



Title IX Final Rule

Presented By
Ed Cramp and Jessica High
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Today's Presentation

- Overview of Title IX Final Rule
- Key Definitions
- Title IX Coordinator Responsibilities
- Preparing for Implementation



OVERVIEW OF TITLE IX FINAL RULE

2024 Title IX Final Rule

- Released on April 19, 2024
- Officially published in the Federal Register on April 29, 2024
- Effective August 1, 2024
- Not retroactive: applies to **incidents** occurring on or after August 1, 2024
 - 2020 Policy

Litigation

- 9 lawsuits
 - 26 states involved
 - 3 of 4 moved for and were granted preliminary injunction
 - 14 states (potentially 18) not bound by Aug. 1 effective date

Litigation

- *Tennessee v. U.S. Dep't of Educ.*
 - TN, KY, OH, IN, VA, WV
- *Louisiana v. U.S. Dep't of Educ.*
 - LA, MS, MT, ID
- *Kansas v. U.S. Dep't of Educ.*
 - KS, AK, UT, WY
- *Alabama et al v. Cardona* (pending)
 - AL, FL, GA, SC



KEY DEFINITIONS

Prohibiting all forms of Sex Discrimination

- Discrimination on the basis of:
 - Sex stereotypes
 - Sex characteristics
 - Pregnancy or related conditions
 - Sexual Orientation
 - Gender Identity

Sex-Based Harassment (not only “sexual”)

- Quid pro quo harassment
- Specific Sexual Violence Offenses
- Hostile Environment

Quid Pro Quo Harassment

- An employee, agent, or other person authorized by the College to provide an aid, benefit, or service under the College'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.

Specific Sexual Violence Offenses

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking
- No required definition for consent

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.
- alignment with Title VII

Totality of the Circumstances

- Degree to which the conduct affected the complainant's ability to access the education program or activity
- Type, frequency and duration of the conduct
- Parties' ages, roles, previous interactions and other relevant factors
- Location and context of the conduct
- Other sex-based harassment in the school's education program or activity

Application

- All sex discrimination occurring under a college's education program or activity in the U.S.
- Includes conduct that occurs
 - In a building owned or controlled by a student organization that is officially recognized
 - Conduct that is subject to disciplinary authority

Disciplinary Authority

- Social Media?
- Conduct occurring outside the school's education program or activity or outside the U.S. if contributes to a hostile environment in the education program or activity



TITLE IX COORDINATOR RESPONSIBILITIES

Obligation

- College with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must
 - Respond promptly and effectively
 - And address sex discrimination

Barriers to Reporting

- T9 Coordinator must monitor for barriers to reporting and
- Take steps reasonably calculated to address such barriers

Employee Reporting

- Confidential Employees
 - Notify Title IX Coordinator: No
 - Provide Title IX Coordinator Contact Info: Yes
- Employees with authority to institute corrective measures
 - Notify Title IX Coordinator: Yes
 - Provide Title IX Coordinator Contact Info: Yes

Employee Reporting

- Employees with responsibility for administrative leadership, teaching and advising
 - Notify Title IX Coordinator: Yes
 - Provide Title IX Coordinator Contact Info: Yes
- All other employees
 - Notify Title IX Coordinator OR
 - Provide Title IX Coordinator Contact Info

T9 Coordinator Requirements

- When notified of conduct that may reasonably constitute sex discrimination
 - Treat complainant and respondent equitably
 - Offer and coordinate supportive measures
 - Notify complainant of grievance procedures
 - Notify parties of informal resolution process (if available and appropriate)

T9 Coordinator Requirements

- If a complaint is made
 - Notify respondent of grievance procedures
 - Notify respondent of informal resolution (available and appropriate)

Complaint

- Oral or written request to the college that objectively can be understood as a request for the college to investigate and make a determination about alleged discrimination

Who Can Make a Complaint?

- Complainant
 - Student or employee
 - Other person at a time when individual was participating or attempting to participate in school's education program or activity;
- Parent, guardian or other authorized legal representative;
OR
- Title IX Coordinator
- Sex-based harassment: individual themselves are alleged to have been subjected to sex-based harassment (+ rep)

Student Employees

- Title IX Coordinator must consider:
 - Party's primary relationship is to receive an education
 - The alleged sex-based harassment occurred while the party was performing employment-related work

Title IX Coordinator Complaint

- Title IX Coordinator can initiate complaint if alleged conduct:
 - Presents an imminent and serious health or safety threat
 - Prevents college from ensuring equal access to its education program or activity on the basis of sex
- Fact-Specific Determination
 - 8 factors listed in Final Rule
- If initiating, prior notification to complainant required
 - Address concerns, provide supportive measures

Required Response – Grievance Procedures

- **Response to Notice**
 - 106.44: Title IX Coordinator must conduct initial assessment and response (no complaint needed)
 - Includes offering and coordinating supportive measures
- **Response to Complaint**
 - +106.45: Grievance procedure initiated when complaint received
 - Sex discrimination or non-student sex-based harassment
- **Response to Student Sex-Based Harassment**
 - ++ 106.46: Grievance procedure and additional sex-based harassment procedures

Supportive Measures

- Designed to protect the safety of the parties or the educational environment or provide support during resolution process
- Not imposed for punitive or disciplinary reasons
- Parties can challenge a decision to provide, deny, modify or terminate
 - Must be heard by impartial employee with ability to modify or reverse original decision
- Don't unreasonably burden either party

Supportive Measures

- Can burden respondent during grievance process
 - Allow for review prior to imposition if possible
 - Removed at the conclusion of the grievance process
 - No more restrictive than necessary to restore/preserve complainant's access
 - Not punitive/disciplinary

Informal Resolution

- Cannot be investigator or decisionmaker
- Trained
- No conflicts of interest or bias
- Potential terms
 - Restrictions on contact
 - Restrictions on respondent's participation in education program or activity consistent with disciplinary sanctions had there be a determination

Dismissal

- No mandatory options
- Discretionary (notification required):
 - Unable to identify the respondent (reasonable effort)
 - Respondent no longer enrolled or employed
 - Complainant voluntarily withdraws allegations (remaining allegations do not constitute sex discrimination)
 - College determines conduct would not constitute sex discrimination (even if proven)
- Appeal Decisionmaker cannot have been previously involved

Basic Grievance Procedure Components

- Title IX Coordinator, Investigator(s), Decisionmaker may not have:
 - Conflict of interest
 - Bias for or against complainants or respondents generally
 - Bias for an individual complainant or respondent
- Single investigator model (including decision) ok
- Presumption of non-responsibility
- Objective evaluation of all relevant evidence

Investigation Components (106.45)

- Adequate, reliable and impartial investigation
- Burden on college
- Equal opportunity
 - Provide fact witnesses and relevant evidence
 - Access relevant evidence (directly related evidence is gone)
 - Reasonable opportunity to respond to the evidence

Investigation Components (106.46)

- 106.45+
- Written notice of the date, time, location, participants and purpose of all meetings or proceedings (with time to prepare)
- Equal opportunity to
 - Be accompanied by an Advisor of choice
 - Have any persons other than and Advisor present
 - Present expert witnesses (if permitted at all)
 - Access to relevant evidence and investigation report
 - Opportunity to respond to evidence/report (10+10 gone)

Determination (106.45)

- Decisionmaker must be able to question parties and witnesses to adequately assess credibility (to the extent in dispute and relevant)
- Preponderance of the evidence standard (unless C&C used for comparable proceedings)
- Written determination provided with (1) rationale and (2) grounds for appeal (if applicable)
- Remedies and sanctions imposed if violation

Determination (106.46)

- 106.45+
- Decisionmaker must have method of testing credibility
 - Individual meetings
 - Live hearing with Decisionmaker asking questions
 - Live hearing with advisor cross examination

Live Hearing Optional

- If no live hearing:
 - Investigator or decisionmaker must be able to question parties and witnesses during individual meetings
 - Parties may suggest questions of other parties or witnesses
 - Provide parties with a recording or transcript

Confidentiality

- School must take reasonable steps to
 - Prevent and address (parties and their advisors)
 - Unauthorized disclosure of information and evidence obtained solely through grievance procedures

Appeals

- 106.45: same as offered for all other comparable proceedings (including other discrimination complaints)
- 106.46: required on the following bases:
 - Procedural irregularity that would change the outcome
 - New evidence that would change the outcome and that was not reasonably available when the determination was made
 - Title IX Coordinator or Decisionmaker had a conflict of interest or bias

Pregnancy and related conditions

- Based on reasonable belief that individual is pregnant
- Generally, cannot require a certification to participate unless required of all students
- Provide students with information on how to contact Title IX Coordinator and inform that Coordinator works to prevent sex discrimination and ensure equal access

Pregnancy and related conditions

- Individualized needs/interactive process
- Reasonable modifications
 - Cannot fundamentally alter the education program or activity
 - Student can accept or decline each reasonable modification
 - Cannot require medical documentation unless necessary to provide modification
- Voluntary leave of absence
- Lactation space (clean, private, free from intrusion)



PREPARING FOR IMPLEMENTATION

Preparation

- Impacted state?
- Policy and procedure review
- Overlap with 2020 Rule
- Title IX staffing
- What investigator/Decisionmaker model
- Expanded training requirements
- Review pregnancy related policies and ensure sufficient lactation space



Questions?



Edward M. Cramp

Partner

EMCramp@duanemorris.com
(619) 744 2223



Jessica S. High

Associate

JHigh@duanemorris.com
(619) 744 2214