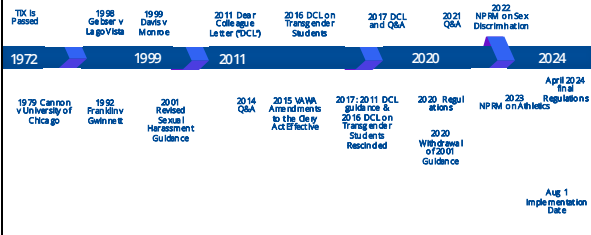


TITLE IX TRAINING FOR PRESIDENTS

August 5, 2024

Where we've been

A Timeline



Year	Event
1972	TIX is Passed
1979	Canon v University of Chicago
1982	Franklin v Gwinnett
1988	Gabriel v Lago Vista
1989	Davis v Monroe
2001	Revised Sexual Harassment Guidance
2014	Q&A
2015	VAWA Amendments to the Rape Act Effective
2017-2011	DCL guidance & 2016 DCL on Transgender Students Resched
2020	Regulations
2020	Withdrawal of 2011 Guidance
2021	DCL and Q&A
2021	Q&A
2022	NPRM on Sex Discrimination
2023	NPRM on Athletics
2024	April 2024 Final Regulations
2024	Aug 1 Implementation Date

WHERE WE ARE



- Implementation date was August 1, 2024.
- Rolling preliminary injunctions and appeals.
- Request to the Supreme Court to intervene.
- OCR acknowledges injunctions and that it cannot enforce the new regulations in those states or against the named institutions.

WHEN THE DUST SETTLES

- Possible outcomes to the litigation.
- First/next steps for implementation, if it occurs.

CHANGES IN THE 2024 REGULATIONS

- Creates framework to respond to sex discrimination
- Expands employee reporting and response/notification obligations
- Not strictly limited by geography; impact matters
- Requires annual training for all employees and those implementing the policy.
- Allows access to the informal resolution process without "filing a complaint."

COVERED CONDUCT – 2024 REGULATIONS

- **Discrimination on the basis of sex** includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
 - Incorporating *Bostock*.
 - Sex-based harassment is a form of sex discrimination and means sexual harassment, and other harassment *on the basis of sex, that is:*
 - Hostile environment sexual harassment
 - Quid Pro Quo
 - Specific Offenses (VAWA)
- How is this different from sexual harassment as defined in 2020?**

GEOGRAPHY - 2024 REGULATIONS

- Generally, not required to respond to alleged sex discrimination off-campus unless it is "within the program or activity"
- But "within the program and activity" includes "conduct that is subject to the recipient's disciplinary authority"
- Some schools have broad disciplinary authority that includes off-campus. The Department is trying to address "two track" systems.



PREGNANCY – 2024 REGULATIONS

- Not new, but clarified:
- Discrimination is prohibited.
 - Must provide reasonable modifications
 - Allow voluntary leaves or separate but comparable programs
 - Comparable treatment to other medical conditions
 - Modernized language around "related conditions."



PREGNANCY – 2024 REGULATIONS

This is new:

When a student* informs any employee of the student's pregnancy or related conditions...the employee promptly:

- (1) provides the Title IX Coordinator's contact information and
- (2) informs that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access....



RESOLUTION OPTIONS – 2024 REGULATIONS

- Informal resolution does not require "making a complaint"
- Permits informal resolution in postsecondary setting between employees and students.
- Baseline procedural requirements in 106.45 are for sex discrimination other than sex-based harassment involving a student.
- Additional procedure requirements for sex-based harassment involving a student (106.46).
- Flexibility to use one (106.46 compliant) procedure for all matters
- Flexibility on whether to have a live hearing* and what type (advisor questioning, or questions through the hearing officer)

TRAINING REQUIREMENTS –2024 REGULATIONS

- All employees – not merely offered.
- Additional topics for those implementing grievance procedures, specific to their roles.
- Annually
- No required training for students (who aren't also employees); but VAWA!



WHAT'S BEEN ELIMINATED IN THE 2024 REGULATIONS

- No requirement to post training
- No recordkeeping requirement relating to actions taken meet obligations under the sections relating to pregnancy
- No "mandatory dismissals"
- No formal complaints required – oral or written are ok
- Fewer barriers to informal resolution

See 'A Goodbye GIF By The Rodgers & Hammerstein Organization

OVERLAP WITH OTHER LAWS

- VAWA/Clery
- State nondiscrimination and antiharassment laws
- PUMP Act, PWFA, FMLA, and similar state laws
- Multi-layered training, notice, procedural requirements.



TITLE IX TODAY

- Tremendously complex, risky, and evolving area of compliance.
- Title IX Coordinator is responsible for critical decisionmaking.
- Sexual harassment prevention remains a priority across agencies, including in sponsored research.



TITLE IX TODAY

- What are the risks?
 - Litigation (I.E. study)
 - Investigations and findings by OCR, FSA, other agencies (including more and more federal agencies)
 - Reputational
 - Burnout and turnover of staff
 - Retention challenges
- **MOST IMPORTANT:** Harm to students, staff, and community members, and the harm can be and often is deeply devastating


TITLE IX TODAY


- We all want safe, secure, healthy living, learning, working environments free from discrimination and harassment (based on sex or any other protected category)
- Challenges: encouraging reporting, recordkeeping; building and maintaining trust in the office and process, recruiting and retaining staff to do this work.
- How do you know how your Title IX Office doing?
 - Proper staffing
 - Data collection
 - Monitoring trends
 - Assessing training effectiveness


TITLE IX TODAY


- Data
- Budget
- Measurable objectives
- How can we apply this approach to Title IX?


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