




# TRAINING ON TITLE IX 2024 REGULATIONS

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# Meet your trainer



Rebecca Leitman Veidlinger is an attorney specializing in Title IX and the institutional response to complaints of gender-based discrimination, sexual harassment, and sexual violence. Rebecca has conducted and supervised hundreds of Title IX investigations and has served as a Title IX hearing officer in nearly 100 matters.

Rebecca teaches and trains on school-related sexual misconduct nationwide. As an adjunct professor at the University of Michigan Law School, she teaches a seminar on Title IX, and she frequently provides sexual misconduct prevention and response training to higher education administrators, Title IX implementers, and K-12 personnel.

In 2022, Rebecca was appointed as the external co-chair of the University of Michigan's Coordinated Community Response Team, a group that examines the University's prevention and response efforts, identifies areas for growth, and makes policy recommendations to the University's leadership.

Before entering private practice, Rebecca worked at the University of Michigan as a Title IX investigator. She also served as Michigan State University's interim deputy Title IX coordinator, overseeing MSU's creation of a free-standing civil rights investigation unit in 2015. Rebecca is the former sex crimes prosecutor in Monroe County, Indiana (home of Indiana University), where she prosecuted hundreds of cases of domestic and sexual violence involving children and adults.

# Before we begin

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# Today we will discuss

- The expanded scope of the new regulations and the revised definitions
- New requirements re: pregnant and parenting students
- Mandatory reporting requirements of various institutional employees
- Institutions' mandatory response to reports of sex discrimination
- Complaints and dismissals of complaints
- Options and requirements for resolving complaints of sex discrimination
- Training requirements for Title IX implementers
- Roles in the process, and how to serve impartially, without bias, and without conflicts of interest

# Where we are today

- New regulations were issued in April 2024 and went into effect August 1, 2024
- Institutions were required to change to policies compliant with the new 2024 regulations for sex discrimination on August 1 unless subject to an injunction
- Institutions subject to an injunction remain operating under policies compliant with the 2020 regulations
- No matter what your status re: injunctions, the old regulations still apply to conduct occurring before August 1, 2024
- Special note: For public institutions in the 6<sup>th</sup> Circuit (all of you) the changes in the regulations regarding resolution options don't really apply
- New president = new Title IX framework ?????

# Expansion: Sex Discrimination

- Includes but is not limited to:
  - *Sex-based harassment*
- Sex discrimination includes discrimination on the basis of:
  - *Sex stereotypes*
  - *Sex characteristics*
  - *Sexual orientation*
  - *Gender identity*
  - *Pregnancy or related conditions*
- Also: clarification of retaliation

# Gender identity and the 2024 Regulations

- Discrimination based on gender identity is explicitly identified as a form of discrimination based on sex
- Where Title IX permits separation on the basis of sex, institution cannot do so in a manner that subjects a person to more than de minimus harm
- Preventing a person from participating in a program or activity consistent with their gender identity subjects a person to more than de minimus harm

# Sex-Based Harassment:

## Three categories of conduct

- Category One: Quid Pro Quo

- *An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct*
- Broadened to include acts of an employee, agent, or other person authorized by the institution to provide an aid, benefit, or service of the institution



# Sex-Based Harassment:

## Three categories of conduct

- Category Two: Hostile Environment Harassment
  - *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 (i.e., creates a hostile environment).*
  - Broadened definition to conduct that is severe OR pervasive
  - Provides factors to assess for hostile environment
    - The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
    - The type, frequency, and duration of the conduct;
    - 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;
    - The location of the conduct and the context in which the conduct occurred; and
    - Other sex-based harassment in the recipient's education program or activity

# Sex-Based Harassment:

## Three categories of conduct

- Category Three: Clery crimes
  - *Sexual assault, dating/domestic violence, and stalking*

# Additional expansion: Duties of Title IX Coordinator

- In absence of a complaint or withdrawal of complaint/allegations in a complaint, TIXC must determine whether to initiate a complaint of sex discrimination by considering these factors:
  - *Complainant's request not to proceed with complaint*
  - *Complainant's reasonable safety concerns regarding initiation of complaint*
  - *Risk that additional acts of sex discrimination would occur if complaint is not initiated*
  - *Severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction*
  - *Age and relationship of the parties, including whether Respondent is an employee*
  - *Scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple people*
  - *The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred*
  - *Whether the institution could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures*
- Must monitor institution's education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination, and take steps reasonably calculated to address such barriers

# Additional expansion: Pregnancy and related conditions

- Institution must not discriminate in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions
- Institutions may not adopt or implement any policy, practice, or procedure concerning a student's current, potential, or past parental, family, or marital status that treats students differently on the basis of sex
- Institution must provide reasonable modifications based on individualized needs but don't have to fundamentally alter programs
- Student has a right of reinstatement to academic status after leave of absence
- Includes an explicit requirement for lactation space for students other than a bathroom
- \*\*Pregnancy disclosures by a student and the requirement of providing information\*\*

# Change:

## Notification and information requirements (i.e., “mandatory reporting”)

- Differ, based on category of employees
- Officials with authority, or employees who have responsibility for administrative leadership, teaching, or advising: must report to TIXC
- All other non-confidential employees: must either report to TIXC or provide reporting party the TIXC’s contact info
- Confidential employees: must explain to any disclosing/reporting person:
  - *Their status as confidential*
  - *The circumstances in which they are not required to notify the TIXC about possible sex discrimination*
  - *How to contact the TIXC*
  - *How to make a complaint of sex discrimination*
  - *That the TIXC may be able to offer and coordinate supportive measures, initiate informal resolution, and conduct an investigation*

# Change:

## Dismissals of complaints

- Under 2024 regulations, no more mandatory dismissal of complaints
- Dismissal is discretionary
- May dismiss based on:
  - *Institution unable to identify the respondent after taking reasonable steps to do so*
  - *Respondent is not participating in institution's education program or activity and is not employed by the institution*
  - *Complainant voluntarily withdraws any or all of the allegations in a complaint, and TIXC declines to initiate a complaint, and institution determines that without the withdrawn allegations, the conduct that remains alleged would not constitute sex discrimination under TIXC*
  - *Institution determines the conduct alleged in complaint, even if prove, would not constitute sex discrimination under TIX.*

# Other expansions and changes worth noting

- Definition of student: a person who has gained admission
- Response obligations: expands to include conduct that occurred outside the institution's program or activity or outside the U.S., if it contributes to a sex-based hostile environment
- Investigation obligations: definition of complaint
- Challenging supportive measures
- Availability of informal resolution

# RESOLVING COMPLAINTS UNDER THE 2024 REGULATIONS



# Informal Resolution

- Can be offered at any time, based on TIXC's discretion
- Can't require or pressure the parties to participate, must be voluntary
- Facilitator must not be the same person as investigator or decisionmaker
- Before offering, TIXC must provide notice to the parties that explains:
  - *The allegations*
  - *The requirements of the informal resolution process*
  - *That prior to agreeing to a resolution a party may withdraw from the informal process and proceed with formal process*
  - *That an agreement at the end of informal process would preclude the parties from initiating or resuming formal process*
  - *The potential terms that may be requested or offered in an informal resolution agreement*
  - *What information the institution will maintain and whether and how institution could disclose such information for use in formal process if formal process is initiated/resumed*

# Grievance procedures: two sets

- Complaints of sex-based harassment involving a student party (106.46)
- Complaints of all other forms of sex discrimination (106.45)

# Procedures for complaints of sex discrimination (§106.45)

- Fewer elements in written notice of allegations
- Evidence review: must provide opportunity to access relevant evidence OR a description of the evidence with reasonable opportunity to respond
- No requirement of investigation report
- Doesn't require institution to permit advisors
- No requirement of a hearing

# Procedures for complaints of sex discrimination (§106.45) (cont'd)

- Decisionmaker (who may be the same investigator who conducted investigation) must be allowed to question parties and witnesses where credibility in issue
- Preponderance of the evidence, unless ...
- Written notice of determination must include rationale for determination
- Appeals

# Procedures for complaints of sex-based harassment involving a student party (§106.46)

- More detailed notice letter
- Must allow advisors
- Evidence review: must provide access to relevant evidence OR a written investigation report summarizing that evidence, with reasonable opportunity to respond
- Written determination must include decisionmaker's evaluation of the relevant evidence and determination of whether sex-based harassment occurred

# Procedures for complaints of sex-based harassment involving a student party (§106.46) (cont'd)

■ Must include mechanism that permits decision maker to question parties and witnesses. Can, in theory, do this in one of three ways:

- *Single investigator model (modified)*
- *Nonhearing decisionmaker model*
- **Hearing decisionmaker model**

# Appeals

- Must offer both parties opportunity to appeal determination whether sex-based harassment occurred and from the decision to dismiss a complaint based on:
  - *Procedural irregularity that would change the outcome*
  - *New evidence that would change the outcome and that was not reasonably available when the determination or dismissal decisions were made*
  - *TIXC, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome*

# Training for all employees

- Institution's obligation to address sex discrimination
- The scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment
- All applicable notification and information requirements related to pregnancy and related conditions



# Training for all Title IX implementers (including investigators, decisionmakers, and those who handle supportive measures)


- (Training for all employees, plus)
- Institution's obligations to respond to sex discrimination (including mandatory reporting)
- Institution's grievance procedures under 106.45 and, if applicable 106.46
- How to serve impartially, including not pre-judging the facts, conflicts of interest, and bias
- The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance

# Training for facilitators of informal resolution

- (Training for all employees, plus)
- The rules and practices associated with the institution's informal resolution process
- How to serve impartially, including by avoiding conflicts of interest and bias

# Training for Title IX Coordinator and designees

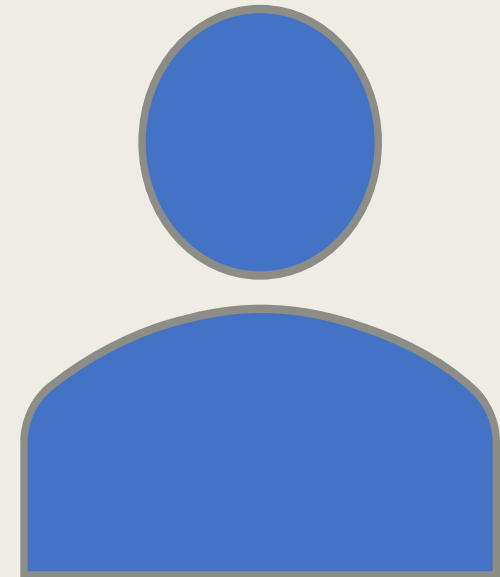
- (Training for all employees, training for all implementers, training for facilitators of informal resolution, plus)
- Their specific responsibilities to coordinate efforts to comply with Title IX, all duties of the TIXC spelled out in the regulations
- The recordkeeping requirements of the regulations



REGULATIONS REQUIRE THAT  
TITLE IX IMPLEMENTERS BE  
UNBIASED

- Title IX Coordinator
- Facilitator of informal resolution
- Investigator
- Decisionmaker
- Appeals officer
- Individual to hear challenges to supportive measures
- Party advisor

# Title IX Roles



# What does it mean to be unbiased?

- *Don't have a bias for or against complainants or respondents generally*
- *Don't have a bias for or against an individual complainant or respondent*
- *Treat parties equally/equitably during process*
- *Don't prejudge the evidence*

# Deeper dive into bias

Bias is not an action; it occurs in a person's head

What is implicit bias?

Different kinds of bias

QUESTIONS?

AND  
THANK YOU!

