

**EDUCATION LAW: A YEAR IN REVIEW**

**JUNE 12, 2024**

**Title IX Update:  
New Federal Regulations and  
Implications for Schools**

**Amy Dickerson**

**Kaitlin Atlas**

**Emily Tulloch**

**FRANCZEK**

**New Title IX  
Regulations  
Are Here!**



# A (Not So) Brief History

**MAY 2020** – 2020 Title IX Rules Published.



**AUGUST 2020** - 2020 Title IX Rules Effective.



**JUNE 2022** - Noticed of Proposed Rulemaking for New Title IX Rules. (Anticipated Effective Date May 2023)



**MAY 2023** – Administration Announces Delay. (New Anticipated Effective Date of October 2023)

---

# A (Not So) Brief History

**OCTOBER 2023** - Administration Announces Another Delay. (New Anticipated Effective Date March 2024)



**APRIL 19, 2024** - 2024 Title IX Rules Published.



**AUGUST 1, 2024** - 2024 Title IX Rules Take Effect.

---

# Title IX Statute

(20 U.S.C. §§ 1681–1688)

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

# What falls under Title IX?

Recruitment,  
Admissions, and  
Counseling

Financial  
Assistance

Athletics

Sex-Based Conduct  
(Umbrella  
Definition under  
2024 Regs.)

Treatment of  
Pregnant &  
Parenting  
Individuals

Discipline

Single-Sex  
Education

Employment

Retaliation

# Title IX Regulations

(34 C.F.R. Part 106 – **NEW Amendments in effect 8/1/24**)

- Prohibit discrimination on the basis of sex
- Establish procedural requirements
  - Policy
  - Detailed grievance procedure
  - Designation of Title IX coordinator(s)
  - And many more requirements!



# When Must a School Respond to Sex Discrimination?





# When must a school respond?

2020 Regulations	2024 Regulations
<p>A recipient with <b>actual knowledge</b> of [Title IX] sexual harassment in an education program or activity against a person in the U.S. must respond promptly and in a manner that is not deliberately indifferent.</p>	<p>A recipient with knowledge of conduct that <b>reasonably may constitute sex discrimination</b> in its education program or activity must respond <b>promptly</b> and <b>effectively</b>.</p>

# Employee Reporting

K-12: **All employees** (except confidential employees) must notify the Title IX Coordinator when the employee has information about conduct that **reasonably may constitute** sex discrimination.

Higher Ed: **All employees** (except confidential employees) must notify Title IX Coordinator **or** provide Title IX Coordinator's contact information to the reporter.



# Sex Based Harassment

Hostile Environment

Quid pro quo

Sexual Assault  
Domestic Violence  
Dating Violence  
Stalking

# Quid Pro Quo Harassment

**Definition:** An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service in the recipient's education program or activity explicitly or implicitly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

# Clery Act/VAWA “Big Four”

Sexual Assault 20 U.S.C. 1092(f)(6)(A)(v)

Domestic Violence 34 U.S.C. 12291(a)(8)

Dating Violence 34 U.S.C. 12291(a)(10)

Stalking 34 U.S.C. 12291(a)(30)

---

# Key Elements of a Legal Claim of Hostile Environment Sexual Harassment

# Title IX – What is a Hostile Environment

2020 Regulations	2024 Regulations (8/1/24)
<p>Unwelcome conduct determined by a reasonable person to be <b>so severe, pervasive, and objectively offensive</b> that it <b>effectively denies</b> a person’s equal access to the school’s education program or activity</p>	<p>Unwelcome sex-based conduct that, based on the totality of the circumstances is <b>subjectively and objectively offensive</b> and is so <b>severe <u>or</u> pervasive</b> that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity.</p>

# Hostile Environment Factors

Context, Type, Frequency, Duration,  
and Location of the Incidents

Identity, Number, Ages, and  
Relationships of the Persons involved



**What  
about....  
casual or  
isolated  
comments  
or conduct?**





# Title IX Sexual Harassment Must Be “In a Program or Activity”

---



---

## Program or Activity (2020)

Any location, events, or circumstance over which the recipient exhibits substantial control over both the alleged harasser and the “context” in which the harassment occurred.

## Program or Activity (2024)

Conduct that occurs in any building owned or controlled by a student organization that is officially recognized by a postsecondary institution; and

**Conduct that is subject to the recipient’s disciplinary authority.**

- **2020:** Schools need only address sex discrimination occurring against a person *in the United States*.

- **2024:** May be inclusive of offenses outside of the U.S.



# EVALUATING COMPLAINTS & DISMISSALS

1. Respondent unable to be identified
2. Respondent is not participating in recipient's education program or activity, or is not employed by the recipient
3. Complainant withdraws complaint
4. Complainant withdraws allegations in the complaint and, without withdrawn allegations, the remaining conduct would not constitute sex discrimination under Title IX
5. Even if true, conduct would not constitute sex discrimination under Title IX (reasonable efforts to clarify required)



# Adequacy of Response



COMPLAINT



NOTICE OF  
ALLEGATIONS &  
SUPPORTIVE MEASURES



INVESTIGATION &  
EVIDENCE



DETERMINATION &  
REMEDIES



APPEAL

# Key Changes to Grievance Procedure(s)

Ability to have single investigator/decisionmaker model

No mandated timeframes

Live hearings not required in K-12 or higher education

Two grievance procedures:

- § 106.45: general procedure applies to both K-12 and higher ed.; and
- § 106.46: applies **only** to higher ed. when allegation involves sex-based harassment **and** either the Complainant or Respondent (or both) is a student



One grievance  
procedure or two?





**§ 106.45**  
**General Grievance Procedure**





# Complaint

An oral or written request to the recipient that **objectively** can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or its implementing regulations.

# Supportive Measures

- Title IX Coordinator may offer supportive measures to parties even in the absence of a complaint or where a complaint is withdrawn
- Must provide process for a party to modify or reverse the school's decision to provide, deny, modify, or terminate supportive measures



# Students with Disabilities



K-12: Title IX Coordinator **must** consult and coordinate with IEP/504 team throughout the grievance process.



Higher Ed.: Title IX Coordinator **may** consult and coordinate with Section 504 office throughout grievance process.

# Informal Resolution

- **May** be offered for any conduct that could reasonably be interpreted as sex discrimination
- **No complaint required**
- Informal resolution still not permitted for conduct where a student is the alleged complainant and an employee is the alleged respondent (K-12)



**Informal Resolution  
Facilitators**

CANNOT be the Title IX  
Coordinator or investigator or  
decision-maker

A person wearing a light-colored trench coat and a hat is crouching on a wooden floor, holding a magnifying glass. The floor has several white footprints leading away from the person. The background is a plain, light-colored wall.

# Investigation

- Burden of proof on school
- “Reasonable steps” to protect privacy of parties and investigation; cannot submit parties to gag order(s)
- Equal, reasonable opportunity to produce witnesses and to produce, review, and respond to evidence
- Process that enables decisionmaker to question parties and witnesses and assess credibility
- No requirement to draft investigation report

# Determinations of Responsibility

- Preponderance of the evidence standard\*
- Notify parties of determination in writing



# Appeal Process

- Available to both parties
- Appeal dismissal or determination
- Same process as in all other comparable proceedings



**§ 106.46**

**Sex-Based Harassment and  
CP/RP is a Student  
(Higher Ed. ONLY)**



# Key Differences

1. Notice of allegations may be delayed due to safety concerns.
2. Written notice of investigation meetings with parties is required
3. Parties must have equal opportunity to bring an advisor and support person(s).
4. Access to evidence or written investigation report and opportunity to respond.
5. Specific processes based on whether a live hearing is provided.
6. Written determination must be provided simultaneously.
7. Appeal bases.

# Training

- Annual training for **all employees**
- Annual training for members of your Title IX team
  - Additional training upon change of position that alters duties under Title IX
- No requirement to post training materials



# All Employee Training

- School's obligations to address sex discrimination under Title IX
- Scope of conduct that constitutes sex discrimination under Title IX, including definition of sex-based harassment
- All notification and information requirements under §§ 106.40(b)(2) and 106.44

# All Employee Training + Role-Specific Training

Investigators & Decisionmakers	Informal Resolution Facilitators	Title IX Coordinator
<ul style="list-style-type: none"><li>• School’s obligation under § 106.44</li><li>• School’s grievance procedures</li><li>• How to serve impartially, including avoiding conflicts of interest and bias</li><li>• Meaning and application of “relevance” for questions and evidence</li></ul>	<ul style="list-style-type: none"><li>• Rules and practices of school’s informal resolution process</li><li>• How to serve impartially, including avoiding conflicts of interest and bias</li></ul>	<p>All other role specific trainings <u>and</u>:</p> <ul style="list-style-type: none"><li>• Title IX Coordinator’s specific responsibilities under Title IX</li><li>• School’s recordkeeping system and recordkeeping requirements under Title IX</li><li>• Other topics as needed to perform duties</li></ul>

# Questions

