2022 Draft Title IX Regulations
A Summary Session for Colleges and Universities

June 28, 2022
We exist to help create safe and equitable work and educational environments.

Bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity
Overview of Topics

1. Scope Clarity (& Expansion)
2. Definitions
3. Procedural Updates
4. So Much More
REMINDER

Continue to follow current policies and procedures consistent with the 2020 Final Rule and state law
Background

Released unofficially June 23, 2022 – Happy Anniversary!

Expected to be published in the Federal Register July 8th.

July 8 FR publication would take us to ~Sept. 6 for the initial, mandatory comment period.

Anticipating an Extension... TBD

2020 Final Rule

- Nov. 2018 Publication → May 2020 Final → August 2020 Effective
- 140,000+ Comments
(Proposed) Expanded Scope

• Sex-Based Harassment (Proposed § 106.2) includes
  Discrimination on the Basis of Sex (Proposed § 106.10)

**SEX-BASED HARASSMENT**

- Quid pro quo
- Hostile environment: “Severe or pervasive”
- Specific Offenses, including sexual assault, dating violence, domestic violence, and stalking

**DISCRIMINATION ON THE BASIS OF SEX**

- discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
(Proposed) Expanded Responsibility

Expanded standard of responsibility
• “act promptly and effectively” versus deliberate indifference standard

Retaliation and peer retaliation

Pregnancy and related conditions
LGBTQI+

• “sex stereotypes, sex characteristics,... sexual orientation, and gender identity.”
• separate rule making for athletic eligibility standards
Responding and Notification

“actual knowledge”

• “[R]equire a recipient to take a prompt and effective action to end any prohibited sex discrimination that has occurred in its education program or activity, to prevent its recurrence, and remedy its effects.” (Proposed § 106.44(a))

• Supportive measures

Employees required to notify the TIXC (proposed § 106.44) are those who are not confidential, and:

• have responsibility for administrative leadership, teaching, or advising
• have authority to institute corrective measures
• All other employees who are not confidential employees*
Does an employee have to take any action because of what they learned about conduct that may constitute sex discrimination under TIX to the TIXC?

1. **IS THE EMPLOYEE CONFIDENTIAL?**
   - YES, no reporting is required.
   - IF NO, does the employee have the authority to institute corrective measures?
     - IF YES, report to TIXC.
     - IF NO, does the employee have responsibility for administrative leadership, teaching, or advising?
       - IF NO, TWO OPTIONS:
         1. Report to TIX, or
         2. Provide the TIXC’s contact information and information about how to report sex discrimination to any person who provides the ‘ee with the information about conduct that may constitute sex discrimination under TIX.

2. IF YES, is the information about a student being subjected to conduct that may constitute sex discrimination under TIX?
   - IF YES, report to TIXC.
   - IF NO, if the information about an employee being subjected to conduct that may constitute sex discrimination under TIX?
Geography and Jurisdiction

• Expanded scope (Proposed § 106.11)
• “in the United States” (Current § 106.44(a))

“It also requires a recipient to respond to a hostile environment based on sex within its education program or activity in the United States, even if sex-based conduct contributing to the hostile environment occurred outside the recipient’s education program or activity or outside the United States.” (Proposed § 106.11)
Definitions

- Student
- Complainant (includes 3rd Party Complainants)
- Retaliation and Peer Retaliation
- Pregnancy or related conditions
- Confidential employee
Supportive Measures

- Definition expanded from the 2020 Final Rule
- “Upon being notified of conduct that may constitute sex discrimination under Title IX, a Title IX Coordinator must offer supportive measures, as appropriate, to the complainant or respondent to the extent necessary to restore or preserve that party’s access to the recipient’s education program or activity” (Proposed § 106.44(g))
- Supportive measures may include but are not limited to:

  - Counseling;
  - Extensions of deadlines and other course-related adjustments;
  - Campus escort services;
  - Increased security and monitoring of certain areas of the campus;
  - Restrictions on contact between the parties;
  - Leaves of absence;
  - Voluntary or involuntary changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative;
  - Training and education programs related to sex-based harassment.
Informal Resolution

When may informal resolution begin?

Other changes?
Formal Resolution

Investigations, Hearings, and the Single-Investigator Model

Credibility analysis; “Process for evaluating allegations and assessing credibility” (Proposed § 106.45(f)(1))

Cross-examination?

Standard of evidence; The preponderance of the evidence standard of proof, unless* (Proposed § 106.45(h)(1))
Training

- **Specific Obligations To Train**

  - Employees: Scope and obligations; responsible employee duties; pregnant/parenting
  - Investigators, decisionmakers, and other persons who are responsible for implementing the recipient’s grievance procedures or have the authority to modify or terminate supportive measures
  - Facilitators of informal resolutions
  - TIXC and designees
Notice and Comment

The 60-day comment period begins the day the proposed rule is published in the Federal Register.

Do you want to submit a comment to the Department?

Join us for our comment writing session on Tuesday, July 12th to learn more.
Thank you!

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