

# Title IX Team Training

Limestone University  
May 21, 2024



# Agenda

---

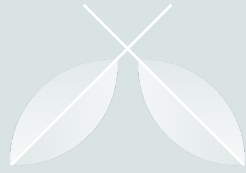
Introduction of the Team

Brief History of Title IX

2024 Regulations Update

Investigation Checklist



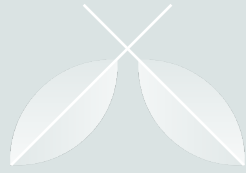


# Original Title IX Statute

*"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 educational program or activity receiving Federal financial assistance."*

These 37 words are the original Title IX, which is a section of the Education Amendments signed into law by President Richard M. Nixon on June 23, 1972. This has not changed.





# Title IX Regulations have been revised several times.

**MOST RECENTLY APRIL 18, 2024**

**DEPARTMENT OF EDUCATION**

**GUIDANCE ISSUES APRIL 29, 2024**

**IMPLEMENTATION AUGUST 1, 2024**



**1978:** initial regulations issued with a notice of obligation to comply and in 1980 the Office of Civil Rights was given jurisdiction.

**1987:** Regan Administration attempted to revoke Title IX but this was overridden by the Civil Rights Restoration Act.

**2011 and 2014:** in a response to the Me-Too Movement, the Obama Administration issued guidance (not the force of a regulation) to address sexual harassment and discrimination through Title IX.

**2020:** the Trump Administration issued revised regulations that substantially added to the responsibility and liability of an institution.

**2024:** Biden Administration issued revised regulations and added new areas of enforcement.

# The Life of a Law

- **Statutory Law:** never changes, it make be revoked, but never changed. I.E. 37 words of the original Title IX remain the same.
- **Regulatory Law:** changes with periodically depending on cultural climate, extended interpretation, guidance and/or additions. Title IX regulations have been updated in 2011, 2014,(through guidance) 2020, and most recently 2024 (through actual rule changes). Other revisions are likely as administrations change.
- **Case Law:** changes everyday. Court interpretations will precipitate changes in regulations, others will set precedents.



The 2024 Regulations  
Broadened the Scope of  
Title IX compliance:

**SECTION 106.10**



**“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”**

Sex Discrimination is now recognized in two categories:

---

### **Sex-Based Harassment:**

- Sexual Assault
- Dating/Domestic Violence
- Stalking
- Hostile Environment
- Quid Pro Quo

### **Sex Discrimination:**

- Sex stereotypes
- Sex characteristics
- Pregnancy or related conditions
- Sexual orientation
- Gender identity

# Scope of Title IX Coverage

Title IX requires a recipient to address all sex discrimination occurring under its education program or activity in the United States. Under the final regulations, conduct that occurs under a recipient's education program or activity includes, but is not limited to:

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.

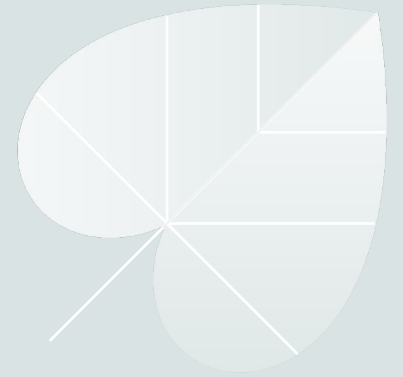
Under the final regulations, a recipient is required to address a sex-based hostile environment in its education program or activity in the United States, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States.



# Title IX Team Member Roles:

---

- **Title IX Coordinator**: The Title IX coordinator is the responsible employee of the University with major responsibility for Title IX compliance efforts. The Title IX Coordinator oversees the University's response to reports and complaints that involve possible sex discrimination to monitor outcomes, identify and address any patterns, and assess effects on the campus climate so the University can address issues that affect the wider school community.
- **Title IX Investigator**: bears the burden of gathering evidence in order to (1) determine if the sexual harassment allegations meet Title IX standards, and (2) provide the Decision-Maker with evidence with which to base the written determination of responsibility at the end of the grievance procedure.
- **Title IX Decision Maker**: the person or group of individuals responsible for making decisions based on relevant information gathered by investigators and evaluating the credibility of the information presented.



# The Role of an Advisor in a Title IX Investigation

- Individuals bringing allegations (“Complainants”), and individuals responding to allegations (“Respondents”) who participate in a Title IX investigation process, have the right to have one individual of their choosing serve as their advisor throughout the investigation process.
- The advisor is someone who can assist with navigating and understanding the investigation process, including providing support during each portion of the investigation process and any meeting or interview that is associated with the investigation process. It is recommended that an advisor **not** be someone who is a witness in the same matter. This person may or may not be an employee of the University and may or may not be part of the Title IX team.

# ~~Grievance Process~~ is now referred to as the GRIEVANCE PROCEDURE

- Grievance Procedure A (CFR 34 106.45) refers to sex discrimination and **employee on employee** sex-based harassment
- Minimum Requirements include:
  - *Complaint received*
  - *Notice to the parties (complainant and respondent).*
  - *Investigation: single investigation model allowed. Decision maker may be the same person as the Title IX Coordinator or the investigator.*
  - *Written Determination: distributed to both parties.*

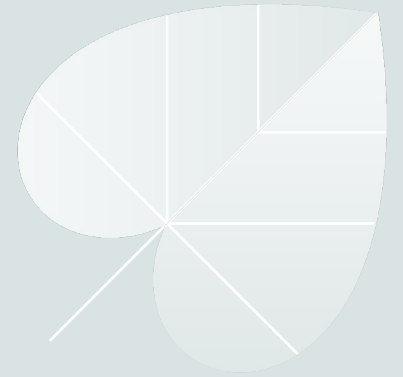


# Combining Title VII and Title IX Protections for Employees

- Employee-on-employee harassment was **not** noted in the original definition of Title IX. Title VII of the Civil Rights Act of 1964 is a federal employment law that prohibits employment discrimination based on race, color, religion, sex (including pregnancy) and national origin. The Supreme Court has allowed for the complaints under Title VII (EEOC) and Title IX (OCR) (Bostock vs. Clayton County) and joint complaints were rare since two different agencies are involved.
- **NEW REGULATIONS:** promote using Title IX because of the established procedural safeguards and defined process. There is no requirement under Title VII to have a grievance procedure.

# GRIEVANCE PROCEDURE B

- Grievance Procedure B (CFR 34 106.46) refers to sex-based harassment involving **student** complainants/respondents.
- Requirements:
  - *Upon receipt of a complaint, the focus is on the care of the student. Supportive measures are immediately offered to the complainant and the respondent.* The institution should guard against **"deliberated indifference"**.
  - Parties involved must be allowed an advisor and may be allowed a support person (not associated with the institution).
  - Investigation collects only **relevant** information and **privacy** guarded as much as possible.



## Grievance Procedure is required to include the following:

- Equitable treatment of the complainant and respondent. Presumption that the respondent is not responsible until determination is made. Notice of allegations to the parties.
- Ensure Title IX Coordinator, investigators, and decision makers are free from bias and are trained.
- Standard of proof is clearly stated: either preponderance of the evidence OR clear and convincing evidence.
- Reasonable timeframe for resolution. Specific timelines are not set in the regulations.
- Reasonable protection of privacy for the parties involved as well as witnesses.

## Grievance Procedure requirements continued:

- Written notice to all parties of allegations, dismissal, delays, meetings, and proceeding.
- Equal opportunity for both parties to review relevant evidence and the investigative report.
- If it is determined that sex discrimination occurred, remedies for the complainant and disciplinary sanctions for the respondent must be made promptly.
- Appeal options must be provided with determination of credibility of the information used to make a decision.

# Mandatory Reporting

- Section 106.44 (c) (2) (i)
- “Any non-confidential employee at a post-secondary institution or other recipient who has authority to take corrective action on behalf of the recipient or has responsibility for administrative leadership, **teaching, or advising** in the recipient's education program or activity is obligated to notify the Title IX Coordinator of possible sexual discrimination.”



## Three categories of confidential employees who are not required to notify the Title IX coordinator about sexual misconduct:

- **Privileged or Confidential Communications:** Employees whose communications are privileged or confidential under federal or state law fall into this category. They are exempt from the obligation to report incidents of sexual misconduct.
- **Designated Confidential Employees:** This category includes employees who are designated as confidential for the purpose of providing services related to sex discrimination. These employees are not considered mandatory reporters and do not need to notify the Title IX coordinator.
- **Research Study Participants:** Employees conducting an institutional review board-approved human-subjects research study specifically designed to gather information about sex discrimination are also exempt from the reporting requirement

## Confidential Employees are Obligated to:

- Inform the complainant of their status as confidential employee.
- Inform the complainant on how to contact the Title IX Coordinator, how to make a complaint, and how the Title IX Coordinator can help.
- Must assess the need for care and supportive measures and offer or provide.
- Question: *Must the confidential employee report the incident (with no identifying information) to be included in the Clery Report?*  
*Clarification to follow by the Department of Education.*



## Three New Provisions in the 2024 Regulations

- Protect students, employees, and applicants from discrimination based on pregnancy and related conditions.
- Prohibit discrimination against LGBTQI+ students, employees, and others.
- Protect people from harm when they are separated or treated differently based on sex.

# 1. Protect students, employees, and applicants from discrimination based on pregnancy and related conditions.

- The final regulations update longstanding existing protections and place them under Title IX obligation for students, employees, and applicants against discrimination based on pregnancy, childbirth, termination of pregnancy, lactation, related medical conditions, or recovery from these conditions. Specifically, the final regulations strengthen requirements that schools provide reasonable modifications and accommodations for students based on pregnancy or related conditions, allow for reasonable break time for lactation for employees, and access to a clean, private lactation space for students and employees.
- For the first time, the word “accommodations” is used in reference to institutional obligations under Title IX. These accommodations are organized and documented by the Title IX Coordinator.

## 2. Prohibit discrimination against LGBTQI+ students, employees, and others.

- *The rule prohibits discrimination and harassment based on sexual orientation, gender identity, and sex characteristics, applying the reasoning of the Supreme Court's ruling in Bostock v. Clayton County*
  - Bostock v. Clayton County extended the definition of “sex” to include sexual orientation and sexual identity.
- *This includes the creation of a hostile environment.*

### 3. Protect people from harm when they are separated or treated differently based on sex in school.

- The final regulations clarify that a school must not separate or treat people differently based on sex in a manner that subjects them to more than de minimis harm (so minor as to merit disregard) , except in limited circumstances permitted by Title IX.
- The final regulations further recognize that preventing someone from participating in school (including in sex-separate activities) consistent with their gender identity causes that person more than de minimis harm. **This general nondiscrimination principle applies except in the limited circumstances specified by statute, such as in the context of sex-separate living facilities and sex-separate athletic teams.**
- The final regulations do not include new rules governing eligibility criteria for athletic teams.

## Next steps: Identifying the Investigation Process and roles

- Define positions:
  1. Title IX Coordinator: duties are only performed by the designated coordinator and supported by the deputy coordinator (not required but advised). New regulations allow for the Coordinator to act as an investigator.
  2. Investigator: any member of the Title IX team who has been trained to collect relevant information to support the claim.
  3. Decision Maker: a member of the team trained to evaluate the evidence and decide on relevance and credibility. May be assisted by a panel.
  4. Advisor: any member of the team who can provide support and guidance to the complainant or respondent.



Thank you for your  
attention. See you next  
time when we delve into  
**Investigation 101**

---

Sharon E. Bellwood

Title IX Consultant

864-325-5916

[sebellwood@gmail.com](mailto:sebellwood@gmail.com)