

# Thrun Law Firm Webinar

## 2024 Title IX Regulations

### 2024 Title IX Regulations: A Brief Overview






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### CAUTION

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### Agenda

- Statutory Overview
- Key 2024 Changes
- Action Items

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### Title IX

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . ."

20 USC 1681

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### Application

-  Effective August 1, 2024
-  Not retroactive
-  Slightly broadens jurisdiction:  
Within a school's education program or activity;  
May have to address conduct that occurs outside the school's program or activity if it is contributing to the hostile environment.

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## 2024 Title IX Regulations

### Scope

Addresses sex-based discrimination and sex-based harassment as subset of sex-based discrimination

Also addresses discrimination on the basis of:

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

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### Sexual Harassment Defined

- Quid pro quo harassment
- Hostile environment
- Sexual violence
  - Sexual assault
  - Dating violence
  - Domestic violence
- Stalking

106.2, 106.10

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### Hostile Environment

2020 Regulations	2024 Regulations
Unwelcome conduct determined by a reasonable person to be <b>so severe, pervasive, and objectively offensive</b> that it <b>effectively denies</b> a person equal access to the recipient's education program or activity.	Unwelcome sex-based conduct that "based on the totality of the circumstances, is <b>subjectively and objectively offensive</b> and is <b>so severe or pervasive</b> that it <b>limits or denies</b> a person's ability to participate in or benefit from the recipient's education program or activity."

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### Hostile Environment

- Fact-specific inquiry
- Must consider:
  - Degree to which access is affected
  - Type/frequency/duration of conduct
  - Parties' ages/roles/previous interactions
  - Location
  - Other sex-based harassment within the program or activity

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### Title IX Coordinator

- School employee must be designated as Title IX Coordinator
- Can have more than one, but must designate one with ultimate authority on oversight and compliance
- Has discretion to initiate Complaint if conduct:
  - Presents an imminent and serious threat to someone's health or safety; or
  - Prevents school from ensuring equal access based on sex
- Additional training requirements

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### Reports & Complaints

A recipient with "knowledge" of conduct that reasonably may constitute sex discrimination must respond promptly and effectively.

All employees who are not "confidential" must notify Title IX Coordinator when they have information about conduct that "reasonably may constitute sex discrimination."

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### “Confidential” Employees

Schools may designate certain employees as “confidential,” meaning they are not required to report knowledge of sex-based discrimination to the Title IX Coordinator

No requirement to designate employee as “confidential”

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### Complaints

- An “oral or written request” that “objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination”
- For sex-based harassment:
  - Complainant or parent/guardian
  - Title IX Coordinator
- For sex-based discrimination
  - Any person participating in or attempting to participate in program or activity

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### Upon Receipt of a Complaint

If alleged conduct may constitute sex discrimination, T9C must:

- Treat parties equitably
- Offer and coordinate supportive measures
- Notify Complainant and Respondent of grievance procedure and informal resolution process (if available)
- Initiate grievance procedure
- Consult member of student’s IEP or Section 504 Team to ensure compliance with IDEA and Section 504

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### Supportive Measures

- Largely the same as 2020
- Cannot be punitive or unreasonably burden either party
- Parties may challenge a decision to provide, deny, modify, or terminate supportive measures (to that Party)
  - Challenge must be heard by an impartial employee with ability to modify or reverse supportive measures

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### Emergency Removal

- Individualized safety and risk analysis still required
  - “An imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegation of sex discrimination justifies removal”
- Removed “physical” threat requirement
- Changed “immediate” to “imminent”
- Respondent may still challenge

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### Informal Resolution

- Largely the same
- Offered at the discretion of the school
- Not permitted if allegation that employee engaged in sex-based harassment toward student

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### Grievance Procedure

- Must have grievance procedures for all sex discrimination complaints that provide for prompt and equitable resolution (including sexual harassment)
- Basic requirements
  - Treat parties equitably
  - T9C, Investigator, or Decisionmaker cannot have conflict of interest or bias
  - Single investigator model permissible
  - Presumption that Respondent is not responsible
  - Establish "reasonably prompt timeframes for major stages of grievance procedures" (evaluation, investigation, determination, and appeal)

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### Grievance Procedure (Cont.)

- May adopt different grievance procedures, but must "articulate consistent principles" for when each applies
- For sex-based harassment complaints, grievance procedure must:
  - Describe the range of supportive measures available
  - List or describe the range of potential disciplinary sanctions and remedies

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### Notice Requirements

- Upon initiation of grievance procedure, schools must provide notice of allegations, including:
- Grievance procedures and informal resolution (if any)
  - Party identities
  - Alleged conduct, including dates and locations (if known)
  - Statement prohibiting retaliation
  - That parties have equal opportunity to view evidence or evidence summary

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### Dismissals



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### Complaint Investigation

- Investigation must be "adequate, reliable, and impartial"
- Burden is on school to gather sufficient evidence
- Equal opportunity for parties to present witnesses and evidence
- Review all evidence
- Allow parties equal opportunity to review evidence (either actual or summary)



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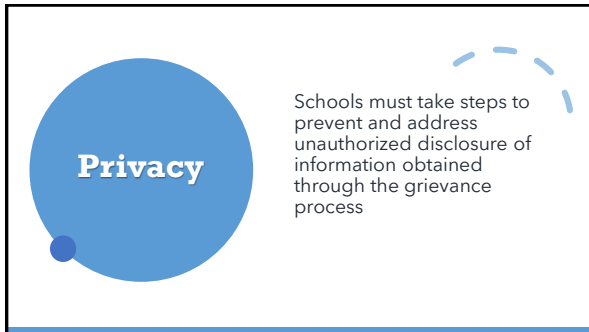
### Evidence Review

- 10 day review periods eliminated
- No longer required to provide *all* evidence
- May provide an "accurate description" of the evidence (still entitled to all evidence if requested)
- Parties entitled to "reasonable opportunity to respond" to the evidence
- Decisionmaker must question parties and witnesses to assess credibility

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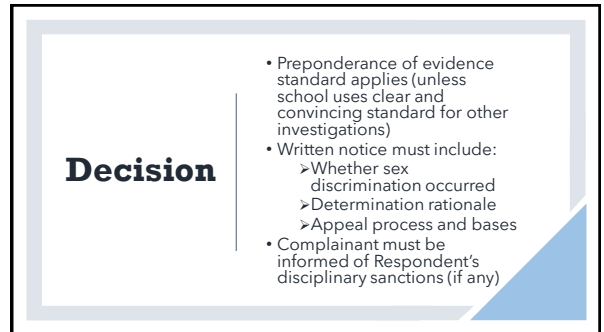
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**Privacy**

Schools must take steps to prevent and address unauthorized disclosure of information obtained through the grievance process

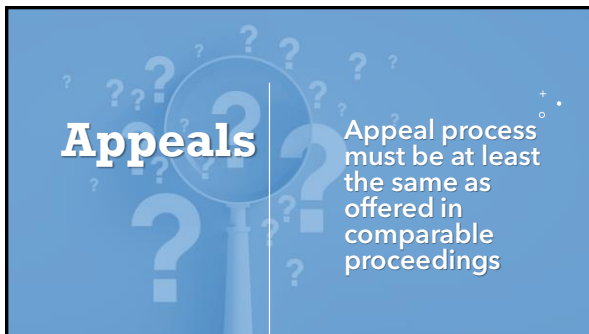
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**Decision**

- Preponderance of evidence standard applies (unless school uses clear and convincing standard for other investigations)
- Written notice must include:
  - Whether sex discrimination occurred
  - Determination rationale
  - Appeal process and bases
- Complainant must be informed of Respondent's disciplinary sanctions (if any)

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**Appeals**

Appeal process must be at least the same as offered in comparable proceedings

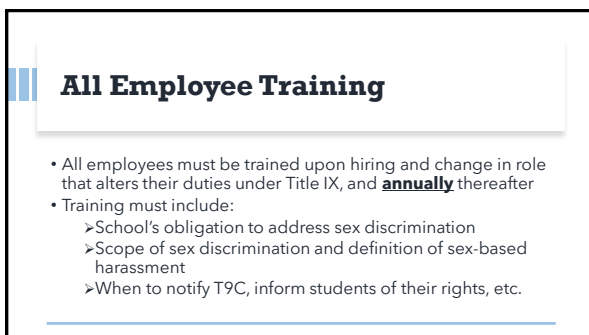
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**Retaliation**

- Recipients must prohibit retaliation, including peer retaliation
- If allegations of retaliation arise, must initiate grievance procedures

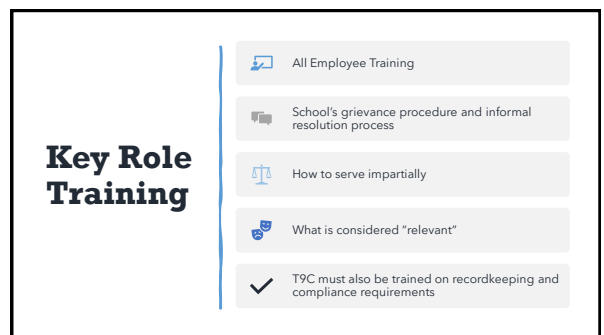
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**All Employee Training**

- All employees must be trained upon hiring and change in role that alters their duties under Title IX, and **annually** thereafter
- Training must include:
  - School's obligation to address sex discrimination
  - Scope of sex discrimination and definition of sex-based harassment
  - When to notify T9C, inform students of their rights, etc.

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**Key Role Training**

- 📄 All Employee Training
- 🗣️ School's grievance procedure and informal resolution process
- ⚖️ How to serve impartially
- 📋 What is considered "relevant"
- ✓ T9C must also be trained on recordkeeping and compliance requirements

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### Sex Separation

- Schools must not separate or treat any person differently based on sex in a manner that subjects them to more than "de minimis harm"
- 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
- Does not address athletics

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### Pre-Employment Inquiries



Cannot inquire as to marital status, including whether an applicant is "Miss or Mrs."



May only ask about sex if do so for everyone and the response isn't used as basis for discrimination

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### Pregnancy Protections

- Can't treat individuals differently based on parental, family, or marital status
- Can't discriminate against individuals based on pregnancy or "related conditions"
- Must ensure equal access, including:
  - Reasonable modifications for students
  - Reasonable break time for lactation for employees
  - Lactation space for students and employee
- Documentation requirements limited
- Notice requirements to students about rights related to these protections

106.31, 106.21, 106.40, 106.57

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### Recordkeeping

- Same timeline as 2020 (seven years)
- Must maintain:
  - Records documenting informal resolution process, grievance procedure, and resulting outcome
  - For each notification T9C receives about potential sex discrimination, actions school took to address
  - All training materials

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### What Now?

- Take a deep breath
- Watch for training opportunities and updated policy language/forms
- Training/materials later this summer will include:
  - All employee training
  - 2024 Comprehensive Training
  - New Board Policy
  - New Handbook Language

Contact [LSavoie@ThrunLaw.com](mailto:LSavoie@ThrunLaw.com) to be notified when information about these trainings is available

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### Questions?



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