

The Salon Professional Academy (TSPA) is committed to providing an educational environment that is free of sexual discrimination, sexual harassment, and sexual violence. While this policy serves as TSPA's commitment to complying with Title IX requirements, it also serves as a call to action to build on the decades of progress and pave the way forward as we strive.

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in any education program or activity that receives federal funding.

Under Title IX, discrimination based on sex includes:

- Excluding, separating, denying benefits to, or otherwise treating a person differently based on gender
- Sexual Harassment
- Sexual violence, which includes sexual assault, relationship violence, and stalking

Title IX protects students, employees, applicants for admission and employment, and other persons from all forms of sex discrimination, including discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity.

In the event of a Title IX complaint, where a Title IX Coordinator, Adjudicator or Investigator must review the complaint through its complaint process, annual trainings are certified and obtained through the following resources for the Title IX Coordinator, adjudicator, investigator and informal resolution officers to ensure that Complainants and Respondents will be treated equally and fairly following the Title IX requirements:

The Compliant/Grievance Policy and Procedure can be found in the Student Handbook or Admissions Office. The Title IX Coordinator may also be contacted at [TitleIXCoordinator@tspacoloradosprings.com](mailto:TitleIXCoordinator@tspacoloradosprings.com)

This course is designed to assist personnel at all levels of an educational institution in the understanding of the provisions of Title IX of the Education Amendments of 1972 ("Title IX"), and the Clery Act as it was amended in the Violence Against Women Reauthorization Act of 2013. ("VAWA"). These laws require that all individuals in an educational institution understand and comply with the laws in terms of what is prohibited behavior in relation to sexual harassment and/or sexual violence, and what steps are to be followed when such prohibited conduct occurs. This course gives the participants information about the laws, as well as procedures to follow, to provide for the rights of all individuals under the laws. It also provides additional resources to assist educational institutions in continuing to build and strengthen their Title IX and VAWA policies, procedures and training throughout the year.

The sexual harassment and full campus security/annual security report may be obtained in the Admissions Office at The Salon Professional Academy.



# Title IX 2024 First Look

Thursday, April 25, 2024

# Disclaimer



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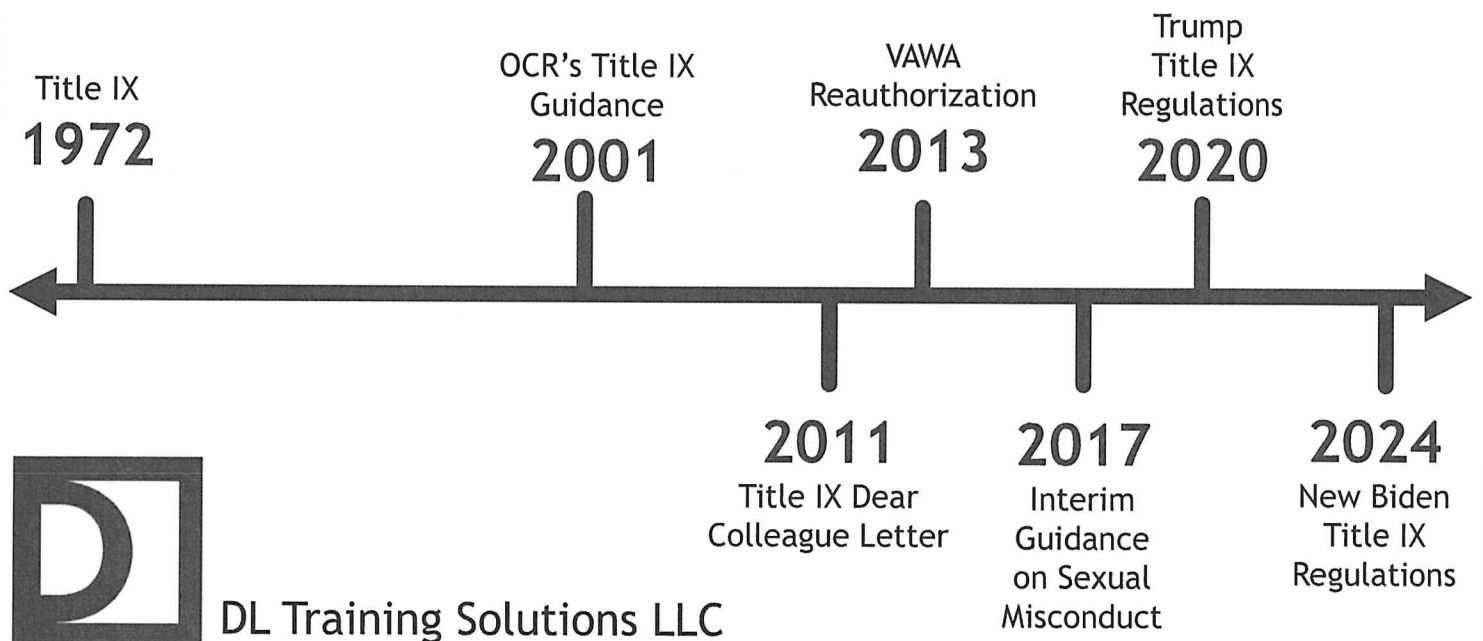
# A little background ...

## *Letter to Stakeholders (April 6, 2021)*

U.S Department of Education Office for Civil Rights (OCR) undertook a comprehensive review of the Department's existing regulations, orders, guidance, policies, and any other similar agency actions, including the amendments to the Department's Title IX regulations that took effect on August 14, 2020.

- Public hearings held June 7 to 11, 2021
  - ED received over 30,000 written comments
- **07-12-22 – ED released NPRM.**
  - ***60-day public comment period ended September 12, 2022***
  - **240,085** public comments received by ED
    - 2020 Title IX regulations – Over 140,000 public comments
  - ED originally said final regulations may be published in May 2023
    - **FINAL REGULATIONS PUBLISHED APRIL 19, 2024 (effective August 1, 2024)**

# Title IX Timeline



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## **Title IX of the Education Amendments of 1972**



Prohibits sex discrimination in education programs that receive federal funding.

- Sexual harassment, including sexual assault, is a type of sex discrimination that is banned by Title IX.

# Title IX Rule Released 4/19/24

## New Regulations Effective 8/1/24

- The unofficial version of the final regulations is available [here](#) (1,577 pages)
- In addition, the Department has released:
  - a [fact sheet](#),
  - a [summary](#) of the major provisions of the final regulations, and
  - a [resource](#) for drafting Title IX policies & procedures



# Highlights of New Title IX Regs

## Administrative Requirements:

- Designate Title IX Coordinator
- Adopt, publish, and implement nondiscrimination policy
  - Sample Policy: [ABC School] does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX, including in admission and employment.
- Recordkeeping - must maintain for seven years:
  - Documentation of each complaint
  - Documentation of actions school took to respond to notices of sex discrimination
  - Title IX training materials
    - Must be made available upon request







# Highlights of New Title IX Regs

## Administrative Requirements:

Provide Notice of Non-Discrimination to students, applicants, etc. Must include:

- a) Statement school does not discriminate on basis of sex and prohibits sex discrimination
- b) Statement that inquiries about Title IX can be made to Title IX Coordinator, OCR, or both
- c) Contact information for Title IX Coordinator
- d) How to locate nondiscrimination policy & grievance procedures
- e) How to report and make complaints of sex discrimination

Notice of non-discrimination must be included on school's website, handbook, catalog, announcement, bulletin, & application forms



# Highlights of New Title IX Regs

## Administrative Requirements:

### Training:

- **All employees** must be trained on school's obligation to address sex discrimination and the scope of conduct that constitutes sex discrimination
- **Investigators, decisionmakers, etc.** must also be trained on school's grievance procedures, how to serve impartially and w/o bias, and understanding meanings of "relevant" evidence and types of impermissible evidence
- **Facilitators of informal resolutions** must be trained on school's informal resolution process and how to serve impartially w/o bias
- **Title IX Coordinators** must be trained in understanding their responsibilities as Title IX coordinators, school's recordkeeping policies & obligations, and any other training necessary for their role

*All must receive training related to their responsibilities promptly upon hiring or change of position, and annually thereafter.*

# VAWA (Clery Act) Training Requirements



Institutional disciplinary hearings must be:

“conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the victims and promotes accountability”

*20 USC 1092(f)(8)(iv)(I)(bb)*

# Highlights of New Title IX Regs



## Ensuring Schools Learn of Possible Sex Discrimination:

- Employees at a postsecondary institutions who either have authority to take corrective action on behalf of the school or have responsibility for administrative leadership, teaching, or advising are obligated to notify the Title IX Coordinator.
- ***All others*** are obligated to either notify the Title IX Coordinator or provide the contact information of the Title IX Coordinator and information about how to make a complaint
- Title IX Coordinator must monitor the school's program or activity for barriers to reporting and take steps reasonably calculated to address such barriers

*The 2020 Rule required a school to respond only when it has "actual knowledge" of allegations of "sexual harassment," and only in a manner that is not deliberately indifferent.*

# Highlights of New Title IX Regs

## Definition of sex-based harassment includes:

- quid pro quo harassment (*no change*);
- VAWA offenses (*no change*); and/or
- hostile environment harassment
  - **Hostile Environment**: unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's† education program or activity
  - *2020 Rule did not include "hostile environment," rather prohibited sex-based conduct only if it is "so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity"*



# Highlights of New Title IX Regs



- Regulations apply to every recipient and to all sex discrimination occurring under a recipient's education program or activity in the United States. This includes:
  - Conduct that occurs in a building owned or controlled by approved student organization
  - Conduct subject to recipient's disciplinary authority

A 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.

# Highlights of New Title IX Regs



## Factors in considering whether a Hostile Environment exists:

- i. The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
- ii. The type, frequency, and duration of the conduct;
- iii. 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;
- iv. The location of the conduct and the context in which the conduct occurred; and
- v. Other sex-based harassment in the recipient's education program or activity



# Highlights of New Title IX Regs

## Title IX Coordinator Response to Sex Discrimination:

- Treat the complainant and respondent equitably
- Offer and coordinate supportive measures, as appropriate, for the complainant.
- Notify the complainant, or if the complainant is unknown, the individual who reported the conduct, of the grievance procedures and the informal resolution process, if available and appropriate.
- If a complaint is made, notify the respondent of the grievance procedures and the informal resolution process (if applicable)
- In response to a complaint, initiate the school's grievance procedures or informal resolution process
- In the absence of a complaint or the withdrawal, make a fact-specific determination that, based on factors listed in the regulation, the Title IX Coordinator may/should initiate a complaint
- If the Title IX Coordinator initiates a complaint, notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others.
- Regardless of whether a complaint is initiated, take other appropriate prompt and effective steps to ensure that sex discrimination does not continue, in addition to providing remedies to an individual complainant



# Highlights of New Title IX Regs



## Grievance Procedures for All Sex Discrimination Complaints:

- General requirements:
  - Equitable treatment of complainants and respondents
  - Title IX Coordinator, investigators, and decisionmakers must not have conflicts of interest or bias.
    - *a decisionmaker may be the same person as the Title IX Coordinator or investigator*
  - Presumption that respondent is not responsible for the alleged conduct until a final determination is made
  - Reasonably prompt timeframes for all major stages.
  - Reasonable steps to protect privacy of parties and witnesses
  - Objective evaluation of all relevant and not otherwise impermissible evidence
  - Exclusion of three types of evidence (privileged, medical, past sexual history)



# Highlights of New Title IX Regs

## Grievance Procedures for All Sex Discrimination Complaints:

- Notice of allegations to the parties
- Dismissals permitted in certain circumstances as long as the recipient offers an appeal and, as appropriate, supportive measures and remedial steps
- Consolidation permitted for complaints arising out of the same facts or circumstances
- Investigation requirements: (§ 106.45(f))
- A process that enables the decisionmaker to question parties and witnesses to adequately assess credibility
- Clear processes for the determination of whether sex discrimination occurred
- An appeal process
- Parties permitted to participate in an informal resolution process if school has one
- Describe range of possible supportive measures and disciplinary sanctions & remedies

# Highlights of New Title IX Regs

## Additional Requirements for Grievance Procedures Involving Postsecondary Students:

- Written notice of allegations, dismissals, delays, meetings, and proceedings
- Equal opportunity to have an advisor of the party's choice at any meeting or proceeding
- Same opportunities, if any, to have persons other than the advisor present at any meeting or proceeding.
- Permitting, but not requiring, an institution to allow expert witnesses, as long as the determination applies equally to the parties
- Reasonable extension of timeframes on a case-by-case basis for good cause with written notice to the parties, including the reason for the delay



# Highlights of New Title IX Regs



## Additional Requirements for Grievance Procedures Involving Postsecondary Students:

- Equal opportunity to access relevant and not otherwise impermissible evidence or a written report summarizing the evidence
- A process enabling the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility when credibility is in dispute and relevant
- Permitting, but not requiring, a live hearing
- Permitting a decisionmaker to weigh the credibility of a party or witness, including when party or witness refuses to respond
- Simultaneous written notice of determination to parties
- Appeal opportunity

# Highlights of New Title IX Regs

## Retaliation is prohibited

- **Retaliation** is defined as 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 the regulations, or because the person has reported possible sex discrimination, made a sex-discrimination complaint, or participated or refused to participate in any way in a recipient's Title IX process.
- **Peer retaliation**, which is defined as retaliation by one student against another student, is also prohibited

*2020 Rule prohibited retaliation but did not define it.*



# Highlights of New Title IX Regs

## Pregnancy & Related Conditions – School must:

- Provide reasonable modifications for students
- Allow student a voluntary LOA for the medically necessary time and reinstatement upon return
- Ensure access to clean, private space for lactation
- Must also provide employees with reasonable break time for lactation and ensure they can access a clean and private lactation space



# Transgender Students



## **Joint Dear Colleague Letter issued by DOJ & ED on 5/13/16**

- Treated a student's gender identity as the student's sex for Title IX purposes
- School could not treat a transgender student differently from the way it treated other students of the same gender identity
- A school's failure to treat students consistent with their gender identity may have created or contributed to a hostile environment in violation of Title IX

## **JOINT DOJ & ED LETTER WITHDRAWN BY TRUMP ADMINISTRATION 2/17/17**

## **EXECUTIVE ORDER 14021, 86 Fed. Reg. 13,803 (March 11, 2021)**

***[A]ll students should be guaranteed an educational environment free from discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity.***

# Transgender Students

## OCR Notice of Interpretation – Published in Federal Register June 22, 2021

In 2020, the Supreme Court in *Bostock v. Clayton County*, 140 S. Ct. 1731, 590 U.S. \_\_\_\_ (2020), concluded that discrimination based on sexual orientation and discrimination based on gender identity inherently involve treating individuals differently because of their sex.

- It reached this conclusion in the context of Title VII of the Civil Rights Act, which prohibits sex discrimination in employment.

The Department issued this Interpretation to make clear that the Department interprets Title IX's prohibition on sex discrimination to encompass discrimination based on sexual orientation and gender identity.





# Sexual Orientation & Gender



Final regulations prohibit separating or treating any person differently based on sex in a manner that subjects that person to more than de minimis harm (except in very limited circumstances)

Final regulations clarify that policies and practices that prevent a student from participating in a school's education program or activity consistent with their gender identity impose more than de minimis harm on that student on the basis of sex, and therefore generally violate Title IX's nondiscrimination mandate.

# State Policies

State legislatures have also addressed the issues of sexual misconduct on college campuses, including:

- Affirmative Consent
- Transcript Notations
- Mandatory Reporting
- Access to Medical Attention
- Memorandums of Understanding (MOU)
- Climate Surveys
- Good Samaritan Provisions

***To the extent of a conflict between State or local law and Title IX, the obligation to comply with Title IX takes priority***



# New Regulations Effective 8/1/24

## Things to Consider:

- Review Non-Discrimination Policy
- Update Notice of Non-Discrimination
  - Publication in catalog, website, applications, etc.
- Training
  - All need some, some need more
- Update Grievance Policies & Procedures
  - Consider VAWA overlap





Questions?

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**Thank you!**

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