

Cleveland State University Title IX Summit


May 17, 2024






Disclaimers and Basics

- This presentation does not constitute legal advice.
- If you'd like to ask questions, please feel free, but refrain from asking questions that are too institution-specific.
- There will be three concurrent break-out sessions on the grievance process, training requirements, and an update on athletics after this representation:





Our Presenters

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Big Picture Thoughts

4

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How is this Presentation Structured?

- Our goal here is to give you an overview of the changes to the new regulations. This is not comprehensive.
- Each section will have a reference to to-do items that should happen June and July before the August 1 effective date.
- We know that summer can be a challenging time to talk to constituents. Remember: you've done this before in 2020 in the middle of the pandemic - you can do it again.

5

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Basics

- The official version was published in the Federal Register on April 29, 2024.
- How do you read these?
 - Start on page 33882 where the new regulations start.
 - Read the new regulations.
 - Go back to the beginning and read the preamble.
 - Now read the regulations again.
- In its press release, ED says that the final rules do all of the following:
 - Protect against all sex-based harassment and discrimination.
 - Promote accountability and fairness.
 - Empower and support students and families.

Watch for these themes as we work through the details.

6

The Presentation is your starting point...



Topics Summarized:

- o the definition of discrimination **on the basis of sex**
- o the definition of sex-based harassment,
- o the definition of **"actual knowledge,"**
- o a broadening of the definition of jurisdiction,
- o changes to the duties of the Title IX Coordinator,
- o different definition and procedures for supportive measures and emergency removal,
- o working with a student with a disability in your Title IX process,
- o updated information about informal resolution and when it can be used,
- o **grievance process (you will need to make a decision as to how your institution will use new grievance procedures),**
- o understanding **new training requirements**
- o an updated definition of retaliation,
- o **new reporting and resource requirements for pregnancy and parenting,** and
- o reporting requirements and confidential employees.

Start with the Basics – What to do Before
June 1 (1 of 3)



- Read the regulatory text.** The Preamble (the 100s of pages of information about why the U.S. Dept. of Education made the changes) is helpful, but start with the actual text of the regulations which is found at the end.
- Identify who will be available on campus to assist you with updating policy and scheduling necessary trainings** (more on trainings later); for example, will your directors of human resources and faculty employment be available? Do you know the availability of your internal or external legal counsel? Are there students available to discuss any changes to your policies? The new regulations are more flexible for certain institutions (specifically private universities) and your updated policy will contain these choices.
- Does the Board of Trustees or other governing body need to approve your updated Title IX policy?** If the answer is yes, identify upcoming Board meetings and alert your Board Chair that you will need Board review or authority to publish an interim policy prior to August 1.

Start with the Basics – What to do Before
June 1 (2 of 3)



- What approvals are required (in addition to Board approval, if necessary) to publishing your policy?**
- Identify all areas where your Title IX policy exists** (both on your website and printed materials) and make a list.
- Solicit support** from your communications department, student affairs, academic affairs, and athletics to ensure that everyone understands the pre-August 1 requirements of the new regulations.

**Start with the Basics – What to do Before
June 1 (3 of 3)**



- Form a working group** to assist you.
- Create timelines** based on your internal governing policies related to policy development (a policy on policies?).
- Identify any vacancies in key positions** that would need to review the policy and identify individuals who are able to act in the interim.

10

Things You Can STOP Doing August 1st



- Posting training materials (though they still must be available for inspection upon request)
- Barring informal resolution in student vs. employee cases
- Permitting advisors in the non-106.46 process (unless the Clery Act requires them)
- Holding hearings?
 - Case law/state law may require this anyway

11



Sex Discrimination

Definition: 106.10

12

Key Takeaways from this Section: Sex Discrimination



- Note the following changes:
 - on the definition of what is prohibited (§ 106.31),
 - the change in the definition of "on the basis of sex" (§ 106.10),
 - the concept of "de minimis harm" (§ 106.31), and
 - the change in hostile environment that occurs outside of your educational program or activity and outside of the United States (§ 106.11).

13

Key Action Items: Sex Discrimination



- Identify sections of your current policy that will need to be updated to reflect the new definitions and scope;
- Educate your core group as to the changes in the prohibition, scope, and application and brainstorm ways in which this would impact operations on campus (e.g., updating reporting requirements, updating training materials related to employee reporting requirements, etc.).
- Do you have off-campus programs? Do your affiliation agreements include a reporting requirement for those entities?
- Do your other employment and conduct processes allow for considering off campus behavior or behavior that occurs outside the United States? We want to resolve conflicts that exist in other policies.

14

Prohibition – 106.31



- Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any **academic, extracurricular, research, occupational training, or other education program or activity** operated by a recipient that receives Federal financial assistance.

15

Scope – 106.10



- Discrimination on the basis of sex includes discrimination on the basis of:
 - Sex stereotypes
 - Sex characteristics
 - Pregnancy or related conditions
 - Sexual orientation
 - Gender identity

16

Where an Exception Applies... 106.31



- A recipient must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to **more than de minimis harm**, except as permitted by:
 - The exceptions laid out in 20 USC 1681(a)(1) through (9) and 106.12 through 106.15
 - The exceptions in 20 USC 1686 and corresponding regulations 106.32(b)(1)
 - [Housing]
 - 106.41(b) [Athletics]
- 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.

17

Application – 106.11



- Applies to all sex discrimination occurring under a recipient's education program or activity in the United States
- Includes:
 - Conduct occurring in a building owned/controlled by recognized student organization; and
 - Conduct that is subject to the recipient's disciplinary authority
- Recipient has an obligation to address a sex-based hostile environment under its education program or activity, **even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States.**

18

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Sex-Based Harassment

Definition: 106.2

19

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Key Takeaways: Sex-Based Harassment

- The new regulations change the definition of sex-based harassment (keep in mind the changes to the definition "on the basis of sex").
- Quid pro quo harassment now includes employees, agents, and "other persons authorized by the college or university to provide aid, benefit or service." This means that contractors will be subject to the regulations and could create liability for the institution.
- The definition of hostile environment is no longer severe, pervasive and objectively offensive, it is now based on a definition more common to hostile environment under Title VII (but notice the difference between the Title VII standard and this one). Note the variation in the definition of domestic violence.

20

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Key Action Items: Sex-Based Harassment

- Identify the areas of your policy that need to be amended.
- Identify and update all contracts of third-party vendors that provide educational programs and services.
- Do your vendor contracts expressly reference obligations for reporting any sort of incident involving sexual harassment?
- Update training materials to reflect changes in definitions.

21

Definition of Sex-Based Harassment – 106.2



Sex-based harassment prohibited by this part is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in 106.10, that is:

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

22

Definition of Quid Pro Quo – 106.2



- An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct

23

Definition of Hostile Environment – 106.2 (1 of 2)



- 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 recipient's education program or activity (i.e., creates a hostile environment).
- Title VII standard, for reference: "must be so severe or pervasive" with reasonable-person standard for charging party

24

Definition of Hostile Environment – 106.2 (2 of 2)



- Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
 - The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
 - The type, frequency, and duration of the conduct;
 - The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
 - The location of the conduct and the context in which the conduct occurred; and
 - Other sex-based harassment in the recipient's education' program or activity

25

Specific Offenses



- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

Note: The domestic violence definition aligns with but does not adopt the full VAWA definition that applies to victim services (e.g. verbal, psychological, economic, or technological abuse).

26



"Actual Knowledge" and Reporting Requirements

27

Key Action Items: "Actual Knowledge" and Reporting Requirements



- Identify which employees fall into which categories.
- Revise policy to match updated reporting requirements.
- Train employees on their reporting obligations.
- Will you give an info sheet to employees if you allow them to share Title IX contact information instead of making a report?
- How will your employees document that they have met their requirements by sharing contact information?

28

Language in 2020 Title IX Regulations



- Under 2020 Title IX Regulations, notice to trigger "actual knowledge" for purposes of liability was limited to:
 - For K-12: any employee, except those deemed confidential (prior to the 2020 Title IX Regulations, "actual knowledge" had been limited to designated school employees).
 - For post-secondary institutions: the Title IX Coordinator any official who has the authority to institute corrective measures on behalf of a recipient (prior to the 2020 Title IX Regulations, "actual knowledge" extended to any employee)


29

Section 106.44's Notice Requirements – Elementary or Secondary School Recipients




Must require **all of its employees who are not confidential employees** to notify the Title IX Coordinator when employee has information about conduct that reasonably may constitute sex discrimination under Title IX (106.44(c)(1))

30

Reporting in Non-K12 Settings 

Duties	Must Report to TIXC	Either report to TIXC or Provide contact info
Authority to institute corrective measures	x	
Administrators	x	
Faculty	X	
Advisors	X	
Non-confidential other employees		X
Confidential employees		X (with required explanations)
Student employees	Institution makes reasonable determination as to what applies	


31

Definition of "Confidential Employees" 

- Confidential/privileged under state law – only applies to information received while functioning in that confidential/privileged role
- Confidential/privileged as designated by policy
- Researchers who are conducting IRB-approved human research – only applies to information received while conducting the research

(Confidential employees can report to TIXC with consent; otherwise, they're providing contact information to the person.)

32

Confidential employee requirements 

- A recipient must notify all participants in the recipient's education program or activity how to contact its confidential employees (exclusion of post-secondary IRB research)
- A recipient must require confidential employee to explain to any person who informs them of conduct that reasonably may constitute sex discrimination under Title IX:
 - Employee is a confidential employee and not required to notify Title IX Coordinator about conduct that reasonably may constitute sex discrimination
 - How to contact Title IX Coordinator and make a complaint
 - That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate informal resolution or formal grievance process

33

"Take Back the Night" Exception **Bricker Graydon**

- If you learn of sex-based discrimination through a public educational event, you don't have to act in response, but you do have to use it to inform your preventive efforts. See 106.44(e)

34

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Jurisdiction

35

Key Action Items: Jurisdiction **Bricker Graydon**

- Revise your Jurisdiction/Scope sections of your policy.
- Update your definitions section to reflect 106.2.
- Revise dismissal provisions.
- Ensure all your "students" (and other campus community members) receive notification of the policy.

36

34 CFR 106.11



- Prohibition applies to sex discrimination education program/activity in the United States
 - This includes off-campus conduct that occurs in a building owned/controlled by an officially recognized student organization
 - This includes conduct that is subject to the recipient's disciplinary authority (which may include off-campus behavior depending on your institution)
- Institutions are obligated to address hostile environment within their educational programs/activities, even if part of the conduct occurred outside the program or outside the USA.

37

Definition of "Student" - 106.2



- Student is "a person who has gained admission."
- Admission is defined to include "selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient."

38

Definition of "Complaint" - 106.2



- 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

39

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Duties of a Title IX Coordinator

See Entire Regulations

40

Key Takeaways this Section: Duties of a Title IX Coordinator **Bricker Graydon**


- Identify the areas of your policy that need to be amended.
- Consider expanding Title IX team members – remember to train if new duties are assumed.
- Review the 8 considerations for engaging Title IX process (next slide) and test these considerations on common scenarios on campus.
- Update training materials to reflect changes in definitions.

41

Initiation of Complaint by TIXC **Bricker Graydon**


- 8 Considerations for initiation by TIXC (§ 106.44(f)(1)(v) – (vi))
 - (1) Complainant's request not to proceed
 - (2) Complainant's reasonable safety concerns re: initiation
 - (3) Risk that additional acts of sex discrimination might occur w/out a complaint
 - (4) Severity of the alleged sex discrimination
 - Would a finding of responsibility result in removal/imposition of another sanction?
 - (5) Age and Relationship of the parties
 - Was Respondent an employee of the recipient?
 - (6) Scope of the alleged sex discrimination
 - Information suggesting a pattern? Ongoing sex discrimination? Impacting multiple individuals?
 - (7) Availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred
 - (8) Whether the recipient could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures

42

Initiation of Complaint by TIXC – tell Complainant 

- If initiating, notify Complainant and address reasonable concerns
- Regardless of initiating:
 - Take other appropriate prompt and effective steps to ensure sex discrimination does not continue
- NOTE: TIXCs are not required to analyze the 8 considerations if the conduct, as alleged, could not constitute sex discrimination


43



Supportive Measures and Emergency Removal

Definition: 106.2
See also 106.44(h) and (i)

44

Key Action Items: Supportive Measures and Emergency Removal 

- Note the changes to the definition of Supportive Measures: Identify the areas of your policy that need to be amended.
- Map out your process for Emergency Removal based on requirements: **imminent and serious threat** to the health or safety
- Remember to consider access issues when providing or implementing Supportive Measures – ADA/504 considerations.
- Update training materials to reflect changes in definitions.

45

Definition of Supportive Measures – 106.2



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 to:

- o Restore or preserve that 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
- o Provide support during the recipient's grievance procedures or during the informal resolution process. [NOTE: specific discussion of Supportive Measures in 106.44 and 106.45]

46

List of Example Supportive Measures – 106.44(g)



- Counseling
- Extensions of deadlines and other course-related adjustments
- Campus escort services
- Increased security and monitoring of certain areas of the campus
- Restrictions on contact **applied to one or more parties**
- Leaves of absence
- Changes in class, work, housing, or extracurricular or any other activity, **regardless of whether there is or is not a comparable alternative**
- **Training and education programs** related to sex-based harassment


47

Consult with Disability Services re Supportive Measures




- If a student is a student with a disability under Section 504, the Title IX Coordinator may consult with your office of disability services in determining appropriate supportive measures. See 106.44(g)(6)(ii)

48

Appeals re: Supportive Measures 

- Must have the ability to seek modification or reversal from an appropriate and impartial employee

49

Emergency Removal from educational program or activity 

- Must undertake an individualized safety and risk analysis
- Must determine that an "**imminent and serious threat** to the health or safety of **a complaint or any students, employees, or other persons** arising from the allegations of sex discrimination justifies removal"
- Must provide respondent with notice and an opportunity to challenge

Note: Institutions still have the right to put employee respondents on administrative leave. See 106.44(i)

Note: Reference to interaction with ADA/504

50



Student with a Disability

Definition: 106.2
See also 106.8(e)

51

Key Action Items: Students with a Disability



- Identify the areas of your policy that need to be amended.
- Work with ADA/504 Coordinator on information sharing provisions re FERPA
- Consider events in your process where ADA/504 issues are common (e.g. Grievance process, intake, etc.)
- Update training materials to reflect changes in definitions.

52

Definition of Student with a Disability – 106.2



- A student who is an individual with a disability under Section 504, or a child with a disability as defined by the IDEA.
- TIXC "may consult, as appropriate" with disability support services to help comply with Section 504. Such consultation = "legitimate educational interest."
- Recipients must establish criteria in its annual notification of FERPA rights to permit its Title IX Coordinator to constitute a school official with legitimate educational interests when performing functions to carry out § 106.8(e)

53

Students with Disabilities



"The rights of students with disabilities warrant the attention and concern demonstrated by the obligations set forth in § 106.8(e), and the inclusion of this provision in the final regulations will provide clarity for students with disabilities about what to expect from their educational institutions when they are involved in Title IX grievance procedures as complainants or respondents."

54

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Informal Resolution

See 106.44(k)

55

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Key Action Items: Informal Resolution

- Identify the areas of your policy that need to be amended.
- Note expansion to higher education employment matters
- Also note application to K-12 environments (does your institution have a school on campus?)
- Increase number of IR facilitators on campus – consider reaching out to your other institutional colleagues to develop common services.

56

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Informal Resolution (IR) 106.44(k) - Expanded

Formal complaint no longer required. IR is permitted when a recipient

- Receives a formal complaint of sex discrimination, or
- Receives information about conduct that reasonably may constitute sex discrimination.

Expanded to higher ed student/employee claims. IR is not permitted:

- For complaints that include allegations that an employee engaged in sex-based harassment of an elementary or secondary school student, or
- When such a process would conflict with federal, state or local law.

57

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Grievance Process

See 106.44, 106.45, and 106.46

58

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Key Action Items: Grievance Process

- Confer with stakeholders to balance all competing interests in what a good grievance process looks like, consistent with your institutional ethic of care.
- Figure out your 106.45 procedures.
- Figure out your 106.46 procedures.
- Make sure you comply with Clery requirements when they apply.
- Have a beautiful flowchart ready to assist your explanations.

59

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Definition of Relevant – 106.2

- Related to the allegations of sex discrimination under investigation as part of the grievance procedures under 106.45, and if applicable 106.46.
- Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

60

Definition of Remedies – 106.2



- Measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient's education program or activity limited or denied by sex discrimination.
- These measures are provided to restore or preserve that person's access to the recipient's education program or activity after a recipient determines that sex discrimination occurred.

61

**Which Grievance Process Applies?
(Assuming Jurisdiction)**



- Are you a postsecondary institution?
 - If yes: Go to next question.
 - If no: 106.45 applies.
- Is one of the parties a student?
 - If yes: Go to next question.
 - If no: 106.45 applies.
- Do the allegations include sex-based harassment?
 - If yes: 106.45 + 106.46 apply.
 - If no: 106.45 applies.

And don't forget the Clery Act overlay....

62

106.45(a)(2) - Who can file a complaint?



- Applies only to respondent individuals (not respondent institution)
- Sex-Based Harassment complaints can be filed by:
 - complainant
 - parent/guardian or other authorized legal representative with the legal right to act on behalf of a complainant
 - Title IX Coordinator
- Sex Discrimination (non SBH) complaints can be filed by:
 - All of the above, plus any student or employee
 - Any other person who was participating or attempting to participate in the institution's education program or activity at the time of the alleged sex discrimination

63

Other Notable Features of 106.45 Process



- Must provide notice to parties if deadlines are delayed for various stages of the process
- If you have different procedures for different situations, you must explain this
- Must provide notice of allegations to the parties - but this notice includes less information than 2020 regulations require
- All dismissal is discretionary -and you must offer an appeal process
- Must provide evidence or description of evidence (but they can still see evidence upon request) For party's response ("reasonable opportunity")
- Prevent unauthorized disclosure of evidence

64

Investigator as Decision-Maker – 106.45



- Decision-maker must question parties and witnesses to assess credibility to the extent credibility is in dispute and relevant
- Simplified requirements for written determination
- Appeals must be comparable to other procedures
- Your policy must describe sanctions and supportive measures

65

No Advisors Under 106.45



- 106.45 does not require nor prohibit advisors
- Clery Act still requires advisor of choice in situations involving sexual assault, dating violence, domestic violence, and stalking

66

Features of 106.46



- Notice of allegations is more robust; may delay provision of notice due to safety concerns
- Parties are entitled to advisor of choice
- Parties get notice/appeal for discretionary dismissal
- Discretion to determine whether parties may present expert witnesses - must apply equally to both parties
- Evidence or summary plus access to evidence

67

106.46(f) Credibility Procedures



- Asynchronous process – Parties submit questions, decision-maker asks questions and provides recording/transcript, parties submit follow-up questions, repeat
- Hearing -
 - Option #1 – Decision-maker asks relevant, permissible questions submitted by parties
 - Option #2 (current procedures) – Advisors and decision-maker ask questions

68

Non-Participation under 106.46(f)(4)



- A decisionmaker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible.
- The decisionmaker must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

69

Initial Thoughts **Bricker Graydon**

- Court decisions may "guide" whether you choose asynchronous or live hearings
- There are logistical issues with both hearing options. An asynchronous hearing could be integrated into the investigator model if there is good planning.
- Consider which option is appropriate where:
 - A party refuses to participate in the process
 - All relevant conduct is documented in objective evidence (texts, videos)
 - There are no disputed facts based on the evidence collected

70

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New Training Requirements

106.8(d)

71

Key Takeaways This Section: New Training Requirements (Slide 1 of 2) **Bricker Graydon**

- The new regulations require training for all employees and your Title IX team including the Title IX Coordinators or designees – identify orientation periods where training can happen with new employees.
- Any employee whose job responsibilities are contemplated as a Title IX responsibility under the new regulations must be trained when their job responsibilities shift not just when they are newly hired – identify mechanisms to have human resources or academic affairs alert the Title IX Coordinator when an individual has changed job responsibilities to make sure that they can be trained promptly.
- Identify those members of your Title IX team who will need to be trained on your policy and by the August 1 deadline.

72

Key Takeaways this Section: New Training Requirements (Slide 2 of 2)



- Identify training schedules and on-line training platforms
- Update training materials to reflect changes in definitions.

73

The Who and the When of Training Requirements 106.8(d)



Who?

1. "All employees"
2. Investigators, decisionmakers, and "other persons who are responsible for implementing the recipient's grievance procedures or have authority to modify or termination supportive measures."
3. "Facilitators of informal resolution process"
4. Title IX Coordinators or Designees.

When? Two periods of time:

1. "promptly upon hiring" or "change in position that alters duties under Title IX; and
2. "Annually thereafter"

74


"All Employees"



- Recipient's obligation to address sex discrimination in its education program or activity
- The scope of conduct that constitutes sex discrimination, including definition of sex-based harassment
- All applicable notification requirements regarding student pregnancy (106.40(b)(2) - providing TIXC contact information and information about actions to ensure equal access and avoid discr.)
- All applicable notification requirements regarding response to sex discrimination (106.44(c) - NOTE: reporting requirements will be different depending on employee roles and status as student-employee)

75

Title IX Team
Training Requirement Summary




All Employee Topics	Recipient's Response to Sex Disc. (106.44)	Recipient's Grievance Procedures (106.45; poss. 106.46)	What is Relevant? What is Impermissible Evidence?	Serve Impartially; Without Conflict of Interest and Bias.	Avoiding Prejudgment of Facts	Rules and Practices re: Informal Resolution (106.49b)
Investigators	X	X	X	X	X	X
Decisionmakers	X	X	X	X	X	X
Resp. For Grievance Proc./Mod. Sup. Measures	X	X	X	X	X	X
Informal Res.	X				X	X
Title IX Cord. *	X	X	X	X	X	X

* Title IX Coordinators and Designees have even more training requirements (106.8(f)(4))

76

Title IX Coordinator/Designees




Title IX Coordinators and Designees have more training requirements:

- o Responsibilities to pregnant students
- o Responsibilities under the grievance process, including with regard to supportive measures
- o Recipient's recordkeeping system and Title IX recordkeeping requirements
- o "Any other training necessary to coordinate the recipient's compliance with Title IX"

77

Training Records



- Keep them for seven years
- Must make them available for inspection upon request – no more required posting

78

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Retaliation

Definition: 106.2
See also 106.71

79

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Key Takeaways this Section: Retaliation

- Identify policies, including Title IX Policy, that reference or use the old definition under 106.71.
- Update training materials to reflect changes in definitions.
- Note the reference to employees acting on behalf of a participant as being protected.

80

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Definition of Retaliation, 106.2

- 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 an information resolution process, in grievance procedures, and in any other actions taken by a recipient [to eliminate the discrimination, prevent its recurrence, and remedy its effects]

81

Definition of Retaliation, 106.2 **Bricker Graydon**

- Nothing in this definition or this part precludes a recipient from **requiring an employee** or other person authorized by a recipient to provide aid, benefit, or service under the recipient's education program or activity **to participate** as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this part.

82

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Athletics

83

Athletics **Bricker Graydon**

- Establishing separate athletic teams under § 106.41(b) = not de minimis harm.
- Preventing someone from participating in school including in sex-separate activities (athletics) consistent with their gender identity = de minimis harm?

The Athletics NPRM ([Reexamination of the Role of Sex in Education Programs or Activities Requiring Federal Financial Assistance: Sex-Related Eligibility Criteria for Male or Female Athlete Events](#)) was NOT a part of this rule.

84

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Pregnancy and Parenting

Definitions: 106.2

85

Key Takeaways this Section: Pregnancy and Parenting

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- Note definitions of parenting status and pregnancy – scope is broad
- Socialize this notice and reporting requirements with HR and Academic Affairs
- Determine existing reporting pathways and enhance the ability for employees to access resources to provide to pregnant persons.
- Update training materials to reflect changes in definitions.

86

Definition of Parental Status – 106.2

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- 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-care because of a physical or mental disability, is:
 - A biological parent;
 - An adoptive parent;
 - A foster parent;
 - A stepparent;
 - A legal custodian or guardian;
 - In loco parentis with respect to such a person; or
 - Actively seeking legal custody, guardianship, visitation, or adoption of such a person.

87

Definition of Pregnancy or Related Conditions – 106.2



- 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.

88

Key Regulations



- Admissions – 106.21(c)
- Non-discrimination, notice, and **reasonable modifications** – 106.40
- Voluntary leaves of absence – 106.40(b)(3)(iv)
- **Lactation space** - 106.40(b)(3)(v)
- **Limitations on supporting documentation** – 106.40(b)(3)(vi)
- Comparable treatment to other temporary medical conditions – 106.40(b)(4)
- Certification to participate – 106.40(b)(5)

89



Your Next Moves

90

Next Steps



- Gather your stakeholders – Board members, faculty, staff, students, community members?
- Get feedback on what choices might fit your community best
- Make decisions about the options you will exercise in your policy.
- Work with counsel to integrate your choices—and your ethic of care—into the policy.

91

Our Next Moves



- Policy Boot Camp – Coming soon via Zoom for your team!
 - ODHE Dates: May 30th or June 20th (free for Ohio institutions)
 - Other Dates coming soon

Title IX in Focus – Free Webinar Series starts again on August 29th at 1:00 EST with Trauma-Informed Resolution Process

If you want to join our newsletter to make sure you don't miss out on future trainings, go to www.brickergraydon.com/subscribe

92

Thank You



93

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The 2024 Title IX Regulations, State Law, and Athletics

2024 Title IX Summit – Cleveland State University
May 17, 2024
Presented by Erin Butcher, Bricker Graydon

**Bricker
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Agenda

- Deep breath – a lot is up in the area and will be fought out in the courts.
- Overview of what 2020 Title IX Regulations say vs. 2024 Title IX Regulations regarding transgender students and access
- Overview of what "de minimis" (may) mean
- Overview of state law overlays
- Overview of how courts have handled, what is pending, and how this may play out in the near future.
- Open discussion and questions.

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2020 Title IX Regulations

- Written before, but in anticipation of the *Bostock* ruling by the U.S. Supreme Court
- The *Bostock* decision made clear that "on the basis of sex" under Title VII (employees) included sexual orientation and gender identity.
- The preamble to the 2020 Title IX Regulations acknowledged that the Court was about to address the issue of "on the basis of sex" under Title VII and application to transgender individuals and would not make a determination on that or its potential application to Title IX
- The 2020 Title IX Regulations indicated that any discrimination on the basis of sex was unlawful, but included binary and heteronormative language in definitions of, for example, sexual assault.

2021 Executive Orders and Proposed Regulations



- In January 2021, the Biden administration issued an executive order that all agencies would be reviewing rules and regulations to ensure that they did not discriminate against sexual orientation and gender identity, which the Biden administration viewed as consistent with *Bostock*.
- In March 2021, the Biden administration issued an executive order expressly requiring the Department of Education to review Title IX to be inclusive of LGBT+ individuals consistent with *Bostock*, which the Biden administration viewed as prohibiting discrimination on the basis of sex based on sexual orientation and gender identity.
- In July 2022, the Department of Education released its proposed Title IX regulations, that, in pertinent part, included protections consistent with the March 2021 Executive Order.
- In July 2022, the E.D. Tennessee federal court granted an injunction blocking the Department of Education and Department of Justice from enforcing the January 2021 Executive Order where it conflicted with state law (on appeal to the Sixth Circuit).
- In April 2023, the Department of Education related proposed amendments to its athletics regulations – rejecting a “one-size fits all” ban on transgender athletes participating in the sport of their gender identity.

2024 Title IX Regulations (effective Aug. 1, 2024)



- Establishing separate athletic teams under § 106.41(b) = not *de minimis* harm.
- Preventing someone from participating in school including in sex-separate activities (athletics) consistent with their gender identity = *de minimis* harm?
- Tell us that forcing someone to use bathroom that does not align with gender identity is more than *de minimis* harm (so violation).

The Athletics NPRM ([Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male or Female Athletic Teams](#)) *de minimis* was NOT a part of this rule.

More on *de minimis* harm



- “*De minimis*” is a legal standard that Courts use to evaluate harm in the Title VII context, but it is new to Title IX here
- What “*de minimis*” means in Title VII is more than minimal - but this has evolved recently
- In June 2023, the United States Supreme Court issued a decision in *Groff v. DeJoy*, 600 U.S. 447, in the context of Title VII religious accommodations. In construing *de minimis* cost to an employer to provide an accommodation, the Court determined that an employer who denies a religious accommodation has the burden of showing that the granting of an accommodation would result in substantial increased costs in relation to the conduct of its particular business (had been a *de minimis* standards contest). Imagine this in the context of differences in facilities or accommodation of a facility.
- In April 2024, the United States Supreme Court issued a decision in *Muldrow v. City of St. Louis*, 144 S. Ct. 967, in the context of Title VII discrimination in change of job duties. In construing what had been a *de minimis* changes test, the Court determined that an employee challenging a job transfer must show that the transfer brought about some harm with respect to an identifiable term or condition of employment, but that the harm need not be significant. Imagine this in the impact on access to an educational program or activity.

Overlay of State Law



- Ohio HB 68 "Ohio Saving Adolescents from Experimentation (SAFE) Act," currently stayed until July 15, 2024 by a county court, would contradict 2024 Title IX Regulations on access to facilities and sports and ban transgender girls and women from participating on girls' and women's teams under the "Save Womens' Sports Act" – Ohio joined a filing in the 4th Circuit to enjoin the Title IX Regulations.
- Michigan HB 4546 (which has not moved forward since its introduction) would allow transgender girls and women to play girls' and women's sports, but not win
- PA "Protection of Women and Girls in Sports Act" would also ban transgender girls and women from participating on girls' and women's teams

What's Next - Expect Injunctions



- Injunctions will come. Pay attention to what is going on in your state and the position of your state's Attorney General and enforcement agencies (state boards of education).
- Communicate with your legal counsel.
- Be nimble and able to pivot.

Discussion



- How is your institution approaching these competing directives?
- Thoughts?
- Questions?

Thank you!



Check out our Athletic Compliance Team and dedicated Title IX and Athletics Resource Center where we stay up to date on gender equity and transgender participation in athletics issues!

<https://www.brickergraydon.com/insights/resources/athletic-compliance>

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2024 Title IX Regulations: Grievance Procedures

Melissa M. Carleton



1

Structure Matters!



- Today we're talking big structural questions, not detail questions.
- When it comes time to draft your policy, you will need to review the regulations in detail to capture nuances.

Baselines



- 106.45 - Applies to all cases of sex discrimination
- 106.46 - Only applies to cases involving SBH + a student party + Higher Ed
- Clery – Applies to all Higher Ed cases involving sexual assault, dating violence, domestic violence, and stalking (even if not based on sex)
- *Doe v. Baum* – Applies to public IHEs in the 6th Circuit where credibility is at issue in a student disciplinary matter; must provide for live cross-examination

106.45 - New Basics



- No requirement to permit advisors
- Must explain when different procedures are to be used
- Notice of allegations requires less information
- Dismissals are streamlined, and there is an appeal right
- Provide access to the evidence, or a summary of the evidence (with the ability to review evidence if requested)
- Provide reasonable opportunity to respond to the evidence
- Take steps to avoid unauthorized disclosure of evidence
- "Provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination"

106.45 - Provisions specific to SBH cases



- Policy must describe range of supportive measures available to the parties
- Policy must list or describe the range of potential disciplinary sanctions and remedies that may be provided

Remember that SBH + student cases must be handled under .46. This provision would apply to those cases, *as well as* SBH cases that do not involve a student party.

106.46 - Student + SBH Cases



- Written notice is more robust, in line with what you provide now
- May reasonable delay notice due to safety issues
- Must permit advisor of choice; can offer equal opportunity to bring support person(s)
- Discretion regarding whether to permit expert witnesses
- Choice of three hearing styles: Asynchronous, Hearing Officer Led, and Full Live Cross (more on this in a bit)
- Yes, there are still relevancy determinations, but they are less awkward in 2 of 3 options...

Aside from Compliance, What Are Your Goals?



- Change as little as possible?
- Use as few resources as possible?
- Be as trauma-informed as possible?
- Have the best-tested evidence for making a decision?
- Finding a middle ground?

How Many Procedures?



- One process that is fully compliant with .46
- A .45 process that is Clery compliant + .46 process
- A .45 process with Clery overlay + .46 process
- Multiple .45 procedures and multiple .46 procedures
 - See next slides

106.45 - Many Choices



- You could have different procedures for different types of allegations
- You could have different procedures depending on the status of the Respondent
- You could have different procedures depending on whether suspension/dismissal/termination is possible

106.46 - Many Choices



- Three options:
 - Asynchronous hearing
 - Hearing Officer led hearing
 - Full cross-examination hearing (parties must have advisors)
- You could choose one option for all .46 cases
- You could choose different options depending on different factors:
 - Is Complainant participating?
 - Is Respondent participating?
 - Is there an issue of credibility to be resolved?
 - Has Respondent accepted responsibility for the violation(s)?

Clery Overlay – 34 CFR 668.46(k)



- The biggest requirement is that both parties may have an advisor of choice
- Annual training requirements specific to administrators handling these case

Hypos to Roundtable



- #1 - Custodian brings hostile environment SBH claim against supervisor.
- #2 - Student brings sexual assault claim against professor.
- #3 - Student brings dating violence claim against another student.
- #4 – Chief of Staff brings quid pro quo claim against President.
- #5 – Student brings sex discrimination claim against professor.
- #6 - Employee brings retaliation claim against another employee.



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BREAK OUT SESSION: New Training Requirements

106.8(d)

1

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The Who and the When of Training Requirements 106.8(d)

Who?

1. "All employees"
2. Investigators, decisionmakers, and "other persons who are responsible for implementing the recipient's grievance procedures or have authority to modify or termination supportive measures."
3. "Facilitators of informal resolution process"
4. Title IX Coordinators or Designees.

When? Two periods of time:

1. "promptly upon hiring" or "change in position that alters duties under Title IX; and
2. "Annually thereafter"

2

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"All Employees"

- Recipient's obligation to address sex discrimination in its education program or activity
- The scope of conduct that constitutes sex discrimination, including definition of sex-based harassment
- All applicable notification requirements regarding student pregnancy (106.40(b)(2) - providing TIXC contact information and information about actions to ensure equal access and avoid discr.)
- All applicable notification requirements regarding response to sex discrimination (106.44(c) - NOTE: reporting requirements will be different depending on employee roles and status as student-employee)

3

**Title IX Team
Training Requirement Summary**



	All Employee Topics	Recipient's Response to Sex Disc. (106.44)	Recipient's Grievance Procedures (106.45; poss. 106.46)	What is Relevant? What is Improbable Evidence?	Serve impartially; Without Conflict of Interest and Bias.	Avoiding Prejudgment of Facts	Rules and Procedures re: Informal Resolution (106.44g)
Investigators	X	X	X	X	X	X	
Decisionmakers	X	X	X	X	X	X	
Resp. For Grievance Proc./Mod. Sup. Measures	X	X	X	X	X	X	
Informal Res.	X				X		X
Title IX Cord.*	X	X	X	X	X	X	X

* Title IX Coordinators and Designees have even more training requirements (106.8(d)(4))

Title IX Coordinator/Designees



Title IX Coordinators and Designees have more training requirements:

- o Responsibilities to pregnant students
- o Responsibilities under the grievance process, including with regard to supportive measures
- o Recipient's recordkeeping system and Title IX recordkeeping requirements
- o "Any other training necessary to coordinate the recipient's compliance with Title IX"

Training Records



- Keep them for seven years
- Must make them available for inspection upon request – no more required posting

Quick Poll



- Does your institution provide training online?
 - Asynchronous? Live?
- Who/what department conducts new employee orientation? Are you able to incorporate training on Title IX in these programs?
- How do you keep records of training attendance? In information retention?

7

Key Takeaways This Section: New Training Requirements (Slide 1 of 2)



- The new regulations require training for all employees** and your Title IX team including the Title IX Coordinators or designees – identify orientation periods where training can happen with new employees.
- Any employee whose job responsibilities are contemplated as a Title IX responsibility under the new regulations **must be trained when their job responsibilities shift not just when they are newly hired** – identify mechanisms to have human resources or academic affairs alert the Title IX Coordinator when an individual has changed job responsibilities to make sure that they can be trained promptly.
- Identify those members of your Title IX team who will need to be trained on your policy and by the August 1 deadline.**

8

Key Takeaways this Section: New Training Requirements (Slide 2 of 2)



- Identify training schedules and on-line training platforms
- Update training materials to reflect changes in definitions.

9



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Admissions

Admitted, State of Ohio,
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Admitted, State of Texas,
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Admitted, United States
District Court, Southern
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Admitted, United States
District Court, Northern
District of Ohio

Admitted, Sixth Circuit U.S.
Court of Appeals

Industries & Practices

Colleges & Universities

Employment

Higher Education

Higher Education Labor &
Employment

Higher Education Litigation

Higher Education Regulatory
Compliance

Overview

Erin Butcher advises higher education entities on Title IX, athletics compliance and name, image, and likeness matters, and employment matters and is an experienced litigator and mediator. She serves as an education litigator licensed in Ohio, a Title IX investigator and hearing officer for colleges and universities, trains on the Title IX regulations for higher education institutions throughout the country, and conducts climate surveys in related Title IX matters. Erin enjoys the interactions with students, faculty, and staff these roles provide and the work required to best balance the law, the needs of the clients, and the needs of parties involved in difficult disputes.

Before joining Bricker Graydon's Higher Education team, Erin represented state agencies and public colleges and universities in federal, state and administrative proceedings at the Ohio Attorney General's Office. She has also advised clients on employment and labor issues, trained human resources professionals, and assisted with public records and open meetings law-related issues.

Experience

Name, Image, and Likeness policies and procedures

Title IX Hearing Officer

Title IX Investigator

Defense Counsel in Federal Cases of Note

Title IX policies and procedures

Erin E. Butcher

Labor

Labor & Employment

Litigation

Pre-K to 12 Labor & Employment

Education

The Ohio State University Moritz College of Law (J.D.), 2010; Editorial Board Co-Note and Comment Editor, *Ohio State Journal on Dispute Resolution*; Board member, treasurer and grant award committee member, Public Interest Law Foundation; Recipient, *Ohio State Journal on Dispute Resolution* Significant and Lasting Contribution Award; Honorable mention, Nancy H. Rogers Prize in Dispute Resolution Scholarship; Mediator, Franklin County Probate Court and Night Prosecutor

The Ohio State University (B.A. in Political Science and Philosophy, *magna cum laude* and *Honors with Distinction*), 2004

Professional Affiliations

Member, National Association of College and University Attorneys

News

[ANNOUNCEMENT | 04.17.2024](#)

Erin Butcher Recognized at OWBA Annual Meeting

[FIRM NEWS | 08.17.2023](#)

Bricker Graydon Attorneys Recognized for 2024 "Best Lawyers" Excellence

[FIRM NEWS | 09.08.2022](#)

Butcher provides insights on ED intervention in Harvard Title IX and Title IX retaliation case

[FIRM NEWS | 08.01.2022](#)

Butcher talks about the growing complexities of Higher Ed legal matters

[FIRM NEWS | 07.19.2022](#)

Court blocks the DOE and EEOC's guidance and enforcement of extensions of Bostock where it conflicts with state law

Speaking Engagements

[WEBINAR | 02.07.2024](#)

DEI, Free Speech and Academic Freedom (Higher Education Free Webinar Series)

[WEBINAR | 01.18.2024](#)

Pregnancy and Parenting in Higher Education Training Series (Day 2)

[WEBINAR | 01.17.2024](#)

Pregnancy and Parenting in Higher Education Training Series (Day 1)

[WEBINAR | 10.06.2023](#)

Employment Law Update (Higher Education Free Webinar Series)

[WEBINAR | 07.14.2023](#)

Anticipated Changes to Affirmative Action in Higher Education

Erin E. Butcher



Publications

ARTICLE | 05.02.2024

What's New in Pregnancy and Parenting on Campus: New Regulations from the Equal Employment Opportunity Commission and the Department of Education

ARTICLE | 11.09.2023

What the Ohio Elections Mean for Ohio Higher Education Institutions

ARTICLE | 09.27.2023

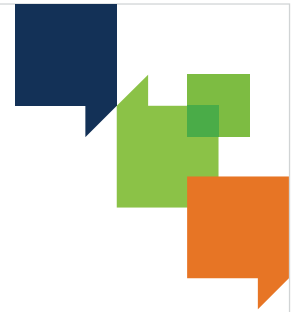
DOL Proposes Increase to the Salary Exemption Threshold - Ramifications in Higher Education

ARTICLE | 07.13.2023

Affirmative Action in Admissions - The Students for Fair Admissions Opinion

ARTICLE | 06.06.2023

The EEOC Issues New Guidance on Use of Artificial Intelligence in Hiring



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Admissions

State of Ohio, (2009)

State of Florida (2021)

Commonwealth of
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Industries & Practices

Public Sector

Regulatory Compliance Law

Education (Pre-K to 12)

Colleges & Universities

Data Privacy

Higher Education

Higher Education Labor &
Employment

Higher Education Regulatory
Compliance

Pre-K to 12 Privacy & Data
Protection

Privacy & Data Protection

Overview

Melissa Carleton advises higher education entities in a variety of areas, including student affairs, student conduct, disability accommodations, student confidentiality, policies, contracts, governance, accreditation, and employment matters. Melissa takes a practical and proactive approach to legal issues. She particularly enjoys working on collaborative matters between educational entities. Melissa holds the CIPP/US credential as a certified information privacy professional.

Melissa has a great deal of experience in guiding the institutional response to allegations of sexual abuse. She regularly works with colleges, universities, career-technical schools, K-12 school districts, and private elementary and secondary schools to comply with Title IX and, where applicable, the Clery Act, as well as implementing guidance and regulations. Melissa is available to conduct impartial investigations, as well as to provide reviews of policies, procedures, and case files from a neutral perspective. Melissa trains administrators, staff members, and other investigators using real-world examples to help learn how to navigate the trickiest situations with regard to sexual misconduct. More information on Title IX training can be found in our [Title IX Resource Center](#).

Melissa also works with religious entities to address allegations of sexual abuse in a manner that is respectful of the parties and their privacy, is transparent and fair, and is attentive to religious beliefs and the safety needs of the community.

News

[FIRM NEWS | 08.31.2023](#)

[Melissa Carleton Quoted in Title IX Article by Higher Ed Dive](#)

Melissa M. Carleton



Education

University of Pennsylvania, J.D. (2009); James Wilson Scholar, Associate Editor, *Journal of Constitutional Law*

The Ohio State University, B.A. Music Education, *magna cum laude* (2002); School of Music Undergraduate Outstanding Achievement Award

Distinctions

Rising Star, *Super Lawyers*®, part of *Thomson Reuters*® - Ohio, Schools & Education (2018-2021)

Participant, Columbus Bar Association Barrister Leadership Program (2012)

Professional Affiliations

Member, National Association of College and University Attorneys

Member, Ohio Association of College and University Business Officers

Member, Columbus Bar Association

[FIRM NEWS | 08.17.2023](#)

Melissa Carleton Quoted in The Chronicle of Higher Education

[FIRM NEWS | 11.21.2022](#)

Melissa Carleton comments to The Chronicle of Higher Education regarding pregnant and parenting students in colleges

[FIRM NEWS | 10.29.2021](#)

North American universities to share internal findings; hope to curb repeat sexual harassment occurrences

[FIRM NEWS | 06.28.2021](#)

The Daily Signal cites Carleton article on Title IX religious exemption

Blog Posts

[CLASS ACTION OHIO | 05.12.2021](#)

Title IX religious exemption is being challenged by class action lawsuit

Speaking Engagements

[WEBINAR | 05.15.2024](#)

New Title IX Regulations: An Overview for College and University Governing Board Members

[WEBINAR | 05.10.2024](#)

Title IX Litigation Update (Higher Education Free Webinar Series)

[WEBINAR | TUESDAY, 04.02.2024 - WEDNESDAY, 04.03.2024](#)

Level 1: Annual Clergy Training and Intro to Title IX Basics (Higher Education)

[SEMINAR | 07.10.2023](#)

Two Day Title IX Team Experiential Workshop

[WEBINAR | 05.17.2023](#)

Title IX Litigation Update (Higher Ed)

Publications

[QUOTED | 01.22.2024](#)

Melissa Carleton Quoted on Ongoing Delays in Title IX Article by Higher Ed Dive

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[ARTICLE | 11.28.2023](#)

[Title IX Training Requirements for Your Campus Community](#)

[ARTICLE | 06.22.2022](#)

[President Biden signs executive order to support LGBTQI+ youth](#)

[ARTICLE | 06.09.2022](#)

[Higher Education Title IX Training Requirements: An Overview](#)

[ARTICLE | 09.29.2021](#)

[Victim Rights Law Center Title IX case appealed; Dear Colleague Letter stands for now](#)

Additional Items

- Presenter, FERPA Certificate Program, Stetson University College of Law (2020-Present)
- Panelist, "Introduction to Sexual Misconduct Issues: Title IX, Title VII, and the Courts," Lawyers New to Higher Education Workshop, NACUA Annual Conference (2023)
- Presenter, "FERPA Update," National Conference on Law and Higher Education (Stetson) (March 2023)
- Panelist, "The Legal Implications of Dobbs for Student Affairs Professionals," NASPA Annual Conference (2023)
- Panelist, "In the Meantime: What To Do While You're Waiting for the Final Title IX Regs," National Association of College and University Attorneys, Winter Virtual CLE Workshop (2023)
- Panelist, "Gender Identity and Title IX," Education Law Association Conference (November 2022)
- Panelist, "Hot Topics in Higher Ed," Education Law Association Conference (November 2022)
- Panelist, "Pregnancy Discrimination Updates," NACUA Webinar (October 2022)
- "Post-Bostock Collection of Demographic Data on Sex and Gender Identity," NACUA Note (July 2022)
- Association for Independent Colleges and Universities of Ohio, Collaborators Conference, Presidential Panel Moderator (2022)
- Presenter, "Where Are We With Title IX?" Association for Independent Colleges and Universities of Ohio (2022)
- Presenter, "Emergency Removal in Sexual Harassment Cases," Association for Student Conduct Administrators (2022)
- Presenter, "Emergency Removal in Sexual Harassment Cases," Association for Student Conduct Administrators, Best of ASCA Virtual Conference (2022)
- Presenter, "Title IX Dismissals to Student Conduct Process" Association for Student Conduct Administrators Region 8 Conference (2022)

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- Presenter, "FERPA Update," National Conference on Law and Higher Education - Stetson (March 2022)
- Panelist, "Foundations of Issues in Ethics & Professionalism for Higher Education Attorneys," National Conference on Law and Higher Education - Stetson (March 2022)
- Adjunct Professor, "Title IX and Issues Unique to K-12 Institutions," Tulane Law School Title IX Certificate Program (September 2020-2022)
- Co-Presenter, "Title IX Takes Up Residency: Addressing Sexual Misconduct Under the New Regulations," Ohio Hospital Association Annual Meeting (June 2021)
- Op-Ed, "The Education Department's New Clery Act Guide Raises New Questions", Higher Ed Dive (November 2020)
- Panelist, "IX on IX", SUNY SPECTRUM Conference (August 2020)
- Podcast Guest, "Episode 27: Implications of Title IX Regulations for K-12 and Higher Education with Melissa Carleton", The Law and Higher Ed Podcast (June 2020)
- Author, "Confidentiality Throughout the Investigation, Hearing, and Disciplinary Process for Campus Adjudication of Sexual Misconduct." In C. Renzetti, & D. Follingstad (Eds.), Adjudicating Campus Sexual Misconduct and Assault: Controversies and Challenges. San Diego: Cognella (2019)
- Co-Presenter, COVID-19 and Higher Education Webinars (March-April 2020)
- Co-Presenter, "Title IX Update: Planning for the Regulations Online Workshop," AICUO (April 2020)
- Presenter, "FERPA in the Middle," National Conference on Law and Higher Education - Stetson (March 2020)
- Panelist, "Title IX: A View from the Trenches," Washington D.C. Bar Association (February 2020)
- Co-Presenter, "Two-Day Title IX Investigator/Adjudicator Training," Bricker & Eckler LLP (January 2020)
- Co-Presenter, "Advanced Title IX Investigator Training," Ohio Department of Higher Education (November 2019)
- Co-Presenter, "Webinar: Title IX Litigation Update," (September 2019)
- Co-Presenter, "Two-Day Title IX Investigator, Adjudicator, and Hearing Panel Training," Indiana University (September 2019)
- Co-Presenter, "Civil Rights Investigator/Adjudicator Training," Bricker & Eckler LLP (September 2019)
- Co-Presenter, "Title IX Investigator/Adjudicator Training," Ohio Department of Higher Education (September 2019)
- Co-Presenter, "Two-Day Title IX Conference: Investigator Training," Five Colleges of Ohio (June 2019)
- Presenter, "Down the Rabbit Hole: Entering the World of Student Mental Health and Threat Assessment," National Association of College and University Attorneys (June 2019)

Melissa M. Carleton



- Presenter, "The Business Implications of Title IX," Ohio Association of College and University Business Officials Annual Meeting (April 2019)
- Presenter, "Policies and Procedures regarding Sexual Abuse of Minors," Leadership Conference of Women Religious Region 6 (March 2019)
- Presenter, "Title IX Litigation Update," Legal Issues and Student Affairs Drive-In, Oberlin College (February 2019)
- Presenter, "Webinar: Overview of Submitted Comments to the Proposed Title IX Regulations: Perspectives for Higher Education," (February 2019)
- Presenter, "Webinar: Changing Standards - Is Preponderance Right for Your Campus?" Ohio Department of Higher Education (February 2019)
- Presenter, Civil Rights Coordination and Investigation Training for K-12 School Administrators, (December 2018)
- Presenter, "Webinar: Title IX Proposed Regulations - Hot Takes for K-12 Administrators," (December 2018)
- Presenter, "Webinar: Title IX Proposed Regulations - Hot Takes for Higher Ed,"(November 2018)
- Presenter, "Webinar: Title IX & Due Process: Case Law Updates," Ohio Department of Higher Education (November 2018)
- Presenter, Two-Day Title IX Investigator Training Workshop, Michigan State University (October 2018)
- Presenter, Two-Day Title IX Investigator Training Workshop, The Ohio State University (October 2018)
- Presenter, Civil Rights Coordination and Investigation Training for K-12 School Administrators (September 2018)
- Presenter, Civil Rights Coordination and Investigation Training for K-12 School Administrators, Bowling Green City School District (August 2018)
- Presenter, "The State of Civil Rights," Ohio Associate for Career and Technical Education (July 2018)
- Presenter, Two-Day Title IX Investigator Training and Advanced Discussion Workshop, Five Colleges of Ohio (August 2018)
- Presenter, Association for Student Conduct Administration Ohio Drive-In, Oberlin College (June 2018)
- Presenter, Civil Rights Coordination and Investigation Training for K-12 School Administrators (June 2018)
- Presenter, Two-Day Title IX Investigator Training Workshop, University of Findlay (May 2018)
- Presenter, Student Handbook Bootcamp - Higher Ed (March 2018)



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Admitted, Sixth Circuit Court
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Member, Ohio Bar
Association

Member, Akron Bar
Association

Industries & Practices

Product Liability & Mass Torts

Southeast Ohio

Regulatory Compliance Law

Political Subdivisions

Colleges & Universities

Education (Pre-K to 12)

Public Sector

eDiscovery & Information
Governance

Overview

Joshua Nolan is a higher education attorney with a litigation background. Throughout his career, he has helped numerous universities, public institutions and private colleges handle many facets of education law, including Title IX, and he manages sensitive litigation and administrative actions for individuals, institutions, and universities.

Josh understands that higher education law involves complicated and personal issues, so he takes an unbiased, professional and knowledgeable approach to identify, resolve and prevent such issues. Because he has more than 10 years of experience as a college administrator, he knows the intricacies of academic cultures and is able to anticipate risks and alleviate threats for his clients before they become problematic. He strives to empower his clients to handle difficult situations, leading them to a reasonable and compliant resolution.

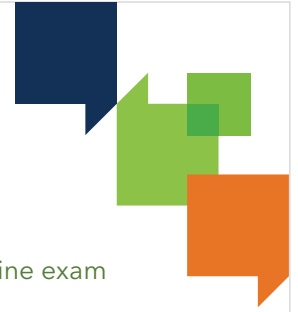
Specifically, Josh's experience includes risk management, privacy law compliance, campus conduct, First Amendment issues and student mental health intervention. He has performed investigations regarding sexual harassment and misconduct for both corporations and educational institutions. He manages Title IX, FERPA and Clery Act compliance and has drafted and reviewed student conduct, speech codes and crisis management policies and procedures. Likewise, he advocates for clients in both state and federal court and administrative hearings for regulatory, criminal and commercial litigation issues.

News

[FIRM NEWS | 08.17.2023](#)

Bricker Graydon Attorneys Recognized for 2024 "Best Lawyers" Excellence

Joshua D. Nolan



Higher Education

Higher Education Labor & Employment

Higher Education Litigation

Higher Education Regulatory Compliance

Litigation

Education

University of Akron School of Law (J.D. *cum laude*), 2009

Indiana University (M.S. in Higher Education and Student Affairs), 1999

Boston College (B.A. in English), 1997

Distinctions

Listed, Best Lawyers in America (Education Law), 2023

Rising Star, *Ohio Super Lawyers* (Schools & Education; General Litigation), 2013-2019

Professional Affiliations

Member, National Association of College and University Attorneys

Member, Association of Student Conduct Administrators

Member, Advisory Board, *The Journal of College and University Law*

[FIRM NEWS | 08.26.2022](#)

Nolan comments regarding case on searches and online exam proctoring

[FIRM NEWS | 08.18.2022](#)

Bricker attorneys recognized for "Best Lawyers" excellence

[FIRM NEWS | 12.05.2018](#)

2019 Super Lawyers list includes 33 Bricker attorneys

[FIRM NEWS | 11.20.2018](#)

Bricker & Eckler announces seven new partners for 2019

Speaking Engagements

[WEBINAR | 07.14.2023](#)

Anticipated Changes to Affirmative Action in Higher Education

[SEMINAR | 05.12.2023](#)

University of Toledo Title IX Summit 2023 (Higher Ed)

[WEBINAR | 05.04.2023](#)

Title IX Regulations Training (Higher Education)

[WEBINAR | 02.22.2023](#)

Annual Clergy Training and Title IX Hot Topics

[WEBINAR | 12.21.2022](#)

Potential Implications for the U.S. Supreme Court's Decision Impacting Affirmative Action (Higher Ed)

Publications

[ARTICLE | 07.13.2023](#)

Affirmative Action in Admissions - The Students for Fair Admissions Opinion

[ARTICLE | 01.06.2023](#)

Collin's Law five-year hazing report for colleges and universities is due on January 15, 2023

[ARTICLE | 04.03.2020](#)

COVID-19 collaboration: Use of higher ed facilities by health care institutions

Joshua D. Nolan

ARTICLE | 12.19.2017

Ohio recreational user immunity

ARTICLE | 08.16.2017

Student transcripts notations: What do you say? Considerations for private institutions in Ohio

