

HigherEdReg Rundown

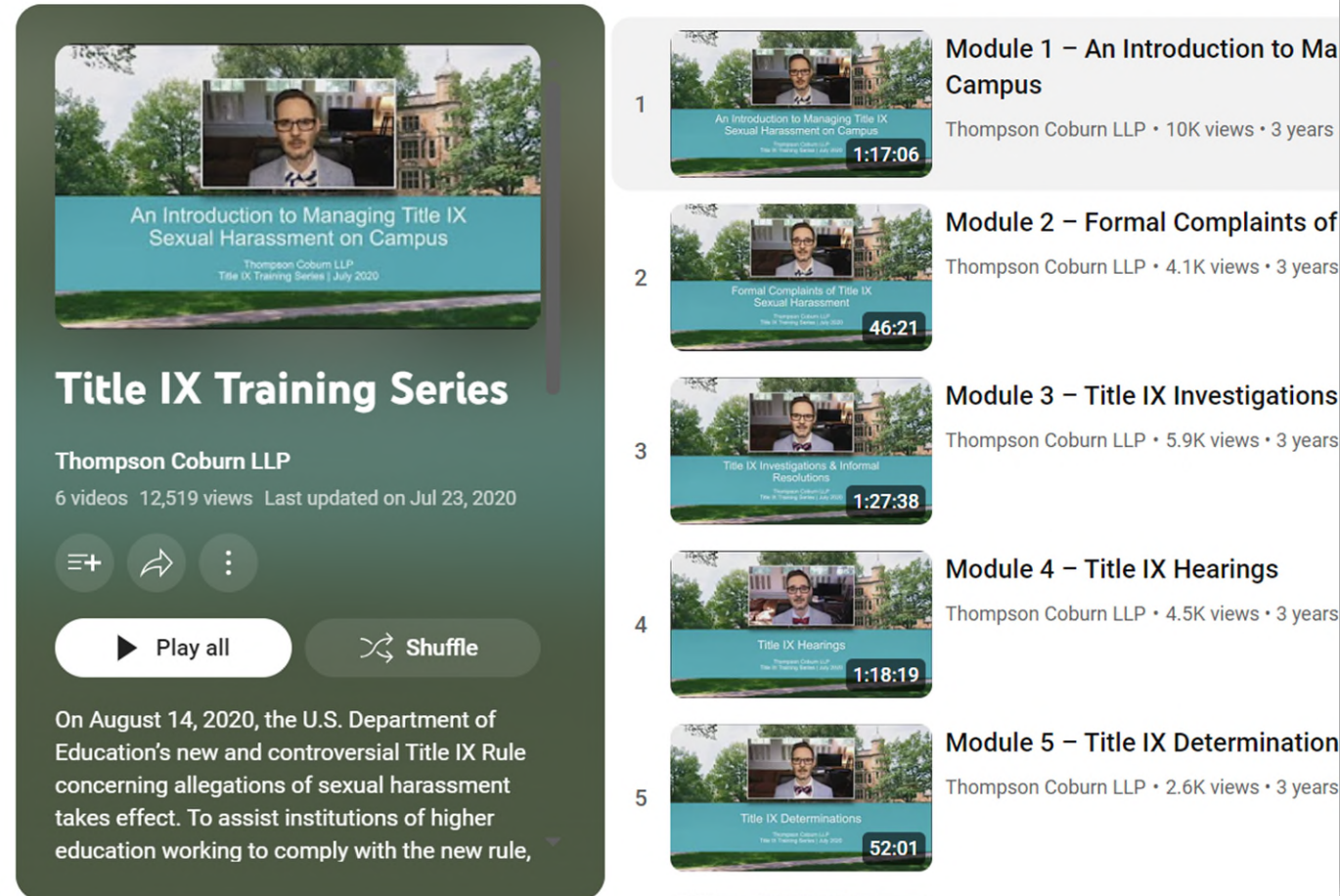
The Biden Administration's New Title IX Rule



The Title IX Rule

- On April 29, 2024, ED [published](#) its long-awaited new Title IX Rules.
- ED also published a [fact sheet](#), a [summary](#) of the major provisions of the final regulations, and a [resource](#) for drafting Title IX nondiscrimination policies, notices of nondiscrimination, and grievance procedures.
- The rule is set to take effect on **August 1, 2024**.

Title IX Training Series Redux



Title IX Training Series
Thompson Coburn LLP
6 videos 12,519 views Last updated on Jul 23, 2020

On August 14, 2020, the U.S. Department of Education's new and controversial Title IX Rule concerning allegations of sexual harassment takes effect. To assist institutions of higher education working to comply with the new rule,

- 1 **Module 1 – An Introduction to Managing Title IX Sexual Harassment on Campus**
Thompson Coburn LLP • 10K views • 3 years
1:17:06
- 2 **Module 2 – Formal Complaints of Sexual Harassment**
Thompson Coburn LLP • 4.1K views • 3 years
46:21
- 3 **Module 3 – Title IX Investigations and Informal Resolutions**
Thompson Coburn LLP • 5.9K views • 3 years
1:27:38
- 4 **Module 4 – Title IX Hearings**
Thompson Coburn LLP • 4.5K views • 3 years
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- 5 **Module 5 – Title IX Determinations**
Thompson Coburn LLP • 2.6K views • 3 years
52:01

Higher Education Resources Page

HIGHER EDUCATION RESOURCES

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Regulatory Churn and Litigation

Florida sues Biden administration over Title IX

By KIMBERLY LEONARD | 04/30/2024 07:01 AM EDT



Florida Attorney General Ashley Moody speaks as Gov. Ron DeSantis looks on after announcing a proposal for Digital Bill of Rights, Wednesday, Feb. 15, 2023, at Palm Beach Atlantic University in West Palm Beach, Fla. | Wilfredo Lee/AP Photo

Definitions and Concepts

| | | | |
|--------------------------------------|-----------------------------------|---|----------------------------------|
| Actual knowledge (removed) | Complainant (meaningful revision) | Consent (removed) | Complaint (new) |
| Confidential employee (new) | Disciplinary sanctions (new) | Formal complaint (removed) | Parental status (new) |
| Pregnancy or related condition (new) | Relevant (new) | Remedies (new) | Respondent (meaningful revision) |
| Retaliation (meaningful revision) | Sex Discrimination (new) | Sexual harassment (removed) | Sex-based harassment (new) |
| Specific Offenses (new) | Student with a disability (new) | Supportive measures (meaningful revision) | Transition Plan (removed) |

Scope

“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.**”

Application

“Except as provided in this subpart, this part applies to every recipient and to all **sex discrimination** occurring under a recipient’s education program or activity in the United States.

For purposes of this section, conduct that occurs under a recipient’s education program or activity includes but is not limited to:

Conduct that occurs in a 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.

A recipient has an obligation to address a sex-based hostile environment under its education program or activity, **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.**”

Protections

“In the limited circumstances in which Title IX or this part **permits** different treatment or separation on the basis of sex, a recipient must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than **de minimis harm, except** as permitted by 20 U.S.C. 1681(a)(1) through (9) and the corresponding regulations §§ 106.12 through 106.15, 20 U.S.C. 1686 and its corresponding regulation § 106.32(b)(1), or § 106.41(b).”

Final rule on Sex-Related Eligibility Criteria for Male and Female Athletic Teams forthcoming.
Proposed rule: 88 FR 22860 (Apr. 13, 2023).

Notification Standard

- Out: “Actual Knowledge” standard
- In: “... a recipient is deemed to have knowledge of sex-based discrimination in its education program or activity and an obligation to respond consistent with the requirements in § 106.44 when **any** non-confidential employee has information about conduct that **reasonably may constitute sex discrimination.**”

Response Requirements

Employees who can implement corrective measures.

- Must notify the Title IX Coordinator when the employee has any information about conduct that that reasonably may constitute sex discrimination.

Employees who have responsibility for administrative leadership, teaching, or advising.

- Must notify the Title IX Coordinator when the employee has any information about conduct that that reasonably may constitute sex discrimination.

All other employees who are not confidential employees.

- Must either: (1) notify Title IX Coordinator of conduct that may reasonably constitute sex discrimination, or (2) provide contact information for Title IX Coordinator and information on how to report sex discrimination.

Confidential employees.

- Must inform a person who discloses conduct that reasonably may constitute sex discrimination of their confidential, explain how to contact the Title IX Coordinator and make a complaint, and explain that the Title IX Coordinator may be able to offer and coordinate supportive measure, as well as initial an informal resolution or investigation.

The Title IX Procedural Waterfall

106.44(c)
Notice Received

Title IX Coordinator receives notice of conduct that may constitute sex discrimination under Title IX.

106.44(f)-(k)
Response to Notice

In response to notice of possible sex discrimination, Title IX Coordinator conducts initial assessment and response [NOTE: significant additional responsibilities for the Title IX Coordinator].

106.45
Response to
Complaint

In response to complaint of possible sex discrimination, Title IX Coordinator initiates universal grievance procedures, without regard to whether alleged behavior involves sex-based harassment involving a student.

106.46
Response to Sex-
Based Harassment
Involving Student

In response to complaint of possible sex discrimination that involves sex-based harassment involving a student, Title IX Coordinator follows both universal grievance procedures and additional procedures for complaints of sex-based harassment involving a student.

Universal Procedures

Equitable Treatment

- Treat complainants and respondents equitably.

Conflicts of Interest

- Require that any person designated as a Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias; however, the decisionmaker may be the same person as the Title IX Coordinator or investigator.

Presumption Against Responsibility

- Include a presumption that the respondent is not responsible for the alleged sex discrimination until a determination is reached.

Reasonable Timeframes

- Establish reasonably prompt timeframes for the major stages of the grievance procedures.

Protection of Privacy

- Take reasonable steps to protect the privacy of the parties and witnesses during the pendency of a school's grievance procedures.

Relevancy & Credibility

- Require an objective evaluation of all relevant evidence and provide that credibility determinations not be based on status as a complainant, respondent, or witness.

Exclusion of Impermissible Evidence

- Exclude specific categories of evidence, and questions seeking that evidence.

Additional Procedures

Notice

- Parties must be provided written notice of date, time, location, participants, and purpose.

Advisors

- Parties must be provided with same opportunities for advisors and others to attend any meeting or proceeding.

Expert Witnesses

- Institutions can choose whether to permit expert witnesses – as long as equitably applied.

Extensions

- Must allow for the reasonable extension of timeframes on a case-by-case basis for good cause.

Evidence

- Must provide equitable access to relevant evidence or a written report summarizing relevant evidence.

Credibility

- Institutions must provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment. Live hearings now optional unless required by state law.

Training Requirements

- **All employees** must be trained on the institution's obligation to address sex discrimination in:
 - The institution's obligation to address sex-discrimination in its education program or activity,
 - The scope of conduct that constitutes sex discrimination, including the proposed definition of "sex-based harassment," and
 - All applicable notification and information requirements under 106.40(b)(2) (pregnancy and marital status) and 106.44 (actions by a school).

Training Requirements

- **Investigators, decisionmakers, and other persons who are responsible for implementing grievance procedures or have the authority to modify or terminate supportive measures** must also be trained on:
 - The institution's obligations under respond to claims of sex discrimination;
 - The institution's grievance procedures;
 - How to serve impartially; and
 - The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible.
- **Facilitators of Informal Resolution Process** must be trained on the information resolution process including issues of impartiality and bias.
- **Title IX Coordinators** must be trained on their specific duties.

Pregnancy and Related Conditions

- An institution must protect students, employees, and applicants from discrimination based on pregnancy, childbirth, termination of pregnancy, lactation, related medical conditions, or recovery by:
 - Providing reasonable modifications for students
 - Reasonable break time for employees for lactation and a clean, private lactation space for both students and employees.
- When an employee is informed of a student's pregnancy or related condition, the Title IX Coordinator's information must be provided to coordinate a response.

Compliance Next Steps

- Rule effective **August 1, 2024**
- New Title IX policy, notice of nondiscrimination, and grievance procedures.
 - ED provided [Resources for Drafting](#)
- Training obligations for all employees.
- Buy-in/socialization from campus constituencies
 - Remember Summer Break!

TC Extra Credit | Resources Page

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