

# An Introduction to the 2024 Title IX Rule

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Thompson Coburn LLP

Title IX Training Series | Session 1 | July 2024



# Thompson Coburn LLP

- Full-service law firm with over 400 attorneys.
- Offices in Chicago, Los Angeles, St. Louis, Dallas, New York, Birmingham, and Washington, D.C.
- **Higher education practice** provides legal counsel, compliance, policy and training services to colleges and universities.
- Our attorneys routinely assist institutions to understand and comply with Title IX and other non-discrimination laws.



# Purpose of Training Series

- The new Title IX rule, effective August 1, 2024, creates new standards by which postsecondary institutions must address potential Sex Discrimination.
- This Title IX Training Series is designed to provide **foundational training** to those individuals who will help to administer this required process, including Title IX coordinators, investigators, adjudicators, advisors, appeal officers, and individuals responsible for managing informal resolutions.
- TC's Title IX Training Series on the 2020 Title IX rule is available here: [Title IX Training Series – YouTube](#)



# Use of Training Series

- Institutions of higher education are welcome to use this **foundational training** series at their discretion.
- TC also will be releasing a series of videos covering **best practices** in investigations and adjudications.
- **Custom training** will be important to cover institutional policies, and to accommodate state and municipal requirements, as well as the impact of litigation.



# Use of Training Series

- TC is available to prepare custom Title IX training sessions, hearing simulations, and other assistance with Title IX matters.
- We also have developed model Title IX policies, procedures, and notifications.
- For additional information contact [Scott Goldschmidt](#) or [Aaron Lacey](#).



# Curriculum for Training Series

The foundational training series includes the following four sessions:

An Introduction to the 2024 Title IX Rule

Complaints of Sex Discrimination

Complaints of Sex-Based Harassment w/ Students

Pregnancy and Related Conditions



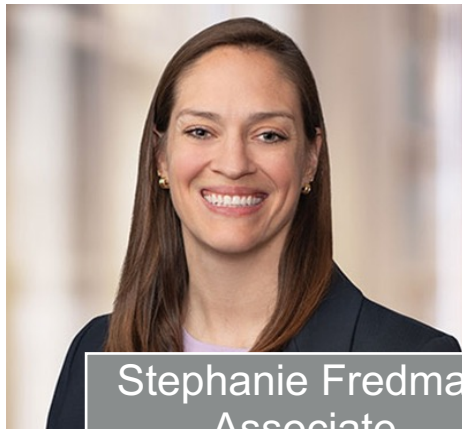
# Session Presenters



Aaron Lacey  
Co-Chair & Partner



Scott Goldschmidt  
Partner



Stephanie Fredman  
Associate



Leah Northener  
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# Syllabus for this Session

The 2024 Title IX Rule: Background and Status

Changes to Key Concepts

Expanded Jurisdiction

The Obligation to Respond to Sex Discrimination

Title IX Procedural Waterfall

Supportive Measures

Notice and Training Requirements

Recordkeeping

Retaliation





# The 2024 Title IX Rule: Background and Status



# The Title IX Statute

Title IX of the Education Amendments of 1972 prohibits discrimination **on the basis of sex** in education programs and activities and employment.

- Covers not only equity in athletic programming, but all forms of discrimination based on sex.
- Protects students and employees.
- Applies to all institutions that receive federal financial assistance, either directly or indirectly.
- Enforced by the Office of Civil Rights.



# The Title IX Regulations

- The regulations at 34 C.F.R. Part 106 amplify the statute, expressly prohibiting sex discrimination impacting **students** in a wide range of areas, including:

Admission  
and  
recruitment

Education  
programs or  
activities

Housing

Facilities

Counseling

Financial and  
employment  
assistance

Health  
insurance  
and benefits

Marital or  
parental  
status

Athletics



# The Title IX Regulations

- Similarly, the regulations expressly prohibit sex discrimination concerning **employees** in a number of areas, such as:

Employment

Compensation

Recruitment

Job  
classification

Fringe  
benefits

Marital or  
parental  
status

Advertising

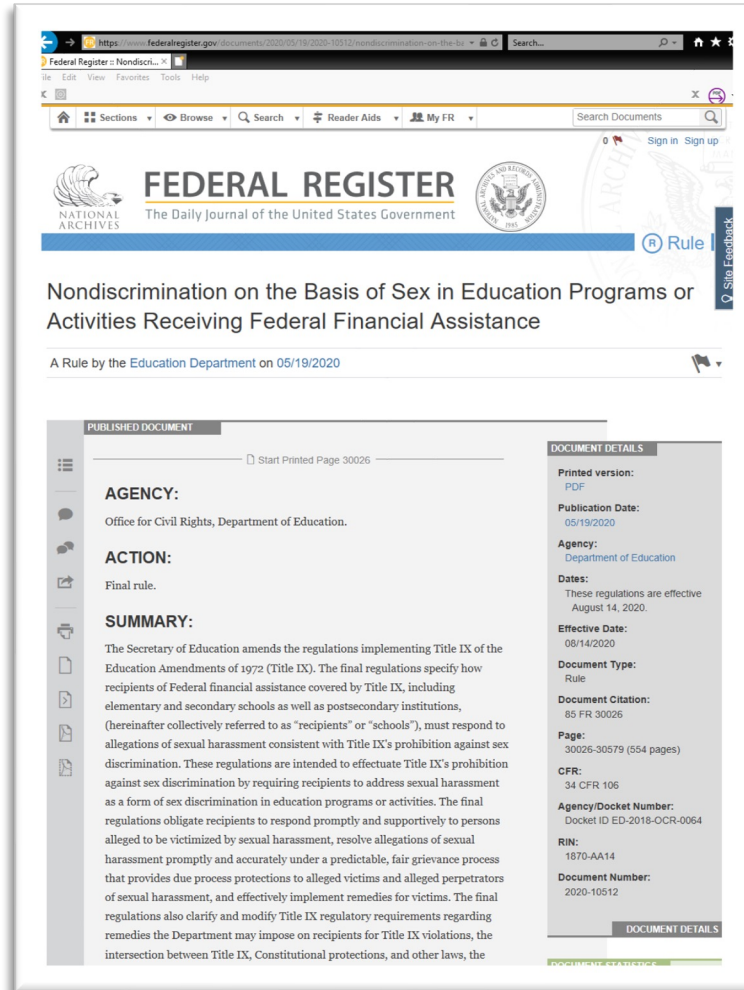
Pre-  
employment  
inquiries

Employment  
criteria



# The 2020 Title IX Rule

- In 2020, ED promulgated the first significant regulation addressing allegations of **sexual misconduct** on campus since 1975.
- The 2020 Title IX rule put into place a complex framework for managing such allegations on campus.



The screenshot displays the Federal Register website for the 2020 Title IX Rule. The page title is "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance". It is a rule issued by the Education Department on 05/19/2020. The document details include:

- AGENCY:** Office for Civil Rights, Department of Education.
- ACTION:** Final rule.
- SUMMARY:** The Secretary of Education amends the regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The final regulations specify how recipients of Federal financial assistance covered by Title IX, including elementary and secondary schools as well as postsecondary institutions, (hereinafter collectively referred to as "recipients" or "schools"), must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination. 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. The final regulations obligate recipients to respond promptly and supportively to persons alleged to be victimized by sexual harassment, resolve allegations of sexual harassment promptly and accurately under a predictable, fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment, and effectively implement remedies for victims. The final regulations also clarify and modify Title IX regulatory requirements regarding remedies the Department may impose on recipients for Title IX violations, the intersection between Title IX, Constitutional protections, and other laws, the

Document details include: Printed version: PDF; Publication Date: 05/19/2020; Agency: Department of Education; Dates: These regulations are effective August 14, 2020; Effective Date: 08/14/2020; Document Type: Rule; Document Citation: 85 FR 30026; Page: 30026-30579 (554 pages); CFR: 34 CFR 106; Agency/Docket Number: Docket ID ED-2018-OCR-0064; RIN: 1870-AA14; Document Number: 2020-10512.



# Title 2024 Title IX Rule

- On April 6, 2021, the Biden administration [announced](#) that it would be revising the 2020 Title IX rule.
- On July 12, 2022, ED published its [proposed 2022 Title IX Rule](#), and received over 235,000 comments.
- On April 29, 2024, the [final 2024 Title IX Rule](#) was released (clocking in at 423 pages) and takes effect **August 1, 2024**.

The screenshot shows the official Federal Register entry for the 2024 Title IX Rule. At the top, it features the National Archives and Records Administration logo and the text "FEDERAL REGISTER The Daily Journal of the United States Government". The title of the rule is "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance", published by the Education Department on 04/29/2024. The main content area is divided into sections: AGENCY (Office for Civil Rights, Department of Education), ACTION (Final rule), SUMMARY (The U.S. Department of Education amends regulations implementing Title IX to better align with the nondiscrimination mandate), DATES (effective August 1, 2024), and FOR FURTHER INFORMATION CONTACT (Randolph Wills, U.S. Department of Education). A sidebar on the right provides document details such as the printed version (PDF), publication date (04/29/2024), agency (Department of Education), effective date (08/01/2024), document type (Rule), document citation (89 FR 33474), page count (423 pages), CFR (34 CFR 106), and agency/docket number (ED-2021-OCR-0166).



# Effective Date and Retroactivity

- The new regulations **only** apply to sex discrimination that allegedly occurred on or after August 1, 2024.
- With respect to prior conduct, “the Department will evaluate the recipient’s compliance against the Title IX statute and the Title IX regulations in place at the time that the alleged sex discrimination occurred” regardless of when the alleged sex discrimination was reported.
- This means certain conduct may be addressed under the 2020 regulations or the 2024 regulations.



# Pending Legal Challenges

- [Challenges](#) to the new Title IX rule already have been brought by various states, school districts, and organizations, and several courts have issued injunctions, including in Texas, Kentucky, Louisiana, and Kansas.
  - The focus of the litigation most commonly is the new rule's interpretation of "on the basis of sex."
- The scope of the injunctions varies, but many states, and potentially hundreds of schools are impacted.





# Pending Legal Challenges

- More challenges and injunctions are anticipated, and it appears at least some courts are inclined to rebuff government efforts to challenge the injunctions.
- Before implementing any policy changes, schools should consult with legal counsel regarding the status of Title IX for their specific institution.
- In addition, schools always should keep state and municipal laws in mind.





# Changes to Key Concepts



# Definitions Heat Map

Actual knowledge (removed)	Complainant (meaningful revision)	Consent (removed)	Complaint (new)
Confidential employee (new)	Disciplinary sanctions (new)	Discrimination on the basis of sex (new)	Formal complaint (removed)
Hostile environment harassment (new)	Parental status (new)	Pregnancy or related condition (new)	Quid pro quo harassment (new)
Relevant (new)	Remedies (new)	Respondent (meaningful revision)	Retaliation (meaningful revision)
Sexual harassment (removed)	Sex-based harassment (new)	Specific Offenses (new)	Supportive measures (meaningful revision)



# Sex Discrimination

- “**On the basis of sex**” has been interpreted differently across administrations.
- In *Bostock v. Clayton County, Georgia*, No. 17-1618 (S. Ct. June 15, 2020)[1], the Supreme Court held that firing individuals because of their sexual orientation or transgender status does violate Title VII’s prohibition on discrimination because of sex.
- On June 22, 2021, OCR issued a [Notice of Interpretation](#) in the Federal Register to make clear that the Department “has determined that the interpretation of sex discrimination set out by the Supreme Court in *Bostock*... guides the Department’s interpretation of discrimination “on the basis of sex” under Title IX and leads to the conclusion that Title IX prohibits discrimination based on sexual orientation and gender identity.”



# Sex Discrimination

The new rule builds on *Bostock* and the Notice of Interpretation, expressly providing that discrimination on the basis of sex includes discrimination based on:

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



# Sex Discrimination

- **Does this mean that schools can never differentiate based on sex?**
  - No. Title IX contains limited exceptions for things such as athletic teams, housing, and social fraternities and sororities.
  - The exemption for educational institutions controlled by religious organizations is unchanged in the new regulations.
- **What about circumstances that do not fall within a statutory exemption like restrooms and locker rooms?**
  - Title IX permits different treatment on the basis of sex in these scenarios only where it subjects individuals to no more than **de minimis harm**.



# Sex Discrimination

- **What is de minimis harm?**

- The preamble states that harm is more than de minimis when it is “genuine and objectively non-trivial and assessed from the perspective of a reasonable person in the individual’s position.”
- The regulations state that “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.”

- Note that this provision is the subject of active litigation.



# Sex-Based Harassment

Sex-based harassment means sexual harassment and other harassment on the basis of sex, including discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity, that is:

Quid Pro Quo  
Harassment

Hostile  
Environment  
Harassment

One of  
Several  
Specific  
Offenses

(Sexual Assault, Dating  
Violence, Domestic  
Violence, or Stalking)





# Sex-Based Harassment

## Quid Pro Quo

An employee, agent, **or other person authorized by the school** to provide an aid, benefit, or service of the school explicitly or impliedly conditioning the provision of that aid, benefit, or service on a person's participation in unwelcome sexual conduct.

## 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 school's education program or activity.

## Specific Offenses

- Sexual assault including rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape.
- Dating violence
- Domestic violence
- Stalking



# Hostile Environment



The degree to which the conduct affected the complainant's ability to access the education program or activity.



The type, frequency, and duration of the conduct.



The location of the conduct and the context in which the conduct occurred.



The parties' ages, roles within the school, previous interactions, and other factors relevant to evaluating the effects of the conduct



Other sex-based harassment in the school's education program or activity.



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# Sex-Based Harassment

- **Does this definition prohibit all harassing or offensive remarks?**
  - No. To create a hostile environment, the remarks must be subjectively and objectively offensive as well as severe or pervasive. But schools can still address such remarks in a variety of ways.
- **Does quid pro quo harassment need to be offensive and severe or pervasive? How about the specific offenses?**
  - No. Only the “hostile environment” prong of the sexual harassment definition must be subjectively and objectively offensive and severe or pervasive.



# Specific Offenses

- **Sexual assault** meaning any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; also unlawful sexual intercourse.
  - Rape;
  - Sodomy;
  - Sexual Assault with an Object;
  - Fondling;
  - Incest; and
  - Statutory Rape.



# Specific Offenses

- **Stalking** meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - Fear for the person's safety or the safety of others; or
  - Suffer substantial emotional distress.
- **Dating violence** meaning violence committed by a person:
  - Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - Where the existence of such a relationship shall be determined based on a consideration of the length and type of the relationship and frequency of interaction between the persons involved in the relationship.



# Specific Offenses

- **Domestic violence** meaning felony or misdemeanor crimes committed by a person who:
  - Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the school, or a person similarly situated to a spouse of the victim;
  - Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
  - Shares a child in common with the victim; or
  - Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.



# Report vs. Complaint

- **Report** means a notification to the school of possible sex discrimination or retaliation.
  - A Report—as distinct from a Complaint—does not request the school to investigate and make a determination about the allegations.
  - A Report may, however, include a request that the school provide supportive measures.
- **Complaint** means an oral or written request to the school that objectively can be understood as a request for the school to investigate and make a determination about alleged sex discrimination or retaliation.





# Expanded Jurisdiction

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# Expanded Jurisdiction

- On-campus conduct.
- Off-campus conduct.
  - Settings operated or overseen by the school (e.g., online classes, athletic programs, off-campus trips).
  - Buildings owned or controlled by officially-recognized student organizations (e.g., sorority and fraternity houses).
  - Conduct subject to the school's disciplinary authority (i.e., any conduct your school chooses--or is required by law--to exercise its disciplinary authority over outside of Title IX).



# Expanded Jurisdiction

- Schools are also required to address a sex-based hostile environment under their education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the school's education program or activity or outside the United States.



# The Obligation to Respond to Sex Discrimination



# Employee Obligations

- Any employee who either has authority to institute corrective measures on behalf of the school or has responsibility for administrative leadership, teaching, or advising must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX.
- All other employees (except confidential employees) must either:
  - Notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX; or
  - Provide the contact information of the Title IX Coordinator and information about how to make a complaint of sex discrimination to any person who provides the employee with information about conduct that reasonably may constitute sex discrimination under Title IX.



# Confidential Employees

- Confidential Employees are an exception to the reporting requirements.
- Confidential Employee means:
  - An employee whose communications are privileged or confidential under Federal or State law;
  - An employee whom the school has designated as confidential for the purpose of providing services to persons related to sex discrimination; or
  - An employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination.
- An employee's confidential status is only with respect to information received about sex discrimination while acting in their confidential role.



# Confidential Employees

- Schools must provide notice of who qualifies as a Confidential Employee and how to contact them.
- Even though Confidential Employees are not required to report possible sex discrimination, they must still provide certain information to the individual confiding in them, including:
  - The employee's confidential status, including the circumstances in which the employee is not required to notify the Title IX Coordinator;
  - How to contact the Title IX Coordinator and how to make a complaint of sex discrimination; and
  - That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the school's grievance procedures.



# Elements of a Sufficient Response

Upon notice, institutions must respond “promptly” and “effectively.” Title IX Coordinators must:

- Treat the parties equitably.
- Offer and coordinate supportive measures.
- Notify the complainant of the grievance procedures and informal resolution process, if appropriate.
- Initiate the grievance procedures if a complaint is made.
- Consider whether to initiate a complaint on behalf of the school in the absence of a complaint by the complainant.
- If initiating a complaint, notify the complainant prior to doing so and address any safety concerns.
- If a complaint is made, notify the respondent of the grievance procedures and informal resolution process, if appropriate.
- With or without a complaint, take appropriate, prompt and effective steps to ensure that sex discrimination does not continue or recur.



# Barriers to Reporting

- The new regulations also require the Title IX Coordinator to monitor for barriers to reporting and take steps “reasonably calculated to address such barriers.”
- “Shortcomings such as inaccessible complaint reporting processes, confusing grievance procedures that lack transparency, and difficult-to-reach Title IX Coordinators or staff who discourage individuals from making reports all serve as barriers to reporting sex discrimination.”





# Title IX Procedural Waterfall



# Title IX Procedural Waterfall

§ 106.44(c) Report Received	Title IX Coordinator receives <u>report</u> of conduct that may constitute sex discrimination under Title IX.
§ 106.44(f)-(k) Response to Report	In response to <u>report</u> of possible sex discrimination, Title IX Coordinator conducts initial assessment and response.
§ 106.45 Response to Complaint	In response to <u>complaint</u> of possible sex discrimination, grievance procedures consistent with § 106.45 requirements must be initiated.
§ 106.46 Response to Sex-Based Harassment Complaint Involving Student	In response to <u>complaint</u> of possible sex-based harassment involving a student party, additional grievance procedures consistent with § 106.46 requirements must be initiated.



# Title IX Procedures

- Complaints of sex discrimination and requirements under § 106.45 are addressed in detail in Session Two.
- Complaints of sex-based harassment and requirements under § 106.46 are addressed in detail in Session Three.





# Supportive Measures

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# Supportive Measures

- Supportive measures are individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent.
- Such measures must be designed to:
  - Restore or preserve that party's access to the school's education program or activity, including measures that are designed to protect the safety of the parties or the recipient's educational environment; or
  - Provide support during the grievance procedures or during the informal resolution process.



# Examples of Supportive Measures

Counseling

Extensions of deadlines or other course-related adjustments

Modifications of work or class schedules

Campus escort services

Restrictions on contact applied to one or more parties

Changes in work locations

Changes in housing locations

Leaves of absence

Increased security and monitoring of certain areas of the campus



# Supportive Measures

- Schools may modify or terminate supportive measures at the conclusion of the grievance or informal resolution process.
- Parties can also seek to modify or terminate supportive measures applicable to them if circumstances “change materially.”



# Supportive Measures

- Parties must be permitted the opportunity to “timely” seek modification or reversal of the school’s decision to provide, deny, modify, or terminate any supportive measure applicable to that party on the basis that the decision was inconsistent with the definition of supportive measures.
  - Appeals of supportive measures must be considered by an impartial employee who did not take part in the original decision but has the authority to modify or reverse it.





# Supportive Measures

- The school must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the school to provide the supportive measures.
- The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.



# Emergency Removal

- Schools can remove a respondent on an emergency basis if:
  - The school undertakes an individualized safety and risk analysis and
  - Determines an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal.
- The school must provide notice to the respondent with the opportunity to challenge the decision immediately following the removal.



# Emergency Removal

- **Does an “imminent and serious threat to the health or safety” have to be a physical threat?**
  - No. A serious non-physical threat to an individual’s safety may warrant the emergency removal of a respondent following an individualized assessment.
- **What does it mean that an individual can challenge their removal “immediately” after removal?**
  - This is fact-specific, but is generally understood as occurring without delay, as soon as possible, given the circumstances.



# Administrative Leave

- Schools are also permitted to place an employee respondent on administrative leave during the “pendency of [its] grievance procedures.”
- However, schools will want to consult with any collective bargaining agreements to ensure compliance.





# Notice and Training Requirements



# Notice of Non-Discrimination

- Schools must provide a notice of nondiscrimination to students, employees, applicants for admission and employment, and all unions and professional organizations with collective bargaining or professional agreements.
- The notice must also be posted on the school's website and in each handbook, catalog, announcement, bulletin, and application form.
- The regulations contain specific requirements for the content of the notice.



# Training Requirements

- **All employees** must receive training on:
  - The school's obligation to address sex discrimination or retaliation in its education program or activity;
  - The scope of conduct that constitutes sex discrimination or retaliation under Title IX, including the definition of sex-based harassment; and
  - All applicable notice requirements related to a student's current, potential, or past pregnancy or related conditions and the school's general response to sex discrimination or retaliation.



# Training Requirements

- **Title IX Coordinators and designees**, in addition to the training provided to all employees and other Title IX team members, must be trained on:
  - Their specific responsibilities,
  - The school's recordkeeping system and requirements, and
  - Any other training necessary to coordinate the school's compliance with Title IX.





# Training Requirements

- **Investigators, decisionmakers, and other persons** who are responsible for implementing the school's Title IX grievance procedures or who have the authority to modify or terminate supportive measures, in addition to the training provided to all employees, must be trained on the following to the extent related to their responsibilities:
  - The school's obligation to respond to sex discrimination or retaliation;
  - The school's Title IX grievance procedures;
  - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and
  - The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance.



# Training Requirements

- **Facilitators of the informal resolution** process, in addition to the training provided to all employees, must be trained on:
  - The rules and practices associated with the school's informal resolution process; and
  - How to serve impartially, including by avoiding conflicts of interest and bias.





# Recordkeeping

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# Recordkeeping

- Schools must maintain the following for at least 7 years:
  - For each complaint of sex discrimination, records documenting the informal resolution process or the grievance procedures and the resulting outcome;
  - For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination, records documenting the actions the school took in response to that report; and
  - All training materials.



# Retaliation



# Retaliation

- **Retaliation** means intimidation, threats, coercion, or discrimination against any person by a school, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the school's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or because the person reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing, including in an informal resolution, in grievance procedures, and in any other actions taken by a school.



# Retaliation

- The regulations require that schools prohibit retaliation, including peer retaliation.
- When a school has information about conduct that reasonably may constitute retaliation the school must take the same actions as if it had received notice of sex discrimination.



# OCR Resources





# OCR Resources

- Fact Sheet
  - <https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-factsheet.pdf>
- Summary of Key Provisions
  - <https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-summary.pdf>
- Resource for Drafting Policies
  - <https://www2.ed.gov/about/offices/list/ocr/docs/resource-nondiscrimination-policies.pdf>
- Policy Guidance Portal
  - <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html>





# TC Extra Credit

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# Higher Education Resources Page

## HIGHER EDUCATION RESOURCES

As part of our ongoing commitment to the postsecondary community, Thompson Coburn's higher education practice routinely creates complimentary resources designed to assist institutions with navigating the complexities of the higher education regulatory and policy environment. We have collected a number of these resources on this page, including our most recent webinars, training series, desk guides, whitepapers, and blog posts. We hope you find these resources helpful, and if you have any questions, please do not hesitate to contact us!

## COMPLIANCE RESOURCES



### COMPLIANCE RESOURCE: FINANCIAL RESPONSIBILITY GUIDE

We provide a guide to the reporting obligations under ED's new Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit Rule.



### COMPLIANCE RESOURCE: TCPA AND OTHER TELEMARKETING RULES

This guide helps colleges and universities understand TCPA regulations for text messages and calls to students, ensuring permission is obtained for promotional messages.



### COMPLIANCE RESOURCE: A DESK GUIDE FOR THE 2023 FINAL FINANCIAL VALUE TRANSPARENCY & GAINFUL EMPLOYMENT RULE

We have developed this Desk Guide to assist institutions as they contemplate compliance with the final version of the GE rule.



# Webinars and Training Series

**HigherEdReg Rundown**  
ED's New Financial Responsibility Reporting Requirements

**Higher Education**  
Thompson Coburn LLP  
75 videos 854 views Last updated on Jun 17, 2024

Play all Shuffle

- HigherEdReg Rundown - ED's New Financial Responsibility Reporting Requirements**  
Thompson Coburn LLP • 482 views • 2 weeks ago  
Now playing
- HigherEdReg Rundown - The Biden Administration's New Title IX Rule**  
Thompson Coburn LLP • 538 views • 1 month ago  
22:21
- HigherEdReg Rundown - ED's Latest Financial Value Transparency/Gainful Employment Guidance**  
Thompson Coburn LLP • 1.2K views • 2 months ago  
23:48
- ED's Evolving State Authorization and Professional Licensure Requirements**  
Thompson Coburn LLP • 747 views • 2 months ago  
1:47:26
- The Higher Education Regulatory Outlook for 2024**  
Thompson Coburn LLP • 494 views • 5 months ago  
1:53:37
- Projecting Debt-to-Earnings Rates Under ED's New Financial Value Transparency and GE Rule**  
Thompson Coburn LLP • 927 views • 7 months ago  
1:39:21
- ED's New Financial Value Transparency and Gainful Employment Rule**  
Thompson Coburn LLP • 3.4K views • 7 months ago  
2:43:12
- Responding to Student Borrower Defense to Repayment (BDR) Claims: 2023 Edition**  
Thompson Coburn LLP • 3.9K views • 9 months ago



# Compliance Materials



## Financial Responsibility Reporting Guide (2024)

Last Updated: May 27, 2024

On July 1, 2024, the U.S. Department of Education's new *Financial Responsibility, Administrative Capability, Certification Procedures, Ability To Benefit* rule takes effect (the "2024 Rule").<sup>1</sup> The 2024 Rule implements a wide range of changes relating to financial responsibility, including the significant revision and expansion of the reporting obligations at 34 CFR § 668.171, which require institutions to report certain "triggering events" to the Department.<sup>2</sup> These reporting requirements are meant to alert the agency that an institution "may not be able to meet its financial responsibilities."<sup>3</sup> If an institution fails to report a triggering event within the requisite timeframe, the Department may take administrative action, to include determining that the institution is not financially responsible, or initiating a proceeding to fine, limit, suspend, or terminate the institution's participation in the federal financial aid programs (the "Title IV Programs").<sup>4</sup> If an institution reports a triggering event (or the Department otherwise becomes aware that an event has occurred), the Department may determine that the institution is not financially responsible and take various administrative actions, depending on the nature and significance of the event reported. Institutions should review the 2024 Rule carefully for additional information regarding the consequences of reporting triggering events and the opportunities to mitigate such consequences.

Below, we provide a guide to the reporting obligations under the 2024 Rule, as set forth in the regulatory text. Because the 2024 Rule, like the existing financial responsibility reporting framework, distinguishes between a Mandatory Triggering Event and a Discretionary Triggering Event, we have divided the chart to identify which triggering events fall into each category. Pending further guidance from the Department, we suggest that institutions continue to submit financial responsibility notifications via email to [PSAFRR@ed.gov](mailto:PSAFRR@ed.gov).<sup>5</sup> The Department has not specified any required form or content for the notices. However, in a dated [Q&A document](#) issued by the prior administration, the Department offered recommendations.<sup>6</sup>

On May 17, 2024, the current administration posted a [Q&A website](#) that addresses certain aspects of the new reporting requirements implemented by the 2024 Rule. We strongly encourage institutions to review the Department's Q&A website and any other relevant guidance to determine, among other things, whether the agency is interpreting the regulatory text in a manner that may expand or otherwise modify the reporting obligations as described in the 2024 Rule (and detailed in the chart below).

- 1 The final 2024 Rule was published in the Federal Register on October 31, 2023. See 88 Fed. Reg. 74568 (Oct. 31, 2023). It revises the financial responsibility regulations at 34 CFR §§ 668.23, 668.171, 668.174, 668.175, and 668.176. The 2024 Rule also revises the financial responsibility factors applicable to institutional changes in ownership, currently in § 668.15, moving them to § 668.176.
- 2 Triggering events, as explained by the Department, are external events or financial circumstances that may not appear in an institution's annual financial statements and are not yet reflected in the institution's calculated composite score. See 88 Fed. Reg. 74569 (Oct. 31, 2023).
- 3 88 Fed. Reg. 74568 (Oct. 31, 2023).
- 4 34 CFR § 668.171(f)(2) (July 1, 2024).
- 5 The Department established this email address for reporting purposes in guidance issued on March 15, 2019, detailing how institutions should report events under the 2016 version of the rule (the "2016 Rule"). As of May 27, 2024, the Department has not issued any further guidance concerning how to report triggering events.
- 6 As of May 27, 2024, the Department has not issued any further guidance concerning the form or content of notices of triggering events.

### A Desk Guide for the 2023 Final Financial Value Transparency & Gainful Employment Rule

*Includes a step-by-step guide for projecting Debt-to-Earnings (D/E) rates under the final rule*

November 2023



# REGucation (our blog)



## Title IX (Joe's Version) Dropped This Morning

👤 Scott Goldschmidt 👤 Stephanie Fredman 📅 April 19, 2024



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### CONTRIBUTORS

We interrupt your Tortured Poets Department\*\* listening party to inform you that the Biden administration has released its long awaited [Title IX rules](#). The new rules, published this morning in unofficial form, will be formally published in the Federal Register shortly.

In its [press release](#) announcing the new rules, the Department 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.

Thompson Coburn's Higher Education team is currently in the process of reviewing the final rules\*, including the preamble which provides the Department's response to the significant, relevant issues raised in public comments and a statement providing the basis and the purpose of the rule. We will be providing additional information about the rule and resources for institutions of higher education in the coming weeks.



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# Title IX Timeline



# Title IX Timeline

Date	Rulemaking Event
June 1972	<a href="#">Title IX of the Education Amendments of 1972</a>
July 1975	ED publishes <a href="#">34 CFR Part 106</a> , which implements Title IX.
March 1997	ED publishes <a href="#">Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties</a> .
June 1998	<a href="#">Gebser v. Lago Vista Ind. Sch. Dist.</a> , 524 U.S. 274 (1998) (holding that an individual may only recover monetary damages under Title IX when a school official with authority to institute corrective measures has actual notice of the harassment but is deliberately indifferent to it).
May 1999	<a href="#">Davis v. Monroe Cty. Bd. of Educ.</a> , 526 U.S. 629 (1999) (holding that a school can be liable under Title IX for student-on-student sexual harassment, but only if the school is deliberately indifferent to known sexual harassment, the respondent is under the school's disciplinary authority, and the behavior is <b>so severe, pervasive, and objectively offensive</b> that it denies access to the school's program and activities).

# Title IX Timeline

Date	Rulemaking Event
Nov. 2000	ED <a href="#">updates</a> Title IX rules to incorporate the Civil Rights Restoration Act's broadened definitions of "program or activity" and "program."
Jan. 2001	Following significant judicial activity, ED publishes <a href="#">Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties</a> . ED draws distinction between standards for administrative enforcement and standards for private litigation for monetary damages.
Oct. 2006	ED <a href="#">updates</a> Title IX rules to clarify and modify requirements regarding single-sex schools, classes, and extracurricular activities in elementary and secondary schools.
April 2011	ED publishes <a href="#">DCL</a> with extensive guidance concerning school responsibilities for preventing and addressing sexual harassment and sexual violence.
April 2014	ED publishes <a href="#">Questions and Answers</a> on Title IX and Sexual Violence, further clarifying guidance articulated in 2001 Guidance and 2011 DCL.
May 2016	ED and DOJ issue joint <a href="#">DCL</a> regarding treatment of transgender students, accompanied by Examples of Policies and Emerging Practices for Supporting Transgender Students.

# Title IX Timeline

Date	Rulemaking Event
Feb. 2017	ED publishes <a href="#">DCL</a> rescinding May 2016 DCL regarding treatment of transgender students.
Sept. 2017	ED publishes <a href="#">DCL</a> rescinding April 2011 DCL as well 2014 <a href="#">Q&amp;A</a> on Campus Sexual Misconduct.
Nov. 2018	On November 29, 2018, ED publishes the <a href="#">official version</a> of its proposed Title IX rule in the Federal Register. The first significant rule concerning sexual misconduct since 1975.
May 2020	On May 19, 2020, ED publishes the official version of its <a href="#">final Title IX rule</a> in the Federal Register.
June 2020	The Supreme Court in <a href="#">Bostock v. Clayton County</a> , concludes that discrimination based on sexual orientation or gender identity inherently involve treating individuals differently because of their sex, and thus is prohibited under Title VII of the Civil Rights Act of 1964.
Aug. 2020	ED's new Title IX Rule takes effect on August 14.

# Title IX Timeline

Date	Rulemaking Event
April 2021	ED <a href="#">announces</a> that it will be overhauling the Title IX regulations put into place by the Trump administration and releases <a href="#">Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021)</a> .
June 2021	OCR issues <a href="#">Notice of Interpretation</a> stating that ED interprets Title IX's prohibition on sex discrimination to encompass discrimination based on sexual orientation and gender identity, consistent with <i>Bostock v. Clayton County</i> .
July 2022	ED publishes its <a href="#">proposed 2022 Title IX Rule</a> , and receives over 235,000 comments.
April 2024	ED publishes its <a href="#">final 2024 Title IX Rule</a> , which takes effect <b>August 1, 2024</b> .



# Presenter Profiles



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