2024 Title IX Education Series: Translating the New Regulations into Your Title IX Policies and Procedures

Session 3: Expansion of Title IX Protections and Definitions

June 11, 2024



Meet Your Speaker Panel



Cara Hardin, J.D.Title IX Deputy Coordinator, Marquette University

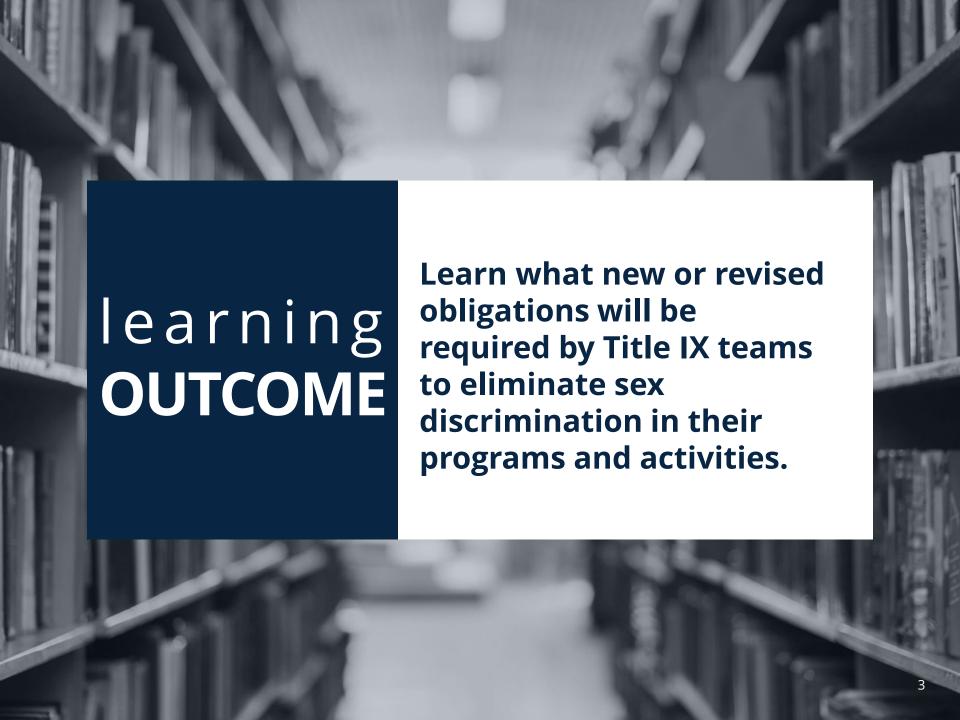


Dr. Adrienne Lyles, J.D.Executive Director for Equal Opportunity and Title IX Coordinator, University of Cincinnati



Candi Smiley, J.D.

Deputy Title IX Director, University of California, Los Angeles



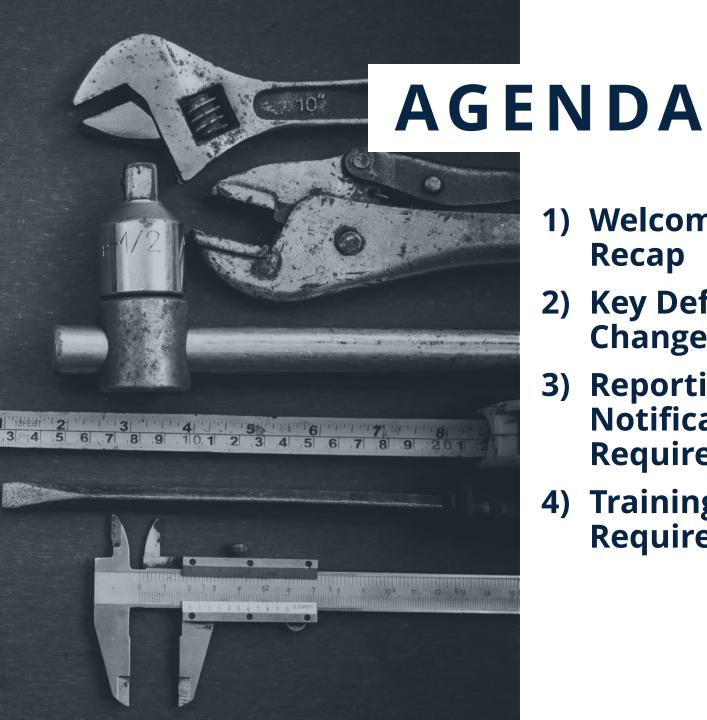
Disclaimer

The information provided in this training does not, and is not intended to, constitute legal advice. Instead, all information, content, and materials available during this training are for training and general informational purposes only.



#1

Welcome & Quick Recap



- 1) Welcome & Quick Recap
- 2) Key Definition **Changes**
- 3) Reporting/ **Notification** Requirements
- 4) Training Requirements

Welcome

These sessions will get you ready for compliance through a framework that emphasizes tips for operationalizing the 2024 regulations through real talk from a variety of institutional perspectives.

Recap

- Session 1: The Grievance Process Part I
- Session 2: The Grievance Process Part II
- Session 3: Expansion of Title IX Protections and Definitions

RESOURCE 🖹

- 2024 Final Rule: <u>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance</u>
- 2024 Final Rule <u>Fact Sheet</u>
- Office for Civil Rights <u>Resource for Drafting</u> <u>Title IX Policies and Grievance Procedures</u>
- NPRM on <u>Sex-Related Eligibility Criteria for</u> <u>Male and Female Athletic Teams</u>



#2

Key Definition Changes

Complaint (§ 106.2)

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 and this part



Comparison

2020 Regulations: Complaint must be written & signed

2024 Final Regulations: **Complaint** may be <u>oral or written</u>

Practical Implications

- Report & intake
- Complaint / desire to initiate an investigation

** However, the Title IX Officer cannot require the Complainant to put their report or desire for an investigation in writing

Complainant

- 2020 Regulations: An individual must be affiliated or participating in an education program or activity when the <u>report was filed</u>
- 2024 Final Regulations: An individual must be affiliated or a former affiliate participating or attempting to participate in an education program or activity when the <u>incident occurred</u>.

Practical Implications

- An individual's right to initiate a Title IX complaint is no longer extinguished because they graduated, transferred or moved onto to another opportunity
- Similarly, an individual on campus for a day:
 - guest speaker
 - volunteer
 - students on a college visit are either <u>attempting to or</u> <u>participating</u> in an educational program or activity and therefore have a right to file a Title IX report or
 - sports, theater or fine arts fan

Please note-this new regulation change is applied to all matters stemming from incidents August 1st moving forward. It will **not** be retroactive.

Sex Discrimination

Discrimination on the Basis of Sex:

 Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity

Sex-Based Harassment:

- Quid pro quo harassment
- Hostile environment harassment
- Specific offenses
 - Sexual assault
 - Dating violence
 - Domestic violence
 - Stalking



Hostile Environment

- 1) unwelcome,
- 2) sex-based,
- 3) subjectively and objectively offensive, as well as
- 4) so severe <u>or</u> pervasive
- 5) that it results in a limitation or denial of a person's ability to participate in or benefit from the recipient's education program or activity.

Practical Implications

- Increased delegation
- Increased campus partnerships

Peer Retaliation

Retaliation by a student against another student for the purpose of:

- Interfering with Title IX rights, or
- Because the person participated in some way in the Title IX grievance procedure

Practical Implications

- Applies only to student-to-student retaliation.
- May sometimes also constitute sex-based harassment.
- Does not apply to First Amendment speech.



#3

Reporting/Notification Requirements

Reporting Requirements - Status

Employee and Student Notification requirements are treated the same.

Practical Implications

- New Regs may necessitate changes to existing notification category
- Increases the number of notifications

REPORTING REQUIREMENTS - Category

<u>Status</u>

Non- Confidential Employee

Vs

Confidential Employee

Duty

 Reporting to the Title IX Coordinator or sharing information with the reporter

Vs

Sharing information with the reporter

Non-Confidential: Category 1

<u>Category 1</u>: Responsible for providing aid, benefits, or services to students.

- Examples:
 - Professors
 - Deans
 - Chairs
 - Supervisors
 - Managers
 - Human Resources

Non-Confidential: Category 2

<u>Category 2:</u> Any person who is provided with information about conduct that reasonably may constitute sex discrimination under Title IX or the regulations.

This category serves as the "catch all" – if they are not deemed a Category 1 member, they are in Category 2.



Non-Confidential Employee: The Options

Option 1:

All report to Title IX Coordinator or Designee

OR

Option 2:

<u>Category 1:</u> Required to report to Title IX Coordinator or Designee

<u>Category 2:</u> Required to inform reporter or Complainant of contact information, reporting process etc.



Practical Implications

Option 1

- Number of notifications to Title IX
- Accurate information
- Knowledge of hotspots and patterns

Option 2

- Reduced number of notifications to the Title IX Office
- Incorrect information
- Less supportive measures
- Decreased knowledge of hotspots and patterns

Confidential Employees (§ 106.2)

- (1) An employee of a recipient whose communications are privileged or confidential under Federal or State law. The employee's confidential status, for purposes of this part, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
- (2) An employee of a recipient whom the recipient has designated as confidential under this part for the purpose of providing services to persons related to sex discrimination.

Confidential Employees

3) An employee of a postsecondary institution who is conducting a human-subjects research study designed to gather information about sex discrimination that is approved by the Institutional Review Board (IRB) of another postsecondary institution (*i.e.*, not the institution that employs the individual who is conducting the study).

Confidential Employee: Notification Requirement

Required to share information about how to contact the Title IX Coordinator and make a complaint of sex discrimination





#4

Training Requirements

General Employee Training (§106.8d)

- The recipient's obligation to address sex discrimination in its education program or activity,
- The scope of conduct that constitutes sex discrimination under Title IX, including the definition of "sex-based harassment," and
- All applicable notification and information requirements under §§ 106.40(b)(2) and 106.44.



Title IX Coordinator and their Designees (§ 106.8(d)(3))

- Specific responsibilities under §§ 106.8(a), 106.40(b)(3), 106.44(f), 106.44(g),
- The recipient's recordkeeping system and the requirements of § 106.8(f),
- Any other training necessary to coordinate the recipient's compliance with Title IX.

Title IX Investigators, Decision Makers, Others (§ 106.8(d)(2))

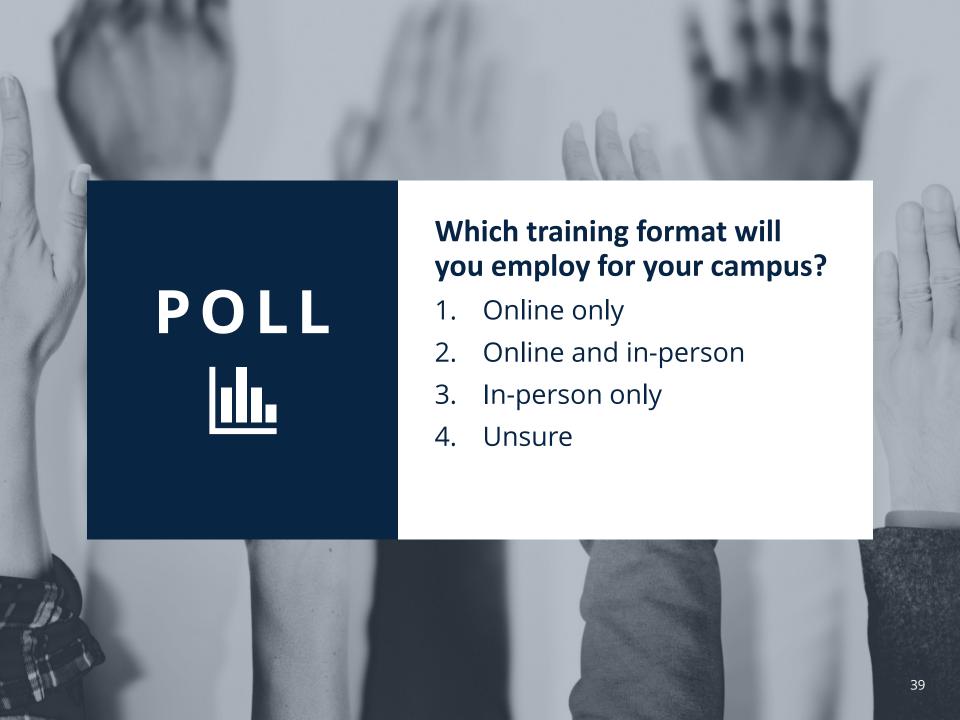
- The recipient's obligations under § 106.44;
- The recipient's grievance procedures under § 106.45, and if applicable § 106.46;
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; § 106.8(d)(2) and § 106.45(b)(1)
- The meaning and application of the term "relevant" in relation to questions and evidence § 106.2
- The types of evidence that are impermissible regardless of relevance under § 106.45, and if applicable § 106.46

Facilitators of Informal Resolution Processes (§ 106.8(d)(3))

- The rules and practices associated with the recipient's informal resolution process and
- How to serve impartially, including by avoiding conflicts of interest and bias.

Frequency & Practical Implications

- Upon hire
- Annually thereafter
- Within six (6) months of promotion



2024 Title IX Regulation Success Program for Coordinators and Investigators

Space is Limited. Sign up by July 10, 2024

How it Works

1. Get a Comprehensive Overview of the New Title IX Regulations in a 5-part live webcast series

May 28 - June 25, 2024

Recordings of sessions will be available to watch on-demand

3. Participate in 4 Title IX Coordinator Discussion Circles

Every Thursday, August 29 – September 19, 2024

2. Certify Your Investigator(s) Online

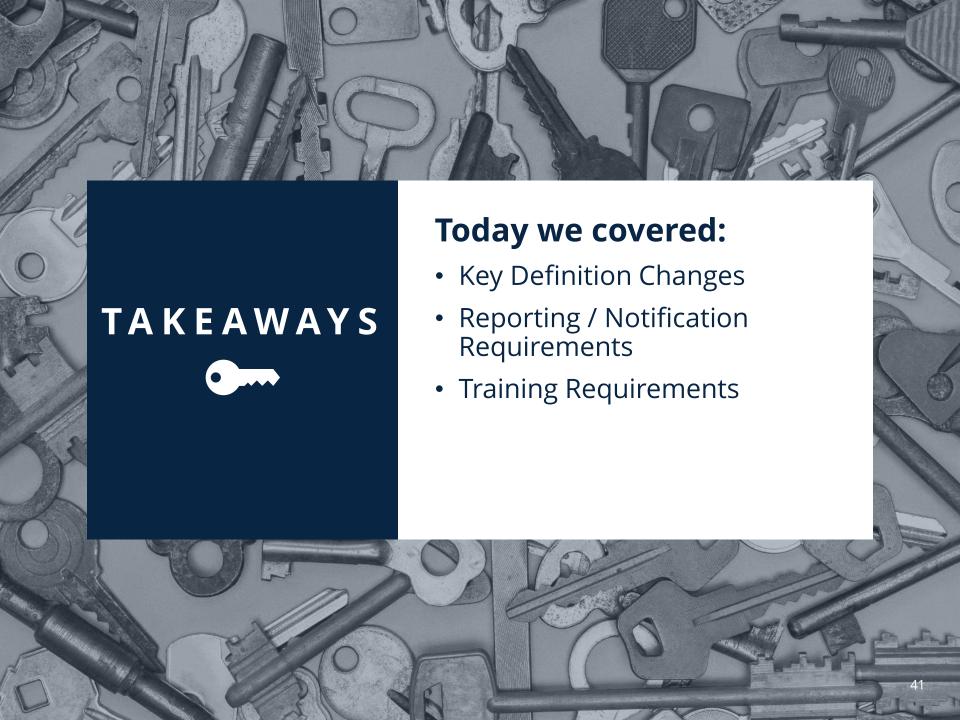
Choose either:

- Foundations: July 11 12, 2024
- Advanced: July 15 16, 2024

4. Attend an in-person 3-day Coordinator Training and earn a certificate

October 16 - 18, 2024 | Baltimore, MD





QUESTIONS?



Thank you!

Please remember to complete the <u>event evaluation</u>. Your comments will help us continually improve the quality of our programs.