- Statements re:
 - ▶ Prohibition of retaliation
 - ▶ Parties' ability to access relevant/not otherwise impermissible evidence or description of such

If new allegations raised during investigation, must provide additional notice

Notice of Allegations – Type 2 Cases Only

Must also include statements re:

- Presumption of non-responsibility
- Parties may have advisor of their choice, who may be, but is not required to be, an attorney
- Policy prohibiting knowingly making false statements/submitting false information

Notice must be in writing

- Including if additional allegations are raised during investigation

If providing notice raises reasonable safety concerns, may reasonably delay to address

Impermissible Evidence - Type 1 & 2 Cases

Evidence & questions must be relevant

- Related to the allegations under investigation
- May aid in showing whether the alleged sex discrimination occurred

Regardless of relevance, the following may not be considered in determination:

- Protected under legal privilege or provided to confidential employee, unless voluntary waiver
- Records made or maintained by physician, psychologist, or other professional/paraprofessional connected to treatment provision, unless voluntary written consent
- Prohibited by rape shield rules

Rape Shield Rules- Type 1 & 2 Cases

Evidence/questions prohibited if relating to:

- Complainant's sexual interests
- Complainant's prior sexual conduct, unless:
 - Offered to prove that someone other than the respondent committed the alleged conduct; or
 - About specific incidents of complainant's prior sexual conduct with respondent that is offered to prove consent

Dismissal of Complaint - Type 1 & 2 Cases

The institution may dismiss a complaint for any of these reasons:

1. Unable to identify respondent after taking reasonable steps to do so;
2. Respondent not employed by or participating in program/activity of IHE;
3. Complainant voluntarily withdraws any or all allegations, Title IX Coordinator declines to initiate complaint, *and* IHE determines that the remaining allegations, if any, would not constitute sex discrimination even if proven; or
 - Note: for Type 2 cases, complainant's withdrawal must be in writing
4. The institution the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX or this part.
 - Note: Before dismissing on this ground, IHE must make reasonable efforts to clarify the allegations with complainant

Dismissal Notice & Appeal – Type 1 & 2 Cases

- Must promptly notify complainant (and respondent, if respondent had prior notice of allegations) of the basis for dismissal
 - ▶ Type 2: notice of and basis for dismissal must be in writing
- Must offer supportive measures to complainant (and respondent, if respondent had prior notice of allegations) as appropriate
- Title IX Coordinator must take other appropriate prompt and effective steps to ensure sex discrimination does not continue or recur
- Institutions must offer the opportunity to appeal a dismissal

Investigation – Type 1 & 2 Cases

- Burden on IHE to gather sufficient evidence to determine if sex discrimination occurred
- IHE must:
 - ▶ Conduct adequate, reliable, and impartial investigation of complaints
 - ▶ Provide equal opportunity for parties to present (relevant & not otherwise impermissible):
 - Fact witnesses
 - Other inculpatory and exculpatory evidence
 - ▶ Review all collected evidence and determine what is:
 - Relevant
 - Impermissible, regardless of relevance

Investigation – Type 1 & 2 Cases (Cont.)

IHE must:

- Provide equal opportunity for parties to access relevant & not impermissible evidence, or accurate description of such
 - Discretion re: presentation of expert witnesses, if equally applied to parties
- Provide parties reasonable opportunity to respond to evidence
- Take reasonable steps to prevent & address unauthorized disclosures by parties and advisors
 - Information or evidence obtained solely through grievance procedures
 - Authorized if for administrative proceedings or litigation related to complaint

Investigation – Type 2 Cases

IHE must:

- Provide written notice of all meetings or proceedings with sufficient time for parties to prepare
- Offer same opportunities for parties to be accompanied by advisor of choice or non-advisors
 - Equal restrictions on advisor participation permitted
- Allow advisors equal opportunity to access evidence or description of such
- Allow for, and provide written notice of, reasonable extensions of timeframes for good cause
- Provide reasonable opportunity to respond to evidence before determination is made
 - If live hearing, can allow response in advance of or during hearing, or both

Questioning of Witnesses – Type 1 & 2 Cases

- ▶ Must provide a process that allows decisionmaker to question parties and witnesses to adequately assess credibility, if in dispute and relevant to the allegations.
- ▶ For Type 2 cases, must conduct questioning using live hearing or investigator model.

Questioning of Witnesses - Type 2 Cases

Investigator Model

Investigator or decisionmaker asks questions during individual meetings with a witness or party

Parties must be permitted to propose questions to be asked of any party or witness

Investigator or decisionmaker asks proposed questions, if relevant & not otherwise impermissible, during individual meetings, including follow-up meetings, with witnesses and parties

Must provide parties with recording/transcript of meetings with reasonable opportunity to propose additional questions for follow-up meetings

Live Hearing Model

Parties can participate in same physical location or virtually

Must create a recording or transcript of any live hearing and make available to parties for inspection and review

Parties may not personally question other parties or witnesses

Questioning must be conducted using a decisionmaker or advisor model

Questioning of Witnesses - Type 2 Cases

Live Hearing - Decisionmaker

Each party may propose questions, including follow-ups, to be asked of parties or witnesses

Decisionmaker asks proposed questions, if relevant & not otherwise impermissible, during live hearing

Live Hearing - Advisor

Each party's advisor asks questions of parties or witnesses

If a party does not have an advisor, must provide one free of charge

Evaluating Party Questions and Refusal to Respond - Type 2 Cases

Regardless of method used, decisionmaker must evaluate proposed questions to determine if relevant and not otherwise impermissible

- If question is excluded, decisionmaker must explain the basis for decision

Proposed questions that are relevant and not otherwise impermissible must be asked unless unclear or harassing

- Decisionmaker must allow party to clarify or revise a question deemed unclear or harassing

A decisionmaker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The decisionmaker must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions

Determinations - Type 1 & 2 Cases

IHE must:

- Consider only relevant/not otherwise impermissible evidence
- Use preponderance of the evidence standard, unless clear and convincing evidence standard used in all other comparable proceedings
- Notify parties in writing of:
 - Determination whether sex discrimination occurred under Title IX
 - Rationale for determination
 - Procedures and permissible bases for parties to appeal, if applicable

Determinations - Type 2 Cases

May place less/no weight on statements if speaker refused to answer relevant/not impermissible questions

- May not draw inference (re: if discrimination occurred) based solely on refusal

Written notice of determination must be delivered to parties simultaneously and include:

- Description of the allegations
- Policies and procedures used to make a decision
- Evaluation of the relevant/not otherwise impermissible evidence and determination whether sex-based harassment occurred
- Any disciplinary sanctions to be imposed on the respondent
- Any additional remedies to be provided to the complainant or others impacted
- Procedures for the parties to appeal

Final once IHE provides written determination of appeal outcome or appeal deadline passes

Post-Determination Duties - Type 1 & 2 Cases

Following a determination that sex discrimination occurred, the Title IX Coordinator must:

- Coordinate provision and implementation of remedies to complainant and other people the IHE identifies as having had equal access limited or denied by sex discrimination
- Coordinate imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions
- Take other appropriate prompt and effective steps to ensure sex discrimination does not continue or recur within the IHE's education program or activity

Before imposing any disciplinary sanctions against a respondent, must comply with grievance procedures (*including those as necessary in section 106.46*)

May not discipline anyone participating in grievance procedures for making a false statement or engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred

Sanctions and Remedies - Type 1 & 2 Cases

Sanctions: consequences imposed on a respondent following a determination that the respondent violated the Institution's prohibition on sex discrimination

Remedies: measures provided, as appropriate, to a complainant or any other person the IHE identifies as having had their equal access to its education program or activity limited or denied by sex discrimination

- Restore or preserve a person's access to the IHE's education program or activity after a determination that sex discrimination occurred

Appeals - Type 1 & 2 Cases

Must offer parties the opportunity to appeal:

- A determination whether sex discrimination occurred
- Dismissal of a complaint or any allegations therein

Appeal process offered must, at minimum, be the same offered in all other comparable proceedings, if any,

- Including other discrimination complaint proceedings

Appeal Procedures - Type 1 & 2 Cases

Upon receiving an appeal, IHE must:

- Notify parties of the appeal
 - ▶ Type 2: notice must be in writing
- Implement appeal procedures equally for the parties
- Ensure decisionmaker for appeal:
 - ▶ Not involved in investigation or dismissal of allegations/complaint; and
 - ▶ Received required training
- Provide parties reasonable and equal opportunity to make a statement in support of, or challenging, the outcome
- Notify the parties of the result of the appeal and rationale for the result
 - Type 2: notice must be in writing

Appeals - Type 2 Cases

Must permit appeals on the following grounds:

- Procedural irregularity that would change the outcome
- New evidence that was not reasonably available when the determination was made and would change the outcome
- The existence of a conflict of interest that would change the outcome

Other grounds for appeal may be permitted if offered to both parties.

Grievance Procedure Options



May adopt grievance procedures that apply to the resolution of some, but not all, complaints

- Must articulate consistent principles for determining which procedures apply.

Resources

- ▶ [2024 Final Rule](#)
- ▶ [2024 Rule Summary](#)
- ▶ [Resource](#) for Policy Drafting
- ▶ Department of Education [Fact Sheet](#)
- ▶ 2024 Training Requirements (attached)



Questions?

2024 TITLE IX TRAINING REQUIREMENTS

	All Employees	Title IX Personnel*	Informal Resolution Facilitators	Title IX Coordinator & Designees
Recipient's obligation to address sex discrimination in its education program or activity	X	X	X	X
Scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment	X	X	X	X
All applicable notification and information requirements re: notice of student pregnancy (§106.40(b)(2)) and obligation to report sex discrimination (§106.44)	X	X	X	X
An IHE's obligations re: response to sex discrimination		X		X
The IHE's grievance procedures		X		X
Serving impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias		X	X	X
Meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance		X		X
Rules and practices associated with the IHE's informal resolution process			X	X
Specific responsibilities <ul style="list-style-type: none"> - Coordinate the IHE's efforts to comply with Title IX - IHE's obligations upon notice of a student's pregnancy or related conditions - IHE's recordkeeping system and Title IX recordkeeping requirements - Any other training necessary to coordinate the IHE's compliance with Title IX 				X

*Title IX Personnel: investigators, decisionmakers, and others responsible for implementing the IHE's grievance procedures, and those with the authority to modify or terminate supportive measures.