

BOWDITCH

ATTORNEYS



MAY 16, 2024

TITLE IX REGULATIONS COMPLIANCE CHECK-IN: TITLE IX COORDINATOR RESPONSIBILITIES

AMY FABIANO, BRIGID HARRINGTON, MEAGHAN BORYS



**AMY
FABIANO**



**BRIGID
HARRINGTON**



**MEAGHAN
BORYS**

- AREAS OF RESPONSIBILITY FOR TITLE IX COORDINATORS UNDER 2024 REGULATIONS
- PRACTICAL TIPS & COMPLIANCE STRATEGIES
- DISCUSSION (IN CHAT)
- Q&A
- NEXT CHECK-IN: WEDNESDAY, JUNE 12 @ 11:00 AM ET (GRIEVANCE PROCEDURES)

THE 2024 REGULATIONS

- Increased responsibilities and bigger role for TIXCs
- Focus today on § 106.8 and § 106.44



A black and white photograph of a person lifting a heavy barbell in a gym. The person's legs and hands are visible, gripping the barbell. The background is a bright, slightly blurred gym setting.

TIX COORDINATOR JOB IS A HEAVY LIFT

CAN YOU DELEGATE?

- Who does the TIXC need to work with to do that?
- How to facilitate compliance across departments
 - Example: supportive measures; employee training; pregnancy

HOW CAN TECHNOLOGY ASSIST?

- What systems need to be in place?
 - Training tech – LMS
 - Recordkeeping tech – Maxient, Ethicspoint, etc.
 - Privacy tech – Box, Hubspot

WHAT ARE YOU DOING ALREADY TO MEET THESE REQUIREMENTS?

CAN IT BE ADAPTED?



CHAT DISCUSSION

- What do you anticipate being the biggest challenge or change for your campus's TIXC?
- What do you anticipate being your TIXC's most important tools/assets?

BOWDITCH

TIXC'S GENERAL ADMINISTRATIVE TASKS – § 106.8



THE BASICS

- Update notice of non-discrimination
- Publish TIX policy and accompanying grievance procedures
- Publish TIXC contact information

RECORDKEEPING



- 7-year recordkeeping requirement
- Training materials – don't need to be published, but need to have on file
- Complaints – informal resolution, grievance procedures, outcome
- Reports – records of the action the college took

BOWDITCH

TRAINING – § 106.8(D)



— TRAINING #1: ALL EMPLOYEES, NOTICE OF POLICIES AND RESPONSIBILITIES

ANNUAL TRAINING REQUIREMENTS:

- The college's obligation to address sex discrimination
- Conduct that constitutes sex discrimination
- The employee's obligation to report to the TIXC
- The employee's responsibilities regarding pregnant students
- Continue your practice of training new employees when they are hired
- Includes adjuncts, temps, student employees



TRAINING #2: TIX TEAM, IN-DEPTH TRAINING ON THE TITLE IX PROCESS

ANNUAL TRAINING REQUIREMENTS:

- Title IX Policy and procedures
- How to serve impartially
- Relevance determinations
- Impermissible evidence



WHO RECEIVES THIS IN-DEPTH TRAINING?

- Investigators, decision-makers, other people who have responsibility for implementing grievance procedures (that includes TIXC & deputies!)
- Employees with authority to modify and terminate supportive measures
 - Think about who implements supportive measures, and whether they can change them/end them unilaterally
- Informal resolution facilitators
 - Focus on your process/practices for informal resolution



TRAINING #3: TITLE IX COORDINATOR AND DESIGNEES

ANNUAL TRAINING REQUIREMENTS

- Duties of Title IX Coordinator outside of the grievance process – essentially what we’re going to cover in this webinar, but as applied to your college
- Examples: Recordkeeping, supportive measures, pregnant students, when TIXC should initiate a complaint
- Consider how to outsource this training



WHAT ABOUT TRAINING STUDENTS?

- No student training requirement in 2024 regulations
 - Colleges do have a duty to inform students of their policies and procedures
- MA law requires training of newly matriculated students



ANTICIPATED HURDLES FOR TRAINING

- How will the college enforce the all-employee training requirement?
 - Coordination with unions
 - Coordination with supervisors
- Has your LMS been updated to reflect the new TIX training requirements?
- Does the college need to consolidate responsibility for modifying and terminating supportive measures?
- Time and Money – training is resource intensive



BOWDITCH

RESPONSE TO REPORTS OF INCIDENTS – § 106.44

RECEIVING REPORTS

- **Report** to the TIXC (or a **disclosure** to an employee)
- **Complaint** – a request for the college to investigate and make a determination as to alleged sex-based discrimination
 - Can be oral or written
 - No requirement that complaints be made to TIXC



RECEIVING REPORTS

(CONT'D)

WHEN THE TIXC RECEIVES A REPORT ABOUT POSSIBLE SEX-BASED DISCRIMINATION

- Reach out to reporter; ensure TIXC has information
- Reach out to the potential Complainant
 - Supportive measures
 - Provide information about policy and procedures, including informal resolution
 - Determine if there is a Complaint

PROCESSING REPORTS

- Is this a Complaint?
 - Document all info known at the time
 - Confirm with Complainant via email or other written document
- If this is a Complaint, does the Complaint need to be dismissed?
- If no Complaint, assess other potential responses (including TIXC-initiated Complaint, remedies for Complainant, steps to ensure sex discrimination does not continue or recur)



TIXC-INITIATED COMPLAINT



- Goal of 2024 Regulations: Let the Complainant decide (in most cases)
- TIXC may initiate a complaint (and the grievance process) only in **very limited circumstances**
 1. The alleged conduct presents an imminent or serious threat to the health or safety of a person; AND/OR
 2. The alleged conduct prevents recipient from ensuring equal access to educational programs or activities
- If the conduct **could not constitute sex discrimination**, the TIXC has no requirement to initiate a Complaint

TIXC-INITIATED COMPLAINT (CONT'D)



TIXC **MUST** CONSIDER 8 FACTORS BEFORE DETERMINING WHETHER TO INITIATE A COMPLAINT:

1. Complainant's request not to proceed
2. Complainant's reasonable safety concerns
3. Risk of additional sex discrimination
4. Severity of allegations
5. Age and relationship of parties
 - Respondent an employee?
6. Scope of alleged discrimination
 - Pattern?
 - Ongoing?
 - Affecting multiple people?
7. Availability of evidence
8. Whether other actions could end the discriminatory conduct and prevent its recurrence

Document, document, document!!

WHAT IF THERE IS NO COMPLAINT?

TAKE REASONABLE STEPS TO ENSURE DISCRIMINATION ENDS/DOES NOT RECUR

- Educational outreach
- 1:1 conversations
- Adjusting institutional policies/processes

STEPS MUST BE “PROMPT AND EFFECTIVE”

- What is prompt? Reasonableness standard.





SUPPORTIVE MEASURES

- When:
 - Offer to Complainant when you know their identity
 - Offer to Respondent when notice of informal resolution or grievance procedures
- Must not **unreasonably burden** either party
- Parties can seek modification or reversal of supportive measures that impact them; can also be modified or terminated
- Limitations on disclosure of information about another party's supportive measures

BOWDITCH

OTHER NEW REQUIREMENTS FOR TIX COORDINATORS



BARRIERS TO REPORTING

- New requirement for TIXCs under the 2024 Regulations
- Monitor for barriers to reporting **AND**
- Take steps reasonably calculated to address such barriers

ONE MORE THING... PREGNANCY

TITLE IX COORDINATOR ALSO HAS OBLIGATIONS REGARDING PREGNANCY ACCOMMODATIONS

- This will be covered extensively in our webinar in July
- Please do not hesitate to reach out in the meantime with questions



BOWDITCH

DISCUSSION

- WHAT DO YOU ANTICIPATE BEING YOUR BIGGEST CHALLENGE OR CHANGE?
- WHAT DO YOU ANTICIPATE BEING YOUR MOST IMPORTANT TOOLS/ASSETS?

- Use the Q&A feature to ask your question.
- If we don't answer your question live, we will follow up after the webinar.



QUESTIONS?

UPCOMING COMPLIANCE CHECK-INS

JUNE 12

11:00AM ET

**COMPLIANCE
CHECK-IN #2:**

**GRIEVANCE
PROCEDURES**

JULY 16

11:00AM ET

**COMPLIANCE
CHECK-IN #3:**

**PREGNANCY
ACCOMMODATIONS**

AUGUST 22

11:00AM ET

**COMPLIANCE
CHECK-IN #4**

REGISTER AT [BOWDITCH.COM](https://www.bowditch.com)



**AMY
FABIANO**

afabiano@bowditch.com
508-926-3395



**BRIGID
HARRINGTON**

bharrington@bowditch.com
617-757-3351



**MEAGHAN
BORYS**

mborys@bowditch.com
617-757-6543