

Title IX Training

All Employees-2024 Regulations

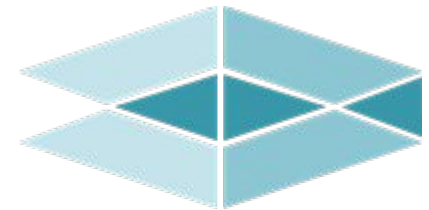
Renning Lewis & Lacy Attorneys:

Tess O'Brien-Heinzen (tobrien-Heinzen@law-rl.com)

Chad Wade (cwade@law-rl.com)

Alana Leffler (aleffler@law-rl.com)

COPYRIGHT © RENNING, LEWIS & LACY, S.C. 2024
ALL RIGHTS RESERVED.



RENNING
LEWIS & LACY

2024 Title IX Regulations

- Effective Date - August 1, 2024
 - 2024 regulations apply to conduct on or after August 1
 - 2020 regulations apply to conduct before August 1

Title IX Overview - Statutory Authority

Title IX of the Education Amendments 1972 provides:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C. § 1681(a).

Title IX Overview - Regulations

- Title IX Regulations, Published May 19, 2020 (34 C.F.R. part 106)

“These regulations are intended to effectuate Title IX’s prohibition against sex discrimination by requiring recipients to address sexual harassment as a form of sex discrimination in education programs or activities.”

- Title IX Regulations, Published April 19, 2024 (34 C.F.R. part 106)

“The purpose of these amendments is to better align the Title IX regulatory requirements with Title IX’s nondiscrimination mandate. These amendments clarify the scope and application of Title IX and the obligations ... to provide an educational environment free from discrimination on the basis of sex, including through responding to incidents of sex discrimination.”

DUTY OF ALL EMPLOYEES TO REPORT Sex Discrimination

- All employees must notify the Title IX coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX.

2024 Title IX Regulations

Sex Discrimination

- Different Treatment or Separation on the Basis of Sex.
 - Districts may not treat individuals differently or separate them on the basis of sex in a manner that subjects the person “to more than de minimis harm.”
 - “Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person’s gender identity subjects a person to more than de minimis harm on the basis of sex.”

2024 Title IX Regulations

“On the Basis of Sex”

Discrimination “on the basis of sex” is discrimination based on:

- Sex stereotypes
 - Stereotypes such as men should only be attracted to women.
- Sex Characteristics
 - Discrimination based on variations in anatomy, hormones, chromosomes that differ from expectations generally associated with male and female bodies.
- Sexual orientation
 - Sexual preferences such as lesbian, gay, bisexual
- Gender identity
 - Nonconforming to sex assigned at birth such as transgender and nonbinary
- Pregnancy or related conditions
 - Pregnancy, childbirth, termination of pregnancy, lactation, medical conditions related to pregnancy, childbirth, termination of pregnancy or lactation, recovery from pregnancy, childbirth, termination of pregnancy, lactation or related conditions.

2024 Title IX Regulations

Sex-Based Harassment

- Quid pro quo harassment: employee or agent conditioning provision of aid, benefit or service (same as 2020 regulations)
- Four types of conduct: sexual assault, dating violence, domestic violence and stalking (same as 2020 regulations)
- 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.

Sex-Based Harassment

- Assault
- Threats
- Slurs
 - Misogynistic
 - Transphobic
 - Homophobic
- Insults
- Dehumanizing gestures
- Online comments or pictures
- Nicknames implying stereotypes
- Exclusion
- Jokes
- Offensive cartoons, drawings, symbols, or gestures
- Sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.
- Intentional use of incorrect pronouns or names
- Jokes, insults, etc. based on gender identity, gender non-conformity, transgender status

Sex Based Harassment Factors to Consider

- Degree to which the conduct affects the individual's ability to access the educational program.
- The type, frequency and duration of the conduct.
- Parties ages, roles within the district, previous interactions.
- Location and context of conduct.
- Other sex-based harassment in the program.

Scenarios

- Male coach.
 - Tells sexually charged jokes around male and female athletes.
 - Comments on what students are wearing, specifically how tight, feminine, short things are.
 - Asks athletes intrusive questions about their dating life. Boyfriends/girlfriends/intimacy.
- Teacher has a student teacher.
 - Comments on teacher's appearance and clothing.
 - Asks about relationship with husband/wife.
 - Calls/texts them on weekends on personal cell.
 - Says things like, "if I were only a little younger, I'd try and date you."
 - Discusses personal life with spouse.
- Employees are out at happy hour after professional development.
 - Male employee comments on the other employee's chest following childbirth.
 - Asks the female employee if she breastfeeds.
 - Uses crude language when talking about it.

2024 Title IX Regulations

Pregnancy Discrimination

- Prohibits districts from treating students, employees, or applicants differently based on sex in connection with parental, family, or marital status.
- Prohibits discrimination against students, employees, or applicants, based on pregnancy or related conditions, and requires recipients to take actions to prevent sex discrimination and ensure equal access to the recipient's education program or activity, such as by providing reasonable modifications for students, reasonable break time for lactation for employees, and lactation space for students and employees.
- Prohibits schools from requiring documentation from students to obtain reasonable modifications or other actions unless such documentation is necessary and reasonable.
- Pregnancy or related conditions means:
 - pregnancy, childbirth, termination of pregnancy, or lactation;
 - medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
 - recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
- Title IX requirements related to pregnancy vary depending on whether the individual is a student or an employee.

2024 Title IX Regulations

Pregnancy or Related Conditions

■ Students

- Inform students of District obligations including modifications to program, allowing access to separate and comparable program, allowing voluntary leave of absence.
- Provide reasonable accommodations and modifications for students and lactation space for students.
- Prohibits schools from requiring documentation from students to obtain reasonable modifications or other actions unless such documentation is necessary and reasonable.

■ Employees

- Requires districts to treat pregnancy or related conditions of employees as any other temporary medical conditions for all job-related purposes, including commencement, duration, and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; and reinstatement; and under any fringe benefit offered to employees by virtue of employment.

DUTY OF ALL EMPLOYEES TO REPORT Student Pregnancy

- When student or person who has the legal right to act on behalf of the student, informs an employee of the student's pregnancy or related conditions, the employee must:
 - Promptly provide the person with the Title IX Coordinator's contact information and inform the person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the district's education program or activity.
 - The only exception is if the employee reasonably believes that the Title IX coordinator has been notified.

2024 Title IX Regulations

Grievance Procedures

- Definition of Complainant

- Student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination or
- A person other than a student or employee allegedly subjected to the same conduct and who was participating or trying to participate in district's program at time of conduct (*i.e., current or former student or employee or applicant*).

- Definition of Complaint

- A “complaint” is a request that objectively can be understood as a request to investigate and make a determination about alleged discrimination under Title IX.
- A complaint may be oral or written

2024 Title IX Regulations

Scope of Conduct/Complainants

- Districts have an obligation to address sex-based hostile environment harassment even when some conduct alleged to be contributing to the hostile environment occurred outside the District's education program or activity or outside the US.
- Former students and employees as well as others attempting to participate in a district's program or activities at the time of the conduct may bring a complaint for sex-based harassment.
- Any individual may file a complaint for other forms of sex discrimination.

2024 Title IX Regulations

Grievance Procedures

- Treat complainants and respondents equitably
- Ensure supportive measures
- Protect the privacy of parties and witnesses
- Establish reasonable timeframe (mandatory waiting periods have been eliminated)
- Emergency Removal in certain circumstances
 - Evaluation – dismiss or investigate/consolidate
 - Investigation
 - Determination
 - Appeal (if offered)

DUTY OF ALL EMPLOYEES TO RECEIVE TRAINING

- Receive annual training on Title IX.
 - District's obligation to address sex discrimination;
 - Scope of conduct that constitutes sex discrimination including definition of sex-based harassment, notification and information requirements.
- If employee assumes new role (e.g., becomes investigator or decision-maker), employee must be trained promptly and without delay.

Title IX Resources

U.S. Department of Education

- <https://www2.ed.gov/about/offices/list/ocr/docs/t9-unofficial-final-rule-2024.pdf> (unofficial regulations)
- <https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-factsheet.pdf> (fact sheet)
- <https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-summary.pdf> (summary sheet)
- <https://www2.ed.gov/about/offices/list/ocr/docs/resource-nondiscrimination-policies.pdf>
<https://www2.ed.gov/about/offices/list/ocr/docs/resource-nondiscrimination-policies.pdf> (resource for drafting policy)

Thank You!
