

The Practical Application of the 2024 Title IX Regulations

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Legal disclaimer

The information contained in this session is presented for informational and discussion purposes as to how these Title IX regulations may apply to the field of student conduct and to your institution. Nothing in this presentation should be considered or construed as legal advice. Please consult your personal or institutional attorney for legal advice regarding these decisions.

Learning Outcomes of the presentation

1. Analyze the major changes between the 2020 and 2024 Title IX regulations.
2. Articulate a plan of action to review and update their institutional policy to ensure compliance with the 2024 Title IX regulations.

ASCA Knowledge and Skills

Area	Category	Skill Level
1-Administration	1.4	Advanced
	1.8	Intermediate
3-Case Resolution Management	3.2	Intermediate/Advanced
7-Investigations	7.1	Advanced
8-Law & Policy	8.1	Foundational/Intermediate
	8.2	Advanced

The “Why” of ASCA’s involvement in Title IX

The “Why”

- By practitioners, for practitioners.
- Numerous decades of experiences in our 25 members who make up the Task Force and Working Group.
- Goal of providing tangible best practices and models for different institution types.
- Flexible offerings based on membership feedback - send us your thoughts at ascatix@theasca.org!

The 2024 Title IX Regulations

Education Department

Rules

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

FR Document: [2024-07915](#)

Citation: 89 FR 334741

[PDF](#) Pages 33474-33896 (423 pages)

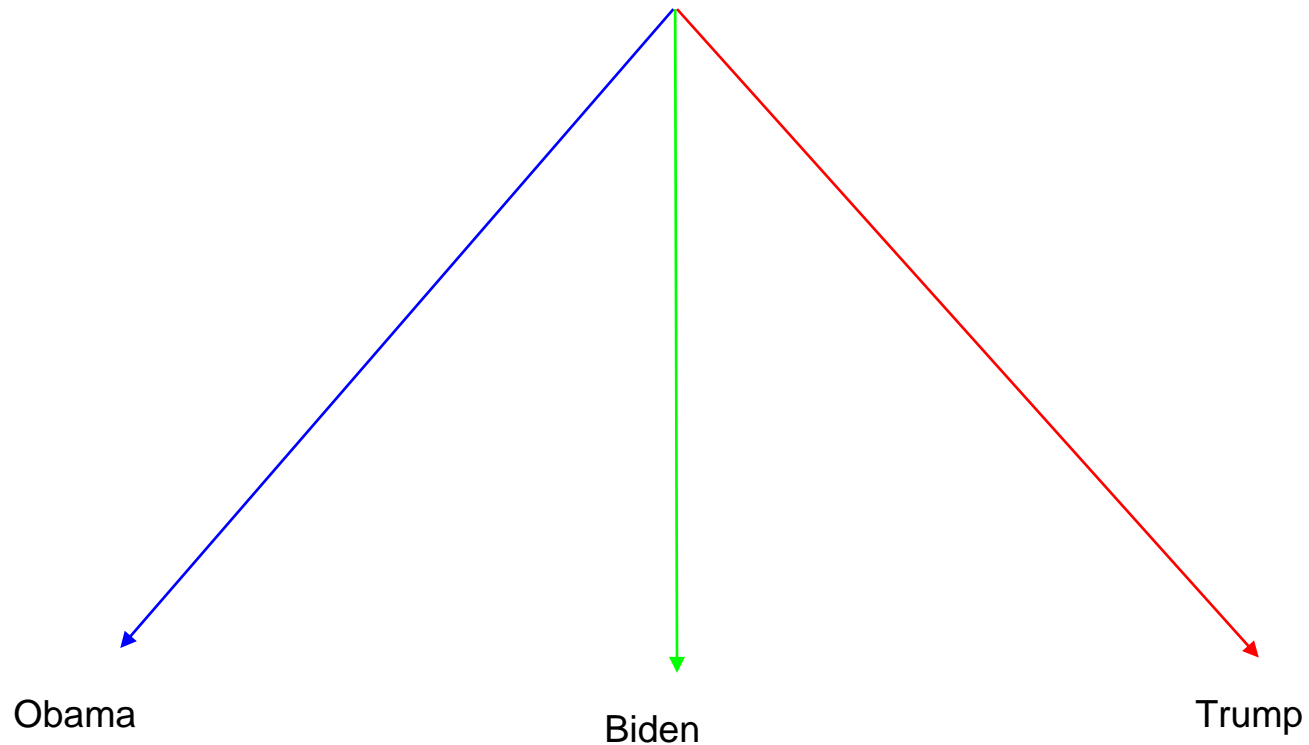
[Permalink](#)

Abstract: The U.S. Department of Education (Department) amends the regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The purpose of these amendments is to better align the Title IX regulatory requirements with Title IX's...

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Major Provisions of the 2024 Title IX Regulations

The 2024 Title IX Regulations



The 2024 Title IX Regulations

Purpose

- Require recipients to adopt grievance procedures that provide for fair, prompt, and equitable resolution of complaints of sex discrimination and to take other necessary steps to provide an educational environment free from sex discrimination;
- Clarify that Title IX's prohibition on sex discrimination includes sex-based harassment in the form of quid pro quo harassment, hostile environment harassment, and four specific offenses (sexual assault, dating violence, domestic violence, and stalking); and
- Clarify that sex discrimination includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

(2024 Final Rules pp. 3-4)

The 2024 Title IX Regulations

Major Provisions (Operations)

- Clarify a recipient's required response to sex discrimination, including sex-based harassment, in its education program or activity;
- Strengthen a recipient's obligations to provide prompt and equitable grievance procedures and to take other necessary steps when it receives a complaint of sex discrimination, including sex-based harassment; and
- Provide for additional requirements in grievance procedures at postsecondary institutions for complaints of sex-based harassment involving a student complainant (a student who is alleged to have been subjected to conduct that could constitute sex discrimination) or student respondent (a student who is alleged to have violated the recipient's prohibition on sex discrimination).

The 2024 Title IX Regulations

Major Provisions (Pregnancy and Parenting)

- Define the terms “pregnancy or related conditions” and “parental status” (p. 1510);
- Clarify the prohibition on discrimination against students and applicants for admission and employees or applicants for employment on the basis of current, potential, or past pregnancy or related conditions; and
- Clarify a recipient’s obligations to students and employees who are pregnant or experiencing pregnancy-related conditions.
- Clarify the prohibition on discrimination against students and applicants for admission and employees or applicants for employment on the basis of current, potential, or past pregnancy or related conditions; (p. 1523) (§106.21)

The 2024 Title IX Regulations

Major Provisions (Other)

- Clarify and streamline administrative requirements with respect to designating a Title IX Coordinator, disseminating a nondiscrimination notice, adopting grievance procedures, and maintaining records;
- Specify that a recipient must train a range of relevant persons on the recipient's obligations under Title IX;
- Clarify that, except as permitted by certain provisions of Title IX or the regulations, a recipient must not carry out any otherwise permissible different treatment or separation on the basis of sex in a way that would cause more than de minimis harm, including by adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with their gender identity; and
- Clarify a recipient's obligation to address retaliation.
- **The regulations are not retroactive (p. 24)**

The 2024 Title IX Regulations

Stories shared with the Department of Education

- Experiences Relating to the Title IX Grievance Procedures (pp. 7-12)
- Experiences Relating to Pregnancy (pp. 13-14)
- Experiences Relating to Sexual Orientation and Gender Identity (pp. 14-17)

Overview of 2024 Title IX Regulations

Title IX Regulations Fact Sheet

<https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-factsheet.pdf>

Title IX Notice and Policy Resource

<https://www2.ed.gov/about/offices/list/ocr/docs/resource-nondiscrimination-policies.pdf>

Texas Lawsuit filed

<https://drive.google.com/drive/u/1/folders/1Ki8QT6KExHMYDtynWkl0E4LbQeliYrym>

Major Changes in the 2024 Regulations

Definitions

- Sex-based harassment
- Updated definition of a complainant and complaint

Operations

- Scope of Title IX
- Pregnancy or related conditions; parenting
- Institutional choice of process
- Jurisdiction
- Supportive measures
- Training requirements
- Retaliation

Considerations for institutional complaints

- pp. 1533-1534

Major Changes in the 2024 Regulations

Sex-based harassment

- Define “sex-based harassment” as a form of sex discrimination that includes sexual harassment and harassment based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity, that is quid pro quo harassment, hostile environment harassment, or one of four specific offenses referenced in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act (“Clery Act”) as amended by the Violence Against Women Reauthorization Act of 2013; (pp. 1513-1514)

Major Changes in the 2024 Regulations

Updated definition of a complainant

- A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part; or
- A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part and who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination. (p. 1506)
- “Means an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or this part.” (p. 1506)

2024 Regulation **Implementation Checklist**-Definitions

Policy Changes:

- Update definitions for
 - Complaint
 - Complainant
 - Confidential employee
 - Parental status
 - Pregnancy or related condition
 - Relevant
 - Retaliation
 - Sex-based harassment
 - Supportive measure

2024 Regulation **Implementation Checklist**-Definitions

Questions to Ask:

- What does it mean to participate in a recipient's educational program or activity?
- Are there particular groups of people affiliated with or present on your campus who you want to consider identifying in the policy definition? (e.g. particular vendors or contractors, etc)
- How are you going to explain your definitions of these terms in the training that you provide to employees, those involved in the Title IX resolution process, and the parties involved?

Training Requirements:

- Ensure that training for all employees includes updated definitions

Major Changes in the 2024 Regulations

Scope of Title IX: LGBTQI+ Protections

§ 106.10 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.” (p. 1522).

The rule prohibits discrimination and harassment based on sexual orientation, gender identity, and sex characteristics in federally funded education programs, applying the reasoning of the Supreme Court’s ruling in *Bostock v. Clayton County* (140 S. Ct. 1731 (2020)).

(p. 1228: discussion)

2024 Regulation **Implementation Checklist**

LGBTQI+

Policy Changes:

- Update your policy to include the prohibition of discrimination on the basis of
 - Sex stereotypes
 - Sex characteristics
 - Sexual orientation
 - Gender identity
- Consider updating the definition of “hostile environment” to include the above traits.

Questions to Ask:

- What programs or services at the institution are set up specific to sex separation?
 - Are these programs or services set up in such a way that the person is subject to no more than de minimis harm?
(§106.31(a)(2) (p. 1524))

2024 Regulation **Implementation Checklist**

LGBTQI+

Training Requirements:

- Update training to include new definitions
 - Sex stereotypes
 - Sex characteristics
 - Sexual orientation
 - Gender identity

Practical Steps:

- Work with your Diversity, Equity, and Inclusion staff to educate your campus community on these new updates.
- A review of the court case [Bostock v. Clayton County](#) may provide additional context for understanding the definition.
 - Oyez Summary: <https://www.oyez.org/cases/2019/17-1618>

Major Changes in the 2024 Regulations

“Pregnancy or related conditions” means:

- (1) Pregnancy, childbirth, termination of pregnancy, or lactation;
 - (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
 - (3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.” (p. 1510).
- Changed from “and” to “or” for clarity and accuracy. (p. 1038).
 - “Or” includes situations where a person is pregnant and also has a related condition, in addition to situations where someone is ONLY pregnant or ONLY has a pregnancy-related medical condition.
 - Starts on page 1525 at § 106.40 Parental, family, or marital status; pregnancy or related conditions.

Major Changes in the 2024 Regulations

Pregnancy or related conditions

- Termination of pregnancy in Title IX since 1975 (*Roe v. Wade*, 1973).
 - “a policy or action that specifically targets individuals who have received abortion care for adverse treatment may violate the general nondiscrimination mandate in section 1681.” (p. 1046).
 - “a recipient’s obligation under Title IX to ensure that students or employees who seek or have had abortions have equal access to education or employment, and, therefore, are unrelated to expanding abortion access.” (p. 1048).
- “(v) *Lactation space*. The recipient must ensure that the student can access a lactation space, which must be a space other than a bathroom, this is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.” (p. 1528).

Major Changes in the 2024 Regulations

Pregnancy or related conditions

(2) Responsibility to provide Title IX Coordinator contact and other information

- When any employee is notified of a student's pregnancy or related condition, the employee must "promptly provide that person with the Title IX Coordinator's contact information and informs that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the recipient's education program or activity." (pp. 1525-6).
 - not required if the employee "reasonably believes that the Title IX Coordinator has been notified." (p. 1525)
 - also imposes that the TIX Coordinator "promptly and effectively prevent sex discrimination and ensure equal access to the recipient's education program or activity" once the student notifies the TIX Coordinator of their pregnancy or related condition.

Major Changes in the 2024 Regulations

Pregnancy or related conditions

Examples of reasonable accommodations: (p. 1527)

- breaks during class to express breast milk, breastfeed, or attend to health needs association with pregnancy or related conditions, including eating, drinking, or using the restroom;
- intermittent absences to attend medical appointments;
- access to online or homebound education;
- changes in schedule or course sequence;
- extensions of time for coursework and rescheduling of test and exams;
- allowing a student to sit or stand, or carry or keep water nearby;
- counseling;
- changes in physical space or supplies (ex: larger desk or footrest);
- elevator access; OR
- other changes to policies, practices, or procedures.

Major Changes in the 2024 Regulations

Pregnancy or related conditions

Supporting documentation examples “not necessary and reasonable”: (p. 1528)

- when the need related to reasonable modifications, voluntary access to separate and comparable portion of program or activity, voluntary leave of absence, and lactation space are obvious;
 - Ex: pregnant student needs a bigger uniform.
- when the student has previously provided the recipient with sufficient supporting documentation;
- when the reasonable modification because of pregnancy or related conditions at issue is allowing a student to carry or keep water nearby and drink, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom; (part of reasonable accommodations examples)
- when the student has lactation needs; or
- when the specific action under the first bullet is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.

Major Changes in the 2024 Regulations

Pregnancy or related conditions

Prohibited disclosures of personally identifiable information, except for the following:

- (1) When the recipient has obtained prior written consent from a person with the legal right to consent to the disclosure;
- (2) When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- (3) To carry out the purposes of this part, including action taken to address conduct that reasonably may constitute sex discrimination under Title IX in the recipient's education program or activity;
- (4) As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or other funding agreement; or
- (5) To the extent such disclosures are not otherwise in conflict with Title IX or this part, when required by State or local law or when permitted under FERPA, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99." (pp. 1537-8)

Major Changes in the 2024 Regulations

Parenting and Parental Status

“Parental Status...means the status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-fare because of a physical or mental disability, is:

- (1) A biological parent;
- (2) An adoptive parent;
- (3) A foster parent;
- (4) A stepparent;
- (5) A legal custodian or guardian;
- (6) In loco parentis with respect to such person; or
- (7) Actively seeking legal custody, guardianship, visitation, or adoption of such a person. (pp. 1509 - 10)

- Parental status not defined in Title IX before these regulations.
 - Based on definition in an Executive Order from May 2000. (p. 1058)

2024 Regulation **Implementation Checklist**

Pregnancy or related concerns; parenting

Policy Changes:

- Ensure that the Title IX or other pregnancy accommodations policy that you have currently is compliant with the new Title IX regulations
 - Definitions
 - Reasonable accommodations

Questions to Ask:

- What physical construction will have to be performed to comply with the regulations?
- What legislative laws and case law decisions are enacted or controlling in your jurisdiction? (e.g. state laws, Federal district, Circuit Court of Appeals)

Training Requirements:

- Ensure training includes information about the requirement to provide Title IX Coordinator name and contact information to students who disclose a pregnancy or related condition

Practical Steps:

- Consider consolidating the policies (Title IX and Pregnancy), if separate
- Complete any construction to comply with the regulations

Major Changes in the 2024 Regulations

Operations

- Jurisdiction
 - §106.11- “A recipient has an obligation to address 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.”

2024 Regulation **Implementation Checklist**

Jurisdiction

Policy Changes: Update your policy to reflect changes in jurisdiction that are a change from the 2020 Final Rule.

- Conduct that occurs in any 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
- Under the final regulations, a recipient is required to address a sex-based hostile environment in its education program or activity in the United States, even some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States. (§106.11)

Questions to Ask:

- Does your existing grievance procedures apply to off-campus incidents or incidents not occurring on university owned or controlled property and/or outside of your educational program or activity? (e.g., off-campus)

2024 Regulation **Implementation Checklist**

Jurisdiction

Training Requirements:

- Train study abroad and international programs staff on reporting and response requirements.
- Training requirements also apply to non-US citizens of the institution, employed by the US-based institution.

Practical Steps:

- If you have a satellite campus outside of United States jurisdiction, speak with General Counsel about how the imposition of US law interacts with non-US law.

Training Requirement in the 2024 Regulations (pp. 1517-1521)

All Employees	Investigators, Decision-makers, and other persons responsible for implementing the recipient's grievance procedures or have the authority to modify or terminate supportive measures	Facilitators of informal resolution process	Title IX Coordinator and designees
<ol style="list-style-type: none"> 1. Recipient's obligation to address sex discrimination in its education program or activity 2. Scope of conduct that constitutes sex discrimination under Title IX and this part including the definition of sex-based harassment; and 3. All applicable notification and information requirements under §106.40(b)(2) and 106.44 	<ol style="list-style-type: none"> 4. The recipient's obligations under §106.44 5. The recipient's grievance procedures under §106.45, and if applicable §106.46 6. How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and 7. 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 under §106.45, and if applicable §106.46 	<ol style="list-style-type: none"> 8. The rules and practices associated with the recipient's informal resolution process; and 9. How to serve impartially by avoiding conflicts of interest and bias 	<ol style="list-style-type: none"> 10. Their specific responsibilities under paragraph (a) of §106.8, §§106.40(b)(3), 106.44(f), 106.44(g), and the recipient's record-keeping system and the requirements of paragraph (f) of this section; 11. Any other training necessary to coordinate the recipient's compliance with Title IX

2024 Regulation **Implementation Checklist** Training

Policy Changes:

- If your policy addresses training requirements, it will need to be updated accordingly.
 - If your institution uses a departmental procedure, update that document
- Inclusion of the term and definition for “relevant”

Questions to Ask:

- What laws are applicable in my state, which may require more comprehensive training?

2024 Regulation **Implementation Checklist** Training

Training Requirements:

- Student board members are subject to the same training requirements as faculty and staff board members
- Specific training related to the term, definition, and application of “relevant”

Practical Steps:

- Remember that training is cumulative, based on a person’s role(s) within the institution and the process
- These regulations are fall less prescriptive when it comes to training requirements, than prior regulations, still consider this the floor, not the ceiling.

Major Changes in the 2024 Regulations

Operations

Supportive measures

- §106.2- “means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent to: (p. 1515)
- Restore or preserve the party’s access to the recipient’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 recipient’s grievance procedures under §106.45, and if applicable §106.46, or during the informal resolution process under §106.44(k).

2024 Regulation **Implementation Checklist**

Supportive Measures

Policy Changes:

- Ensure that the policy contains the updated definition

Questions to Ask:

- How practical is it for the institution to offer some of the interim measures listed in the regulations? (pp. 1535-1536)

Training Requirements:

- A required training topic for Title IX Coordinators and deputies, this may be a good topic to include for all employees

Practical Steps:

- Consider that the regulations only mention the burden of supportive measures on the parties, but there may be a burden on the institution
- Remember, that there is a distinction between a supportive measure and a final disciplinary sanction (remains the same as the 2020 current regulations)

2024 Regulation **Implementation Checklist**

Supportive Measures

Practical Steps:

- At the conclusion of the process, there is an opportunity to amend or terminate supportive measures with an opportunity for appeal.
- Appointment of another non-involved (impartial) party to review and decide the appeal of the supportive measure changes

Major Changes in the 2024 Regulations

Operations

- Retaliation
 - §106.2- “means intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient’s education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process under §106.44(k), in grievance procedures under §106.45, and if applicable §106.46, and in any other actions taken by a recipient under §106.44(f)(1).”

2024 Regulation **Implementation Checklist**-Retaliation

Policy Changes:

- Ensure policy contains the updated definition of the term “retaliation”

Questions to Ask:

- Is this definition consistent with any definition that you have for non-Title IX incidents?
- Are the procedures that you have in place to address non-Title IX retaliation consistent with the Title IX procedures?

Training Requirements:

- While not required, this might be a good topic for all groups of training

Major Changes in the 2024 Regulations

Operations

- Institutional choice of process
 - **Provide schools with flexibility to adapt the regulations' grievance procedure requirements to their educational communities so that all schools can implement Title IX's promise of nondiscrimination fully and fairly in their educational environments.**
 - The Department's final regulations will enable all schools to meet their Title IX obligations while providing appropriate discretion and flexibility to account for variations in school size, student populations, and administrative structures.
 - For instance, schools have the option to use a single-investigator model, and schools may choose to use this model in some, but not all, cases as long as it is clear in their grievance procedures when this model will be utilized. Schools also have the option to offer an informal resolution process for sex discrimination complaints unless the complaint includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or unless such a process would conflict with Federal, State, or local law.

Major Changes in the 2024 Regulations

Operations

- Institutional choice of process
 - The final regulations include some requirements that apply in all educational settings as well as specialized requirements that are tailored to the unique situation of sex-based harassment complaints involving postsecondary students. This framework is designed to ensure that all elementary and secondary schools and postsecondary institutions provide for the prompt and equitable resolution of sex discrimination complaints in their respective settings. (Title IX Fact Sheet p. 3)

2024 Regulation **Implementation Checklist**

Choice of Process

Policy Changes:

- The choice of process for the institution must be clearly articulated in the policy §§106.45, 106.46 (pp.1540-1559)

Questions to Ask:

- How do you keep your policy simple?
- Are you making your process universal?
 - (e.g. one process for Title IX cases and non-Title IX cases)
- What factors are you considering in determining to keep live hearings and cross-examination opportunities (e.g., legal, ethical, due-process, institutional fit, staffing models, etc)?
- What Memoranda of Understanding (MOU) need to be updated?
- What state laws or case law decisions are enacted or controlling on my home campus jurisdiction?
- What state laws or case law decisions are enacted or controlling in the jurisdiction of my satellite campus(es)?

2024 Regulation **Implementation Checklist**

Choice of Process

Training Requirements:

- Training and education needs (e.g., faculty training about rights of pregnant students)

Practical Steps:

- This is more than just updating your policy
- The regulations provide an opportunity for culture change

2024 Regulation **Implementation Checklist**

General Operations

Policy Changes:

Questions to Ask:

- How do these regulations and ultimately our institutional procedures complement or contradict with best practices for student conduct administration?
- How can we dovetail the Title IX grievance process and procedures with our non-Title IX case resolution process?
- Complaint-
 - If this is a third-party complaint
 - How are you going to conduct outreach?
 - What considerations should you consider when determining whether or not to proceed with an investigation?
 - Is your complaint form accessible to the general public? (e.g. authentication)
- How are you responding to and educating for response on reports occurring prior to August 1, 2024?

2024 Regulation **Implementation Checklist**

General Operations

Training Requirements:

- Training requirements have changed, consider providing information above and beyond the minimum requirements

Practical Steps:

- For Title IX Coordinator initiated complaints consider the fact-specific determination points (pp. 1533-1534)
- Is your complaint form accessible to the general public? (e.g. authentication)
- The regulations provide an opportunity for culture change

ASCA Future Offerings

What is coming next?

- Title IX Task Force and Working Group
 - Future webinars and feedback forms
 - Additional resources
 - Relying on membership feedback and case studies, adjust offerings accordingly
- Gehring Academy- July 14-July 18, 2024
 - Sexual Misconduct Track
 - Practice-specific elements

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