

2024 TITLE IX RULE COMPLIANCE TRAINING

Ensuring Compliance and Equity at Crestpoint University

Presented By: Amy Dubitsky, Chief Compliance Officer

Date: 12/30/2024



INTRODUCTION TO TITLE IX

- **Definition:** Prohibits sex-based discrimination in educational programs and activities that receive Title IV funding.
- **Scope:** Covers students, employees, and others participating in educational programs.
- **Effective Date:** New regulations took effect August 1, 2024.

- Expanded definitions of 'sex discrimination' to include:
 - Sexual orientation and gender identity.
 - Pregnancy and related conditions.
- Clarified jurisdiction for off-campus and online activities.
- Updated grievance procedures and response protocols.

KEY CHANGES IN THE 2024 TITLE IX RULE

ROLES AND RESPONSIBILITIES

- Title IX Team: Includes coordinators, investigators, advisors, adjudicators, and appeal officers.
- Key Responsibilities:
 - Address complaints promptly and equitably.
 - Ensure fair processes and avoid bias or conflicts of interest.

TITLE IX REGULATIONS

~STUDENTS~

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 Employee Assistance
- Health insurance and benefits
- Marital or Parental Status
- Athletics

TITLE IX REGULATIONS

~EMPLOYEES~

Similarly, the regulations expressly prohibit sex discrimination concerning **employees** in several areas, such as:

- Employment
- Compensation
- Recruitment
- Job Classification
- Fringe benefits
- Marital or Parental Status
- Advertising
- Pre-employment inquiries
- Employment Criteria

TITLE IX REGULATIONS

- 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.

TITLE IX REGULATIONS

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.”

TITLE IX REGULATIONS

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-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 implicitly 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

TITLE IX REGULATIONS

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.



TITLE IX REGULATIONS

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.

REPORTING REQUIREMENTS

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.

COMPLAINTS

A person is entitled to make a complaint of sex-based harassment only if:

- They themselves are alleged to have been subjected to the sex-based harassment;
- They have a legal right to act on behalf of such person; or

The Title IX Coordinator initiates a complaint

**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.

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.

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
- Restrictions on contact applied to one or more parties
- Changes in work locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Changes in housing locations

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.



TITLE IX 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.

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.
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TITLE IX 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.

CRESTPOINT UNIVERSITY TITLE IX COORDINATOR

The rules allow for a single individual to serve as the Title IX coordinator, investigator, and decisionmaker or any combination of the three.

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Phoenix, AZ 85014
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EXPANDED JURISDICTION

- Covers conduct:
- On-campus
- Off-campus if connected to university programs (e.g., field trips, athletic events).
- **Online activities impacting the university environment.**

DISMISSING A COMPLAINT

Basis for optional dismissal:

- The respondent cannot be identified despite reasonable efforts.
- The respondent is not part of the school's education program or staff.
- The complainant withdraws allegations, and the remaining claims, even if proven, do not qualify as sex discrimination.
- The alleged conduct, even if clarified and proven, does not meet the definition of sex discrimination under Title IX.

If dismissed:

- Parties must receive simultaneous written notice of the dismissal and its basis under sex-based harassment procedures
- If a complaint is dismissed based on complainant's voluntary withdrawal of the complaint or allegations; voluntary withdrawal must be obtained in writing.



Prohibited acts:



- Intimidation, threats, coercion, or discrimination against reporters or participants.



Institutional Duty:
Address retaliation promptly and effectively.

PREVENTION OF RETALIATION

WRITTEN DETERMINATION

Written notice of determination must include:

- Description of the allegations;
- Information about the policies and procedures;
- Evaluation of the relevant evidence and determination of whether sex-based harassment occurred;
- Whether sex-based harassment occurred and disciplinary sanctions and remedies if relevant;

and

- Information about appeal procedures.
- Determination of responsibility becomes final upon result or appeal or, if no appeal, date which appeal would not be considered timely.

INFORMAL RESOLUTION

- A school may offer the parties an informal resolution process at any time prior to determining whether sex discrimination occurred, **unless** such a process would conflict with applicable laws.
- A school may not require or pressure the parties to participate in an informal resolution process.
- A school could decline to offer informal resolution despite one or more of the parties' wishes. Reasons for declining would include, but not be limited to, when the school determines that the alleged conduct would present a future risk of harm to others.



PREGNANCY

HISTORY OF PREVIOUS REGULATIONS

Title VII and the Pregnancy Discrimination Act (1978) prohibit discrimination “on the basis of pregnancy, childbirth, or related medical conditions.”



EEOC guidance from 2015 reinforces the prohibition of discrimination “based on current pregnancy, past pregnancy, potential or intended pregnancy, and medical conditions related to pregnancy or childbirth, including lactation.”



The Affordable Care Act, which amended the Fair Labor Standards Act “require[s] employers to provide reasonable break times and a private place, other than a bathroom, for covered employees who are breastfeeding to express milk for one year after the child’s birth[.]”

The Rule states that schools “must not adopt a policy, practice, or procedure concerning a student’s [or employee’s] current, potential, or past parental, family, or marital status that treats students [or employees] differently on the basis of sex.”

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.
- A school must not discriminate in its education
- program or activity against any student based on
- the student's current, potential, or past
- pregnancy or related conditions.

A school must not discriminate in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions.

**NOW
EXPANDED**

HI! I'M PREGNANT!



When a student (or person with a legal right to act on behalf of the student) informs any employee of the student's pregnancy or related conditions, the employee must promptly:

Provide the contact information of the Title IX Coordinator; and

Inform that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the school's education program or activity.

Such notice does not need to be provided if the employee reasonably believes the Title IX Coordinator has been notified.



HI! I'M PREGNANT!

When a student (or person with a legal right to act on behalf of the student) informs the school of the student's pregnancy or related condition, the school must provide information about the following:

- Reasonable modifications;
- Voluntary access to separate and comparable portion of program or activity;
- Voluntary leaves of absence;
- Lactation spaces;
- The School's limitations on requesting supporting documentation and certifications;
- The School's obligation to treat pregnancy and related conditions in the same manner as other temporary medical conditions; and
- Prohibited disclosures of personally identifiable information (34 CFR § 106.44(j));
- The school's notice of nondiscrimination must also be provided.

HI! I'M PREGNANT!



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- Reasonable modifications must be provided to a student, if needed to prevent sex discrimination and ensure equal access to the school's education program or activity.
 - Each reasonable modification must be based on the student's individualized needs.

Crestpoint University representative **must consult with the student.**

- A modification that would fundamentally alter the nature of a school's education program or activity is not a reasonable modification.
- The student has discretion to accept or decline each reasonable modification offered by the school. If a student accepts a school's offered reasonable modification, the school **must** implement it.

EXAMPLES OF REASONABLE MODIFICATIONS

1. Breaks during class to attend to related health needs.
2. Intermittent absences to attend medical appointments.
3. Changes in schedule or course sequence.
4. Extensions of time for coursework and rescheduling of tests and examinations.
5. Counseling.

VOLUNTARY LEAVE OF ABSENCE

- A school must allow the student to take a voluntary leave of absence to cover at a minimum what is medically necessary (as determined by the student's doctor).
- Must allow the longest leave available.
- When a student returns, the student must be reinstated to the academic status and as practicable, to the extracurricular status that the student held when the voluntary leave began.
- A school cannot require documentation unless the documentation is necessary and reasonable for the school to determine the reasonable modifications to make or whether to take additional specific actions, such as granting a voluntary leave of absence.

LEAVE OF ABSENCE REQUEST FORM

Given Name

MORE PREGNANCY



Temporary Disability

Pregnancy or related conditions must be treated in the same manner and under the same policies as any other temporary medical conditions.

This requirement is with respect to any medical or hospital benefit, service, plan, or policy the school administers, operates, offers, or participates in with respect to students admitted to the school's education program or activity.

NEXT STEPS FOR CRESTPOINT UNIVERSITY

- **Immediate Actions:**

- Update institutional policies to align with 2024 regulations.
- Create procedure if student notifies that she is pregnant.
- Ensure all staff complete required training.

- **Ongoing Actions:**

- Monitor compliance and adjust processes as needed.



ANY QUESTIONS?

Call 800-371-6105-

- Ayala, Title IX Coordinator, extension 106, will be further trained with additional info that she will need.
- Amy Dubitsky, Chief Compliance Officer, extension 122 is available to answer any compliance questions.

The End

Thank you for your commitment to
fostering an equitable and safe
environment at Crestpoint University!



CRESTPOINT
UNIVERSITY