An Introduction to the 2024 Title IX Rule

Thompson Coburn LLP

Title IX Training Series | Session 1 | July 2024

TITLE IX TRAINING SERIES

Thompson Coburn LLP

- Full-service law firm with over 400 attorneys.
- Offices in Chicago, Los Angeles, St. Louis, Dallas, New York, Birmingham, and Washington, D.C.
- Higher education practice provides legal counsel, compliance, policy and training services to colleges and universities.
- Our attorneys routinely assist institutions to understand and comply with Title IX and other non-discrimination laws.

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Purpose of Training Series

- The new Title IX rule, effective August 1, 2024, creates new standards by which postsecondary institutions must address potential Sex Discrimination.
- This Title IX Training Series is designed to provide foundational training to those individuals who will help to administer this required process, including Title IX coordinators, investigators, adjudicators, advisors, appeal officers, and individuals responsible for managing informal resolutions.
- TC's Title IX Training Series on the 2020 Title IX rule is available here: Title IX Training Series – YouTube

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Use of Training Series

- Institutions of higher education are welcome to use this foundational training series at their discretion.
- TC also will be releasing a series of videos covering best practices in investigations and adjudications.
- Custom training will be important to cover institutional policies, and to accommodate state and municipal requirements, as well as the impact of litigation.

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Use of Training Series

- TC is available to prepare custom Title IX training sessions, hearing simulations, and other assistance with Title IX matters.
- We also have developed model Title IX policies, procedures, and notifications.
- For additional information contact Scott Goldschmidt or Aaron Lacey.

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Curriculum for Training Series

The foundational training series includes the following four sessions:

- An Introduction to the 2024 Title IX Rule
- Complaints of Sex Discrimination
- Complaints of Sex-Based Harassment w/ Students
- Pregnancy and Related Conditions

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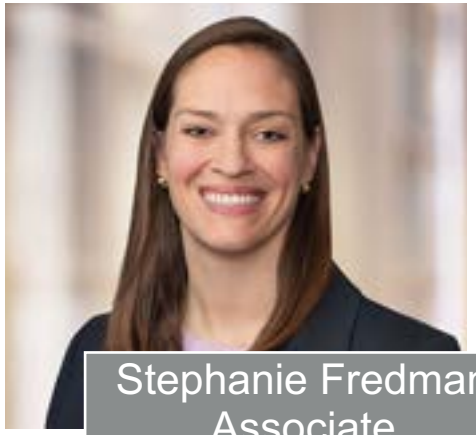
Session Presenters

Aaron Lacey
Co-Chair & Partner

Scott Goldschmidt
Partner



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Syllabus for this Session

- The 2024 Title IX Rule: Background and Status
- Changes to Key Concepts
- Expanded Jurisdiction
- The Obligation to Respond to Sex Discrimination
- Title IX Procedural Waterfall
- Supportive Measures
- Notice and Training Requirements
- Recordkeeping
- Retaliation

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The 2024 Title IX Rule: Background and Status

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The Title IX Statute

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs and activities and employment.

- Covers not only equity in athletic programming, but all forms of discrimination based on sex.
- Protects students and employees.
- Applies to all institutions that receive federal financial assistance, either directly or indirectly.
- Enforced by the Office of Civil Rights.

20 U.S.C. § 1681 *et seq.*

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The Title IX Regulations

- The regulations at 34 C.F.R. Part 106 amplify the statute, expressly prohibiting sex discrimination impacting students in a wide range of areas, including:

Admission and recruitment	Education programs or activities	Housing
Facilities	Counseling	Financial and employment assistance
Health insurance and benefits	Marital or parental status	Athletics

34 CFR Part 106.

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The Title IX Regulations

- Similarly, the regulations expressly prohibit sex discrimination concerning employees in a number of areas, such as:

Employment	Compensation	Recruitment
Job classification	Fringe benefits	Marital or parental status
Advertising	Pre-employment inquiries	Employment criteria

34 CFR Part 106.

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The 2020 Title IX Rule

- In 2020, ED promulgated the first significant regulation addressing allegations of sexual misconduct on campus since 1975.
- The 2020 Title IX rule put into place a complex framework for managing such allegations on campus.

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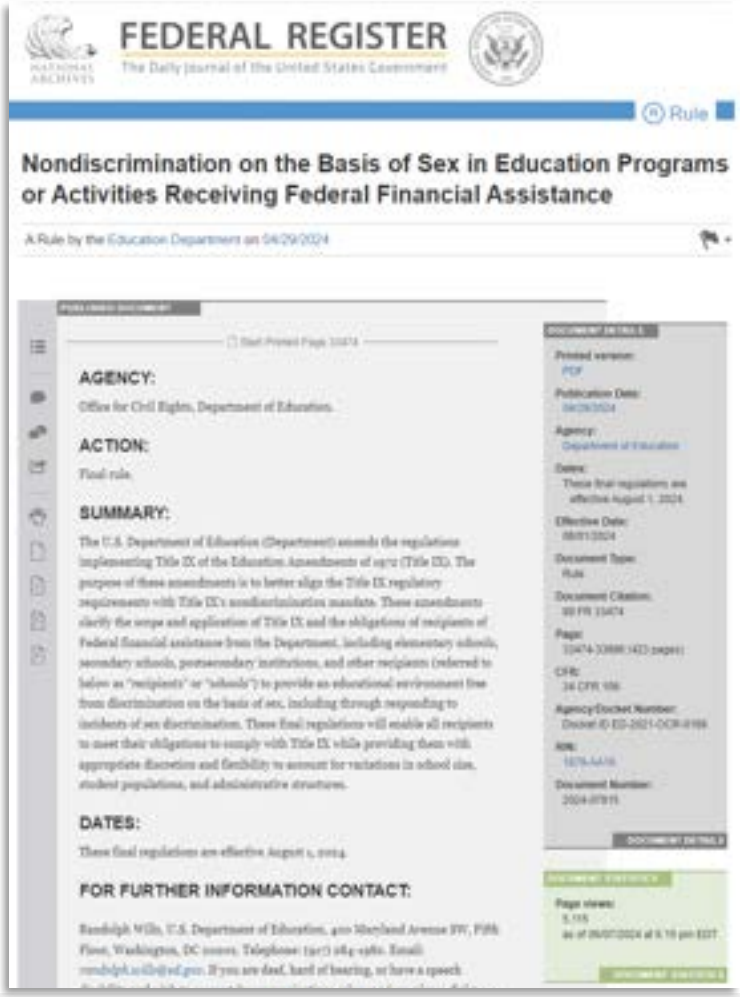
Title 2024 Title IX Rule

- On April 6, 2021, the Biden administration announced that it would be revising the 2020 Title IX rule.
- On July 12, 2022, ED published its proposed 2022 Title IX Rule, and received over 235,000 comments.
- On April 29, 2024, the final 2024 Title IX Rule was released (clocking in at 423 pages) and takes effect August 1, 2024.


FEDERAL REGISTER

The Daily Journal of the United States Government

Rule

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

A Rule by the Education Department on 04/29/2024

AGENCY:

Office for Civil Rights, Department of Education.

ACTION:

Final rule.

SUMMARY:

The U.S. Department of Education (Department) amends the regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The purpose of these amendments is to better align the Title IX regulatory requirements with Title IX's nondiscrimination mandate. These amendments clarify the scope and application of Title IX and the obligations of recipients of Federal financial assistance from the Department, including elementary schools, secondary schools, postsecondary institutions, and other recipients (referred to below as "recipients" or "schools") to provide an educational environment free from discrimination on the basis of sex, including through responding to incidents of sex discrimination. These final regulations will enable all recipients to meet their obligations to comply with Title IX while providing them with appropriate discretion and flexibility to account for variations in school size, student populations, and administrative structures.

DATES:

These final regulations are effective August 1, 2024.

FOR FURTHER INFORMATION CONTACT:

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Effective Date and Retroactivity

- The new regulations only apply to sex discrimination that allegedly occurred on or after August 1, 2024.
- With respect to prior conduct, “the Department will evaluate the recipient’s compliance against the Title IX statute and the Title IX regulations in place at the time that the alleged sex discrimination occurred” regardless of when the alleged sex discrimination was reported.
- This means certain conduct may be addressed under the 2020 regulations or the 2024 regulations.

89 Fed. Reg. 33474, 33841 (April 29, 2024).

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Pending Legal Challenges

- Challenges to the new Title IX rule already have been brought by various states, school districts, and organizations, and several courts have issued injunctions, including in Texas, Kentucky, Louisiana, and Kansas.
  - The focus of the litigation most commonly is the new rule's interpretation of "on the basis of sex."
- The scope of the injunctions varies, but many states, and potentially hundreds of schools are impacted.

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Pending Legal Challenges

- More challenges and injunctions are anticipated, and it appears at least some courts are inclined to rebuff government efforts to challenge the injunctions.
- Before implementing any policy changes, schools should consult with legal counsel regarding the status of Title IX for their specific institution.
- In addition, schools always should keep state and municipal laws in mind.

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Changes to Key Concepts

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Definitions Heat Map

Actual knowledge (removed)	Complainant (meaningful revision)	Consent (removed)	Complaint (new)
Confidential employee (new)	Disciplinary sanctions (new)	Discrimination on the basis of sex (new)	Formal complaint (removed)
Hostile environment harassment (new)	Parental status (new)	Pregnancy or related condition (new)	Quid pro quo harassment (new)
Relevant (new)	Remedies (new)	Respondent (meaningful revision)	Retaliation (meaningful revision)
Sexual harassment (removed)	Sex-based harassment (new)	Specific Offenses (new)	Supportive measures (meaningful revision)

34 CFR §§ 106.2 and 106.10 (August 1, 2024).

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Sex Discrimination

- "On the basis of sex" has been interpreted differently across administrations.
- In *Bostock v. Clayton County, Georgia*, No. 17-1618 (S. Ct. June 15, 2020)[1], the Supreme Court held that firing individuals because of their sexual orientation or transgender status does violate Title VII's prohibition on discrimination because of sex.
- On June 22, 2021, OCR issued a Notice of Interpretation in the Federal Register to make clear that the Department "has determined that the interpretation of sex discrimination set out by the Supreme Court in Bostock... guides the Department's interpretation of discrimination "on the basis of sex" under Title IX and leads to the conclusion that Title IX prohibits discrimination based on sexual orientation and gender identity."

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Sex Discrimination

The new rule builds on *Bostock* and the Notice of Interpretation, expressly providing that discrimination on the basis of sex includes discrimination based on:

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

34 CFR §§ 106.2 and 106.10 (August 1, 2024).

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Sex Discrimination

- **Does this mean that schools can never differentiate based on sex?**
  - No. Title IX contains limited exceptions for things such as athletic teams, housing, and social fraternities and sororities.
  - The exemption for educational institutions controlled by religious organizations is unchanged in the new regulations.
- **What about circumstances that do not fall within a statutory exemption like restrooms and locker rooms?**
  - Title IX permits different treatment on the basis of sex in these scenarios only where it subjects individuals to no more than de minimis harm.

34 CFR § 106.31(a) (Aug. 1, 2024); 89 Fed. Reg. 33474, 33816-17 (Apr. 29, 2024).

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Sex Discrimination

- **What is de minimis harm?**
  - The preamble states that harm is more than de minimis when it is "genuine and objectively non-trivial and assessed from the perspective of a reasonable person in the individual's position."
  - The regulations state that "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."
- Note that this provision is the subject of active litigation.

34 CFR § 106.31(a) (August 1, 2024); 89 Fed. Reg. 33474, 33815 (Apr. 29, 2024).

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Sex-Based Harassment

Sex-based harassment means sexual harassment and other harassment on the basis of sex, including discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity, that is:

Quid Pro Quo Harassment	Hostile Environment Harassment	One of Several Specific Offenses (Sexual Assault, Dating Violence, Domestic Violence, or Stalking)

34 CFR § 106.2 (August 1, 2024).

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Sex-Based Harassment

Quid Pro Quo

An employee, agent, **or other person authorized by the school** to provide an aid, benefit, or service of the school explicitly or impliedly conditioning the provision of that aid, benefit, or service on a person's participation in unwelcome sexual conduct.

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 school's education program or activity.

Specific Offenses

- Sexual assault including rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape.
- Dating violence
- Domestic violence
- Stalking

34 CFR § 106.2 (August 1, 2024).

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Hostile Environment

- The degree to which the conduct affected the complainant's ability to access the education program or activity.
- The type, frequency, and duration of the conduct.
- The location of the conduct and the context in which the conduct occurred.
- The parties' ages, roles within the school, previous interactions, and other factors relevant to evaluating the effects of the conduct
- Other sex-based harassment in the school's education program or activity.

34 CFR § 106.2 (August 1, 2024).

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Sex-Based Harassment

- **Does this definition prohibit all harassing or offensive remarks?**
  - No. To create a hostile environment, the remarks must be subjectively and objectively offensive as well as severe or pervasive. But schools can still address such remarks in a variety of ways.
- **Does quid pro quo harassment need to be offensive and severe or pervasive? How about the specific offenses?**
  - No. Only the "hostile environment" prong of the sexual harassment definition must be subjectively and objectively offensive and severe or pervasive.

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Specific Offenses

- Sexual assault meaning any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; also unlawful sexual intercourse.
  - Rape;
  - Sodomy;
  - Sexual Assault with an Object;
  - Fondling;
  - Incest; and
  - Statutory Rape.

34 CFR § 106.2 (August 1, 2024).

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Specific Offenses

- Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - Fear for the person's safety or the safety of others; or
  - Suffer substantial emotional distress.
- Dating violence meaning violence committed by a person:
  - Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - Where the existence of such a relationship shall be determined based on a consideration of the length and type of the relationship and frequency of interaction between the persons involved in the relationship.

34 CFR § 106.2 (August 1, 2024).

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Specific Offenses

- Domestic violence meaning felony or misdemeanor crimes committed by a person who:
  - Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the school, or a person similarly situated to a spouse of the victim;
  - Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
  - Shares a child in common with the victim; or
  - Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

34 CFR § 106.2 (August 1, 2024).

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Report vs. Complaint

- Report means a notification to the school of possible sex discrimination or retaliation.
  - A Report—as distinct from a Complaint—does not request the school to investigate and make a determination about the allegations.
  - A Report may, however, include a request that the school provide supportive measures.
- Complaint means an oral or written request to the school that objectively can be understood as a request for the school to investigate and make a determination about alleged sex discrimination or retaliation.

34 CFR § 106.2 (August 1, 2024).

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Expanded Jurisdiction

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Expanded Jurisdiction

- On-campus conduct.
- Off-campus conduct.
  - Settings operated or overseen by the school (e.g., online classes, athletic programs, off-campus trips).
  - Buildings owned or controlled by officially-recognized student organizations (e.g., sorority and fraternity houses).
  - Conduct subject to the school's disciplinary authority (i.e., any conduct your school chooses--or is required by law--to exercise its disciplinary authority over outside of Title IX).

34 CFR § 106.11 (August 1, 2024).

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Expanded Jurisdiction

- Schools are also required to address a sex-based hostile environment under their education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the school's education program or activity or outside the United States.

34 CFR § 106.11 (August 1, 2024).

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The Obligation to Respond to Sex Discrimination

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Employee Obligations

- Any employee who either has authority to institute corrective measures on behalf of the school or has responsibility for administrative leadership, teaching, or advising must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX.
- All other employees (except confidential employees) must either:
  - Notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX; or
  - Provide the contact information of the Title IX Coordinator and information about how to make a complaint of sex discrimination to any person who provides the employee with information about conduct that reasonably may constitute sex discrimination under Title IX.

34 CFR § 106.44(c) (August 1, 2024).

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Confidential Employees

- Confidential Employees are an exception to the reporting requirements.
- Confidential Employee means:
  - An employee whose communications are privileged or confidential under Federal or State law;
  - An employee whom the school has designated as confidential for the purpose of providing services to persons related to sex discrimination; or
  - An employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination.
- An employee's confidential status is only with respect to information received about sex discrimination while acting in their confidential role.

34 CFR § 106.44(d) (August 1, 2024).

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Confidential Employees

- Schools must provide notice of who qualifies as a Confidential Employee and how to contact them.
- Even though Confidential Employees are not required to report possible sex discrimination, they must still provide certain information to the individual confiding in them, including:
  - The employee's confidential status, including the circumstances in which the employee is not required to notify the Title IX Coordinator;
  - How to contact the Title IX Coordinator and how to make a complaint of sex discrimination; and
  - That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the school's grievance procedures.

34 CFR § 106.44(d) (August 1, 2024).

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Elements of a Sufficient Response

Upon notice, institutions must respond "promptly" and "effectively." Title IX Coordinators must:

- Treat the parties equitably.
- Offer and coordinate supportive measures.
- Notify the complainant of the grievance procedures and informal resolution process, if appropriate.
- Initiate the grievance procedures if a complaint is made.
- Consider whether to initiate a complaint on behalf of the school in the absence of a complaint by the complainant.
- If initiating a complaint, notify the complainant prior to doing so and address any safety concerns.
- If a complaint is made, notify the respondent of the grievance procedures and informal resolution process, if appropriate.
- With or without a complaint, take appropriate, prompt and effective steps to ensure that sex discrimination does not continue or recur.

34 CFR § 106.44(f) (August 1, 2024).

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Barriers to Reporting

- The new regulations also require the Title IX Coordinator to monitor for barriers to reporting and take steps "reasonably calculated to address such barriers."
- "Shortcomings such as inaccessible complaint reporting processes, confusing grievance procedures that lack transparency, and difficult-to-reach Title IX Coordinators or staff who discourage individuals from making reports all serve as barriers to reporting sex discrimination."

34 CFR § 106.44(b) (August 1, 2024).

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Title IX Procedural Waterfall

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Title IX Procedural Waterfall

§ 106.44(c) Report Received	Title IX Coordinator receives report of conduct that may constitute sex discrimination under Title IX.
§ 106.44(f)-(k) Response to Report	In response to report of possible sex discrimination, Title IX Coordinator conducts initial assessment and response.
§ 106.45 Response to Complaint	In response to complaint of possible sex discrimination, grievance procedures consistent with § 106.45 requirements must be initiated.
§ 106.46 Response to Sex-Based Harassment Complaint Involving Student	In response to complaint of possible sex-based harassment involving a student party, additional grievance procedures consistent with § 106.46 requirements must be initiated.

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Title IX Procedures

- Complaints of sex discrimination and requirements under § 106.45 are addressed in detail in Session Two.
- Complaints of sex-based harassment and requirements under § 106.46 are addressed in detail in Session Three.

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Supportive Measures

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Supportive Measures

- Supportive measures are 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.
- Such measures must be designed to:
  - Restore or preserve that party's access to the school's education program or activity, including measures that are designed to protect the safety of the parties or the recipient's educational environment; or
  - Provide support during the grievance procedures or during the informal resolution process.

34 CFR § 106.2 (August 1, 2024).

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Examples of Supportive Measures

Counseling	Extensions of deadlines or other course-related adjustments	Modifications of work or class schedules
Campus escort services	Restrictions on contact applied to one or more parties	Changes in work locations
Changes in housing locations	Leaves of absence	Increased security and monitoring of certain areas of the campus

34 CFR § 106.44(g) (August 1, 2024).

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Supportive Measures

- Schools may modify or terminate supportive measures at the conclusion of the grievance or informal resolution process.
- Parties can also seek to modify or terminate supportive measures applicable to them if circumstances “change materially.”

34 CFR § 106.44(g) (August 1, 2024).

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Supportive Measures

- Parties must be permitted the opportunity to "timely" seek modification or reversal of the school's decision to provide, deny, modify, or terminate any supportive measure applicable to that party on the basis that the decision was inconsistent with the definition of supportive measures.
  - Appeals of supportive measures must be considered by an impartial employee who did not take part in the original decision but has the authority to modify or reverse it.

34 CFR § 106.44(g) (August 1, 2024).

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Supportive Measures

- The school must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the school to provide the supportive measures.
- The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

34 CFR § 106.44(g) (August 1, 2024).

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Emergency Removal

- Schools can remove a respondent on an emergency basis if:
  - The school undertakes an individualized safety and risk analysis and
  - Determines an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal.
- The school must provide notice to the respondent with the opportunity to challenge the decision immediately following the removal.

34 CFR § 106.44(h) (August 1, 2024).

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Emergency Removal

- **Does an "imminent and serious threat to the health or safety" have to be a physical threat?**
  - No. A serious non-physical threat to an individual's safety may warrant the emergency removal of a respondent following an individualized assessment.
- **What does it mean that an individual can challenge their removal "immediately" after removal?**
  - This is fact-specific, but is generally understood as occurring without delay, as soon as possible, given the circumstances.

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Administrative Leave

- Schools are also permitted to place an employee respondent on administrative leave during the "pendency of [its] grievance procedures."
- However, schools will want to consult with any collective bargaining agreements to ensure compliance.

34 CFR § 106.44(i) (August 1, 2024).

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Notice and Training Requirements

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Notice of Non-Discrimination

- Schools must provide a notice of nondiscrimination to students, employees, applicants for admission and employment, and all unions and professional organizations with collective bargaining or professional agreements.
- The notice must also be posted on the school's website and in each handbook, catalog, announcement, bulletin, and application form.
- The regulations contain specific requirements for the content of the notice.

34 CFR § 106.8(c) (August 1, 2024).

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Training Requirements

- All employees must receive training on:
  - The school's obligation to address sex discrimination or retaliation in its education program or activity;
  - The scope of conduct that constitutes sex discrimination or retaliation under Title IX, including the definition of sex-based harassment; and
  - All applicable notice requirements related to a student's current, potential, or past pregnancy or related conditions and the school's general response to sex discrimination or retaliation.

34 CFR § 106.8(d) (August 1, 2024).

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Training Requirements

- Title IX Coordinators and designees, in addition to the training provided to all employees and other Title IX team members, must be trained on:
  - Their specific responsibilities,
  - The school's recordkeeping system and requirements, and
  - Any other training necessary to coordinate the school's compliance with Title IX.

34 CFR § 106.8(d) (August 1, 2024).

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Training Requirements

- Investigators, decisionmakers, and other persons who are responsible for implementing the school's Title IX grievance procedures or who have the authority to modify or terminate supportive measures, in addition to the training provided to all employees, must be trained on the following to the extent related to their responsibilities:
  - The school's obligation to respond to sex discrimination or retaliation;
  - The school's Title IX grievance procedures;
  - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and
  - The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance.

34 CFR § 106.8(d) (August 1, 2024).

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Training Requirements

- Facilitators of the informal resolution process, in addition to the training provided to all employees, must be trained on:
  - The rules and practices associated with the school's informal resolution process; and
  - How to serve impartially, including by avoiding conflicts of interest and bias.

34 CFR § 106.8(d) (August 1, 2024).

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Recordkeeping

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Recordkeeping

- Schools must maintain the following for at least 7 years:
  - For each complaint of sex discrimination, records documenting the informal resolution process or the grievance procedures and the resulting outcome;
  - For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination, records documenting the actions the school took in response to that report; and
  - All training materials.

34 CFR § 106.8(f) (August 1, 2024).

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Retaliation

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Retaliation

- Retaliation means intimidation, threats, coercion, or discrimination against any person by a school, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the school's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or because the person reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing, including in an informal resolution, in grievance procedures, and in any other actions taken by a school.

34 CFR § 106.2; § 106.71 (August 1, 2024).

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Retaliation

- The regulations require that schools prohibit retaliation, including peer retaliation.
- When a school has information about conduct that reasonably may constitute retaliation the school must take the same actions as if it had received notice of sex discrimination.

34 CFR § 106.2; § 106.71 (August 1, 2024).

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OCR Resources

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OCR Resources

- Fact Sheet
  - https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-factsheet.pdf
- Summary of Key Provisions
  - https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-summary.pdf
- Resource for Drafting Policies
  - https://www2.ed.gov/about/offices/list/ocr/docs/resource-nondiscrimination-policies.pdf
- Policy Guidance Portal
  - https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html

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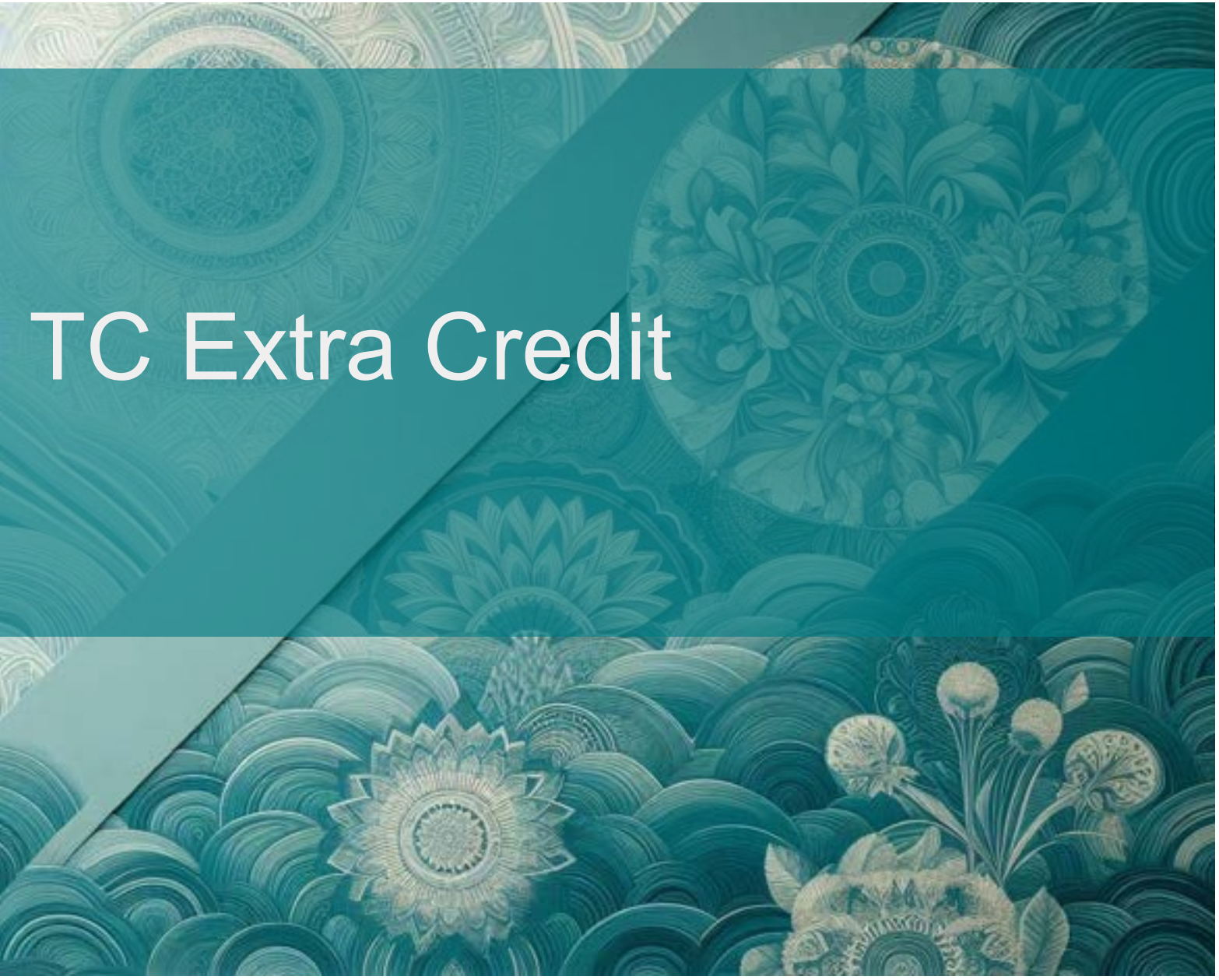
TC Extra Credit



TITLE IX

TRAINING SERIES

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Higher Education Resources Page

HIGHER EDUCATION RESOURCES

As part of our ongoing commitment to the postsecondary community, Thompson Coburn's higher education practice routinely creates complimentary resources designed to assist institutions with navigating the complexities of the higher education regulatory and policy environment. We have collected a number of these resources on this page, including our most recent webinars, training series, desk guides, whitepapers, and blog posts. We hope you find these resources helpful, and if you have any questions, please do not hesitate to contact us!

COMPLIANCE RESOURCES

COMPLIANCE RESOURCE: FINANCIAL RESPONSIBILITY GUIDE

We provide a guide to the reporting obligations under ED's new Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit Rule.

COMPLIANCE RESOURCE: TCPA AND OTHER TELEMARKETING RULES

This guide helps colleges and universities understand TCPA regulations for text messages and calls to students, ensuring permission is obtained for promotional messages.

COMPLIANCE RESOURCE: A DESK GUIDE FOR THE 2023 FINAL FINANCIAL VALUE TRANSPARENCY & GAINFUL EMPLOYMENT RULE

We have developed this Desk Guide to assist institutions as they contemplate compliance with the final version of the GE rule.

TITLE IX TRAINING SERIES

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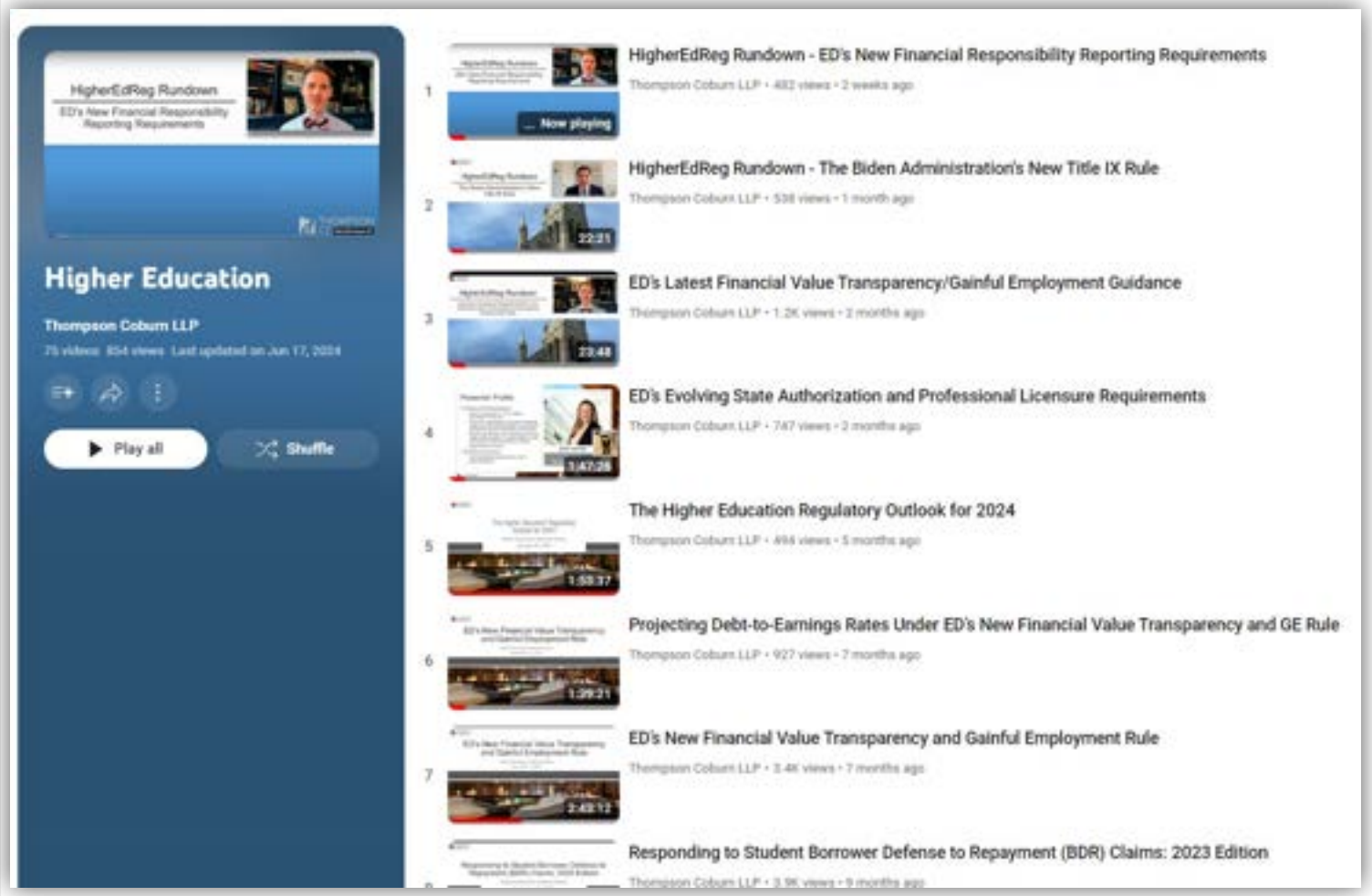
Webinars and Training Series



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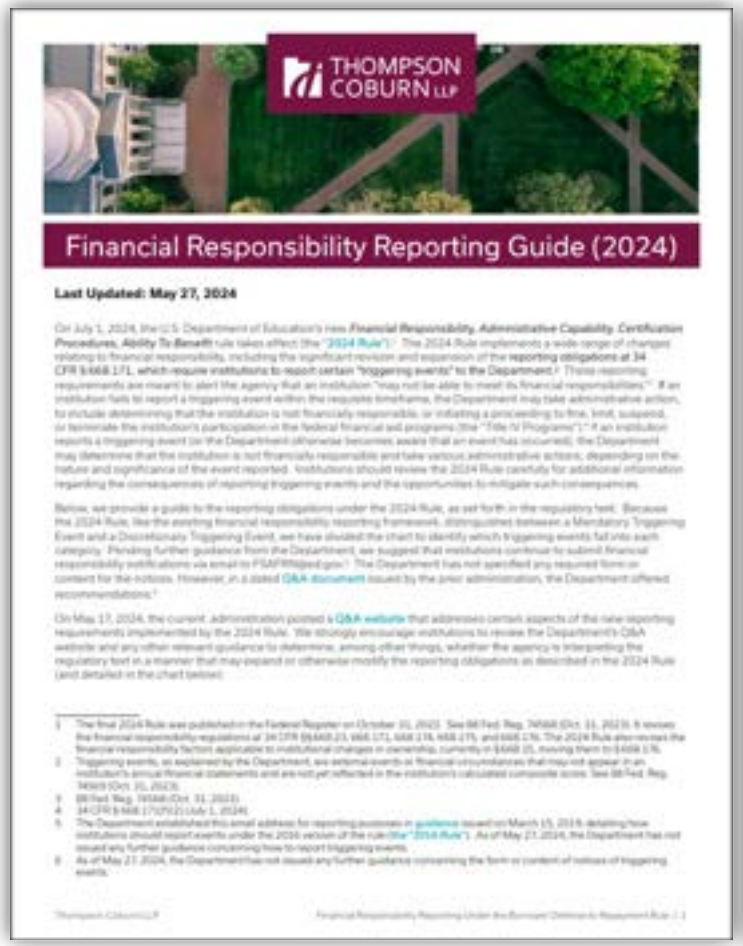
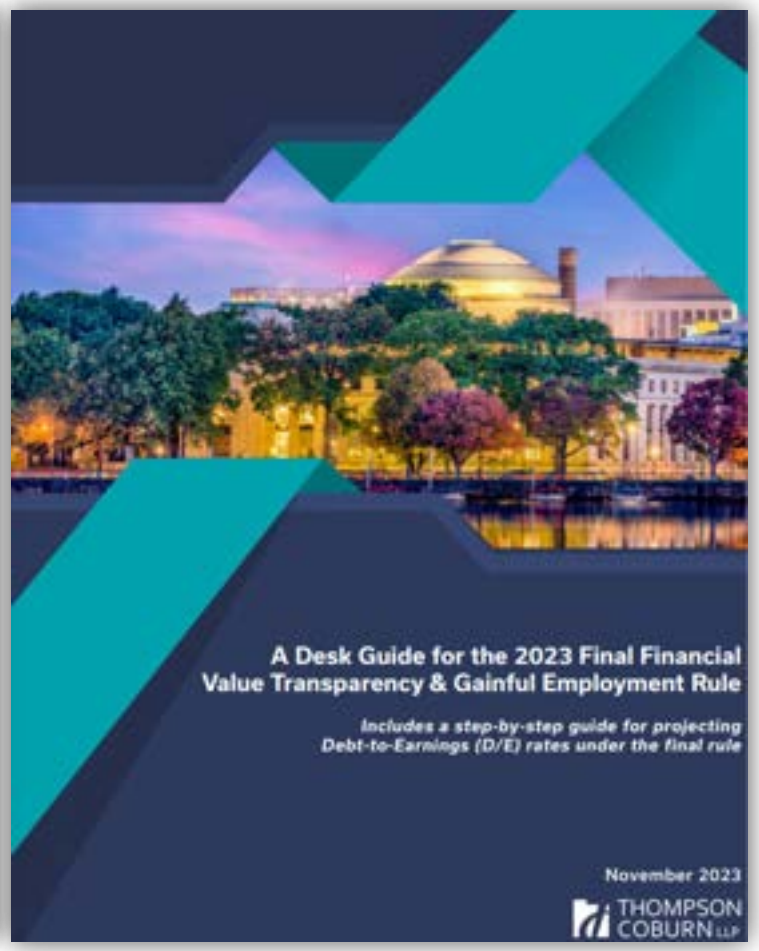
Compliance Materials





TITLE IX TRAINING SERIES

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REGucation (our blog)

Title IX (Joe's Version) Dropped This Morning

Scott Goldschmidt Stephanie Fredman April 19, 2024

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CONTRIBUTORS

We interrupt your Tortured Poets Department** listening party to inform you that the Biden administration has released its long awaited Title IX rules. The new rules, published this morning in unofficial form, will be formally published in the Federal Register shortly.

In its press release announcing the new rules, the Department also published a fact sheet, a summary of the major provisions of the final regulations, and a resource for drafting Title IX nondiscrimination policies, notices of nondiscrimination, and grievance procedures.

Thompson Coburn's Higher Education team is currently in the process of reviewing the final rules*, including the preamble which provides the Department's response to the significant, relevant issues raised in public comments and a statement providing the basis and the purpose of the rule. We will be providing additional information about the rule and resources for institutions of higher education in the coming weeks.

TITLE IX TRAINING SERIES

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TITLE IX
TRAINING SERIES

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Title IX Timeline

TITLE IX

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Title IX Timeline

Date	Rulemaking Event
June 1972	Title IX of the Education Amendments of 1972
July 1975	ED publishes 34 CFR Part 106, which implements Title IX.
March 1997	ED publishes Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties.
June 1998	Gebser v. Lago Vista Ind. Sch. Dist., 524 U.S. 274 (1998) (holding that an individual may only recover monetary damages under Title IX when a school official with authority to institute corrective measures has actual notice of the harassment but is deliberately indifferent to it).
May 1999	Davis v. Monroe Cty. Bd. of Educ., 526 U.S. 629 (1999) (holding that a school can be liable under Title IX for student-on-student sexual harassment, but only if the school is deliberately indifferent to known sexual harassment, the respondent is under the school's disciplinary authority, and the behavior is **so severe, pervasive, and objectively offensive** that it denies access to the school's program and activities).

Title IX Timeline

Date	Rulemaking Event
Nov. 2000	ED updates Title IX rules to incorporate the Civil Rights Restoration Act's broadened definitions of "program or activity" and "program."
Jan. 2001	Following significant judicial activity, ED publishes Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties. ED draws distinction between standards for administrative enforcement and standards for private litigation for monetary damages.
Oct. 2006	ED updates Title IX rules to clarify and modify requirements regarding single-sex schools, classes, and extracurricular activities in elementary and secondary schools.
April 2011	ED publishes DCL with extensive guidance concerning school responsibilities for preventing and addressing sexual harassment and sexual violence.
April 2014	ED publishes Questions and Answers on Title IX and Sexual Violence, further clarifying guidance articulated in 2001 Guidance and 2011 DCL.
May 2016	ED and DOJ issue joint DCL regarding treatment of transgender students, accompanied by Examples of Policies and Emerging Practices for Supporting Transgender Students.

Title IX Timeline

Date	Rulemaking Event
Feb. 2017	ED publishes DCL rescinding May 2016 DCL regarding treatment of transgender students.
Sept. 2017	ED publishes DCL rescinding April 2011 DCL as well 2014 Q&A on Campus Sexual Misconduct.
Nov. 2018	On November 29, 2018, ED publishes the official version of its proposed Title IX rule in the Federal Register. The first significant rule concerning sexual misconduct since 1975.
May 2020	On May 19, 2020, ED publishes the official version of its final Title IX rule in the Federal Register.
June 2020	The Supreme Court in *Bostock v. Clayton County*, concludes that discrimination based on sexual orientation or gender identity inherently involve treating individuals differently because of their sex, and thus is prohibited under Title VII of the Civil Rights Act of 1964.
Aug. 2020	ED's new Title IX Rule takes effect on August 14.

Title IX Timeline

Date	Rulemaking Event
April 2021	ED announces that it will be overhauling the Title IX regulations put into place by the Trump administration and releases Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021).
June 2021	OCR issues Notice of Interpretation stating that ED interprets Title IX's prohibition on sex discrimination to encompass discrimination based on sexual orientation and gender identity, consistent with *Bostock v. Clayton County*.
July 2022	ED publishes its proposed 2022 Title IX Rule, and receives over 235,000 comments.
April 2024	ED publishes its final 2024 Title IX Rule, which takes effect August 1, 2024.

Presenter Profiles

TITLE IX
TRAINING SERIES

THOMPSON COBURN LLP

Presenter Profile

- Practice and Experience
  - Assists institutions of higher education to navigate a wide range of legal and regulatory challenges, including those involving discrimination laws.
  - Represents institutions in administrative proceedings before the Department and other postsecondary regulators.
  - Graduate of Duke University and Vanderbilt University Law School.
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Aaron Lacey

Partner & Co-Chair
Higher Education Practice

THOMPSON COBURN LLP

Presenter Profile

- Practice and Experience
  - Former Deputy General Counsel for Catholic University.
  - Routinely assists with matters involving discrimination law, student affairs, contract drafting and review, and policy development.
  - Graduate of Catholic University of America Columbus School of Law and George Washington University.
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Scott Goldschmidt

Partner

Higher Education Practice

THOMPSON COBURN LLP

Presenter Profile

- Practice and Experience
  - Labor and employment law litigator who assists schools with matters involving discrimination law, student affairs, and policy development.
  - In-house experience in both secondary and postsecondary institutions.
  - Graduate of Washington University School of Law, Harvard Graduate School of Education, and Emory University.
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Stephanie Fredman

Associate

Higher Education Practice

THOMPSON COBURN LLP

Presenter Profile

- Practice and Experience
  - Represents independent school districts, charter schools, private schools, and postsecondary institutions in litigation and administrative matters involving employment disputes, Title IX sexual harassment, special education and more.
  - Graduate of Baylor University School of Law and Texas Christian University.
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Leah Northener

Associate

Higher Education Practice

THOMPSON COBURN LLP

Complaints of Sex Discrimination

Thompson Coburn LLP

Title IX Training Series | Session 2 | July 2024

TITLE IX TRAINING SERIES

Thompson Coburn LLP

- Full-service law firm with over 400 attorneys.
- Offices in Chicago, Los Angeles, St. Louis, Dallas, New York, Birmingham, and Washington, D.C.
- Higher education practice provides legal counsel, compliance, policy and training services to colleges and universities.
- Our attorneys routinely assist institutions to understand and comply with Title IX and other non-discrimination laws.

THOMPSON COBURN LLP

Purpose of Training Series

- The new Title IX rule, effective August 1, 2024, creates new standards by which postsecondary institutions must address potential Sex Discrimination.
- This Title IX Training Series is designed to provide foundational training to those individuals who will help to administer this required process, including Title IX coordinators, investigators, adjudicators, advisors, appeal officers, and individuals responsible for managing informal resolutions.
- TC's Title IX Training Series on the 2020 Title IX rule is available here: Title IX Training Series – YouTube

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Use of Training Series

- Institutions of higher education are welcome to use this foundational training series at their discretion.
- TC also is available to prepare custom Title IX training sessions, hearing simulations, and other assistance with Title IX matters (contact Aaron Lacey or Scott Goldschmidt).
- Custom training will be important to cover institutional policies, and to accommodate state and municipal requirements, as well as the impact of litigation.

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Curriculum for Training Series

The foundational training series includes the following four sessions:

- An Introduction to the 2024 Title IX Rule
- Complaints of Sex Discrimination
- Complaints of Sex-Based Harassment w/Students
- Pregnancy and Related Conditions

TITLE IX TRAINING SERIES

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The Big Picture

Sex Discrimination Policies and Procedures: Institutions are generally obligated to designate a Title IX coordinator, adopt a nondiscrimination policy, publish grievance procedures for the resolution of complaints alleging sex discrimination, train employees, and develop recordkeeping policies. 34 CFR 106.8.

Responding to Complaints of Sex Discrimination: In response to complaint of possible sex discrimination (excluding alleged sex-based harassment involving a student party), institutions must follow grievance procedures that comply with 34 CFR 106.45.

Responding to Complaints of Sex-Based Harassment Involving a Student: In response to complaint of possible sex-based harassment involving a student, institutions must follow grievance procedures that comply with 34 CFR 106.45 and 106.46.

TITLE IX TRAINING SERIES

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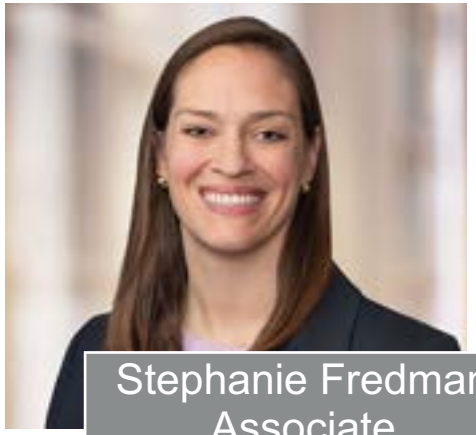
Session Presenters

Aaron Lacey
Co-Chair & Partner

Scott Goldschmidt
Partner



Stephanie Fredman
Associate

Leah Northener
Associate

TITLE IX
TRAINING SERIES

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Syllabus for this Session

- The Complaint
- The Grievance Process
- Appeals
- Serving Impartially

TITLE IX TRAINING SERIES

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The Complaint

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The Complaint

- **Complaint** means an oral or written request to the school that objectively can be understood as a request for the school to investigate and make a determination about alleged discrimination under Title IX.

34 CFR § 106.2 (August 1, 2024).

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The Complaint

- **Who can make a complaint of sex-based harassment?**
  - A complainant;
  - An authorized legal representative with the legal right to act on behalf of a complainant; or
  - The Title IX coordinator.
- **Who can make a complaint of sex discrimination other than sex-based harassment?**
  - The individuals listed above;
  - Any student or employee of the school; or
  - Any person other than a student or employee who was participating or attempting to participate in the school's education program or activity at the time of the alleged sex discrimination.

34 CFR § 106.45(a) (August 1, 2024).

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Complaint by Title IX Coordinator

- The Title IX coordinator must make a fact specific determination about whether to initiate a complaint in the:
  - Absence of a complaint;
  - Withdrawal of any or all of the allegations in a complaint; or
  - Absence or termination of informal resolution.

34 CFR § 106.44(f) (August 1, 2024).

TITLE IX TRAINING SERIES

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Complaint by Title IX Coordinator

- In making this determination, the Title IX coordinator must consider, at minimum, the following eight factors:
  1. the complainant's desires;
  2. the complainant's reasonable safety concerns;
  3. the risk of additional acts of sex discrimination or retaliation if a complaint is not initiated;
  4. the severity of the alleged sex discrimination or retaliation;
  5. the age and relationship of the parties;
  6. the scope of the alleged sex discrimination or retaliation;
  7. the availability of evidence; and
  8. whether the school could end the conduct and prevent its recurrence without initiating its grievance procedures.

34 CFR § 106.44(f) (August 1, 2024).

TITLE IX TRAINING SERIES

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Complaint by Title IX Coordinator

- After considering the eight factors, the Title IX coordinator may initiate a complaint if they determine that the conduct as alleged:
  1. Presents an imminent and serious threat to the health or safety of the complainant or other person, or
  2. That the conduct as alleged prevents the school from ensuring equal access on the basis of sex to its education program or activity.
- The Title IX coordinator must notify the complainant prior to initiating a complaint and address reasonable concerns about the complainant's safety or the safety of others.

34 CFR § 106.44(f) (August 1, 2024).

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Dismissing a Complaint

Basis for optional dismissal

- The school is unable to identify the respondent following reasonable efforts to do so.
- The respondent is not participating in the school's education program or activity and is not employed by the school.
- The complainant voluntarily withdraws some or all allegations and the school determines that without the withdrawn allegations, the conduct that remains alleged would not constitute sex discrimination even if proven.
- The school determines the conduct alleged in the complaint, even if proven, and after making reasonable efforts to clarify with the complainant, would not constitute sex discrimination under Title IX.

34 CFR § 106.45(d) (August 1, 2024).

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Dismissing a Complaint

Notification

Following a dismissal, a school must promptly notify the complainant of the dismissal and, if the respondent has been notified of the complaint, the respondent.

Appeal

A school must provide the parties with an opportunity to appeal a dismissal.

Supportive Measures

In connection with a dismissal, a school must offer supportive measures to the complainant and, if the respondent has been notified of the allegations, to the respondent, as well.

Remediation

Schools must ensure that the Title IX coordinator takes other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur.

34 CFR § 106.45(d) (August 1, 2024).

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Consolidating Complaints

- Schools can consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances.
- If one of the complaints to be consolidated is a complaint of sex-based harassment involving a student complainant or student respondent, the school would be required to follow additional grievance procedures.

34 CFR § 106.44(g) (August 1, 2024).

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Special Considerations

- **Who is the respondent when the complaint alleges discrimination by the school?**
  - There is no respondent.
  - Continue with the grievance process in all other respects.
- **Do institutions have to change their policies as a supportive measure while the grievance process plays out?**
  - No. Changing your policies is not required as a supportive measure but may be necessary at the conclusion of the grievance process, depending on the determination.

34 CFR §106.45(a), (e) (August 1, 2024).

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The Grievance Process

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Grievance Process Requirements

Equitable Treatment	Treat complainants and respondents equitably.
Conflicts of Interest	Require that any person designated as a Title IX coordinator, investigator, or decisionmaker not have a conflict of interest or bias; however, the decisionmaker may be the same person as the Title IX coordinator or investigator.
Presumption Against Responsibility	Include a presumption that the respondent is not responsible for the alleged conduct until a determination is reached.
Reasonable Timeframes	Establish reasonably prompt timeframes for the major stages of the grievance procedures.
Protection of Privacy	Take reasonable steps to protect the privacy of the parties and witnesses during the pendency of a school's grievance procedures.
Relevancy & Credibility	Require an objective evaluation of all relevant evidence and provide that credibility determinations not be based on status as a complainant, respondent, or witness.
Exclusion of Impermissible Evidence	Exclude specific categories of evidence, and questions seeking that evidence.

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Major Stages

"Reasonably Prompt"

- Evaluation
- Investigation
- Determination
- Appeal

34 CFR § 106.45(b) (August 1, 2024).

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Notice of Allegations

- The notice must include:
  - The school's grievance procedures, as well as any informal resolution process;
  - Sufficient information to allow the parties to respond to the allegations, including the identities of the parties, the alleged sex discrimination, and the date and location of the alleged conduct, to the extent that information is available;
  - A statement that retaliation is prohibited; and
  - A statement regarding access to the relevant and not otherwise impermissible evidence.
- If, during the investigation, the school decides to investigate additional allegations, it must provide the parties an updated notice.

34 CFR § 106.45(c) (August 1, 2024).

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Investigations

Burden of investigation	Ensure that the burden is on the school - not the parties - to gather sufficient evidence for a determination.
Equal opportunity	Provide an equal opportunity for the parties to present relevant fact witnesses and other inculpatory and exculpatory evidence.
Evidentiary determinations	Review all evidence and to determine what evidence is relevant and what evidence is impermissible regardless of relevance.
Review of evidence	Provide each party with the relevant evidence that is not impermissible (or a description) and a reasonable opportunity to respond.
Credibility determinations	Provide a process that enables the decisionmaker to adequately assess credibility of parties and witnesses.

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Single Investigator Model

- The rules allow for a single individual to serve as the Title IX coordinator, investigator, and decisionmaker or any combination of the three.

34 CFR § 106.45(b) (August 1, 2024).

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Issues of Relevance

- **Relevance** – related to the allegations of sex discrimination under investigation as part of the grievance procedures.
  - Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred.
  - Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

34 CFR § 106.2 (August 1, 2024).

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Issues of Relevance

- **How can an investigator summarize relevant evidence?**
  - Have a clear record of steps taken during the investigation.
  - Consider summarizing:
    - The alleged incident;
    - Parties involved and witnesses identified;
    - Key factual findings;
    - Relevant evidence; and
    - Specific policy alleged to be violated.

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Impermissible Evidence

- Privileged Evidence
- Treatment Records
- Sexual Interests or Prior Conduct

34 CFR § 106.45(b) (August 1, 2024).

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Privileged Evidence

- Evidence that is protected under a privilege as recognized by Federal or State law, unless the person holding such privilege has waived the privilege voluntarily in a manner permitted in the school's jurisdiction.

34 CFR § 106.45(b) (August 1, 2024).

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Treatment Records

- A party's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party, unless the school obtains that party's voluntary, written consent for use in the school's grievance procedures.

34 CFR § 106.45(b) (August 1, 2024).

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Sexual Interests or Prior Conduct

- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove:
  1. that someone other than the respondent committed the alleged conduct; OR
  2. consent to the alleged sex-based harassment based on specific incidents of the complainant's prior sexual conduct with the respondent.
- The fact of prior consensual sexual conduct between the complainant and respondent does not demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

34 CFR § 106.45(b) (August 1, 2024).

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Party Access to the Evidence

- The school can provide the parties:
  1. Access to the relevant and not otherwise impermissible evidence; OR
  2. An accurate description of this evidence with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.
- In either scenario, parties must be given the opportunity to respond.

34 CFR § 106.45(f) (August 1, 2024).

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Determinations

Evidentiary standard	Use the preponderance of evidence standard, unless the school uses the clear and convincing standard in all other comparable proceedings.
Notification of Determination	Notify the parties of the outcome of the complaint and the process and basis for appeal, if applicable.
Remediation	As appropriate, require the Title IX coordinator to implement remedies for complainants or other impacted persons and to take other appropriate steps to ensure that sex discrimination does not continue or recur.
Procedural Protection	Follow the school's grievance process before the imposition of any disciplinary sanctions against a respondent.
Discipline	Not discipline a party, witness, or others participating in a grievance process for making a false statement or for engaging in consensual sexual conduct based solely on the school's determination of whether sex discrimination occurred.

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When Credibility is at Issue

- Schools must provide a process that enables the decisionmaker to question parties and witnesses to adequately assess their credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.

34 CFR § 106.45(g) (August 1, 2024).

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Appeals

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Appeals of Dismissals

- Dismissals may be appealed on the following bases:
  - Procedural irregularity that would change the outcome;
  - New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
  - The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.
- Parties must be provided a reasonable and equal opportunity to make a statement in support of or challenging the outcome.

34 CFR § 106.44(d) (August 1, 2024).

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Appeals of Dismissals

When a complaint is dismissed, a school must, at a minimum:

- Offer supportive measures to the complainant as appropriate;
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within the school's education program or activity.

34 CFR § 106.44(d) (August 1, 2024).

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Appeals of Determinations

- Schools must offer the parties an appeal process that, at a minimum, is the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints.

34 CFR § 106.45(i) (August 1, 2024).

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Serving Impartially

TITLE IX

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Key Concepts

- Treat complainants and respondents equitably.
- Understand the presumption that the respondent is not responsible for the alleged conduct until a determination is made at the conclusion of grievance procedures.
- Understand the standard of evidence.
- Do not allow, rely upon, or otherwise use impermissible evidence.

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- The Title IX Coordinator, investigators, and decisionmakers must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

34 CFR § 106.45(b) (August 1, 2024).

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Serving Impartially

- **Decisionmakers** must objectively evaluate all relevant evidence—including both inculpatory and exculpatory evidence.
- They must also ensure that credibility determinations are not based on a person's status as a complainant, respondent, or witness.

34 CFR § 106.45(b) (August 1, 2024).

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Serving Impartially

- **What is inculpatory and exculpatory evidence?**
  - Inculpatory evidence shows or tends to show respondent's responsibility.
  - Exculpatory evidence shows or tends to show the respondent is not responsible.

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Serving Impartially

- **How can someone serve without bias or a conflict of interest?**
  - Avoid prejudgment of facts at issue, parties, or witnesses.
  - Avoid inferences based on party status.
  - Avoid sex stereotypes.

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Serving Impartially

- **How can a school ensure that its Title IX team remains free of bias and conflict of interest?**
  - Ensure adequate training and understanding of bias and conflict of interest.
  - Encourage/do not penalize for disclosing bias or conflict of interest.
  - Establish a process to review and evaluate potential bias or conflict of interest.

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OCR Resources

TITLE IX
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OCR Resources

- Fact Sheet
  - https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-factsheet.pdf
- Summary of Key Provisions
  - https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-summary.pdf
- Resource for Drafting Policies
  - https://www2.ed.gov/about/offices/list/ocr/docs/resource-nondiscrimination-policies.pdf
- Policy Guidance Portal
  - https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html

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Higher Education Resources Page

HIGHER EDUCATION RESOURCES

As part of our ongoing commitment to the postsecondary community, Thompson Coburn's higher education practice routinely creates complimentary resources designed to assist institutions with navigating the complexities of the higher education regulatory and policy environment. We have collected a number of these resources on this page, including our most recent webinars, training series, desk guides, whitepapers, and blog posts. We hope you find these resources helpful, and if you have any questions, please do not hesitate to contact us!

COMPLIANCE RESOURCES

COMPLIANCE RESOURCE: FINANCIAL RESPONSIBILITY GUIDE

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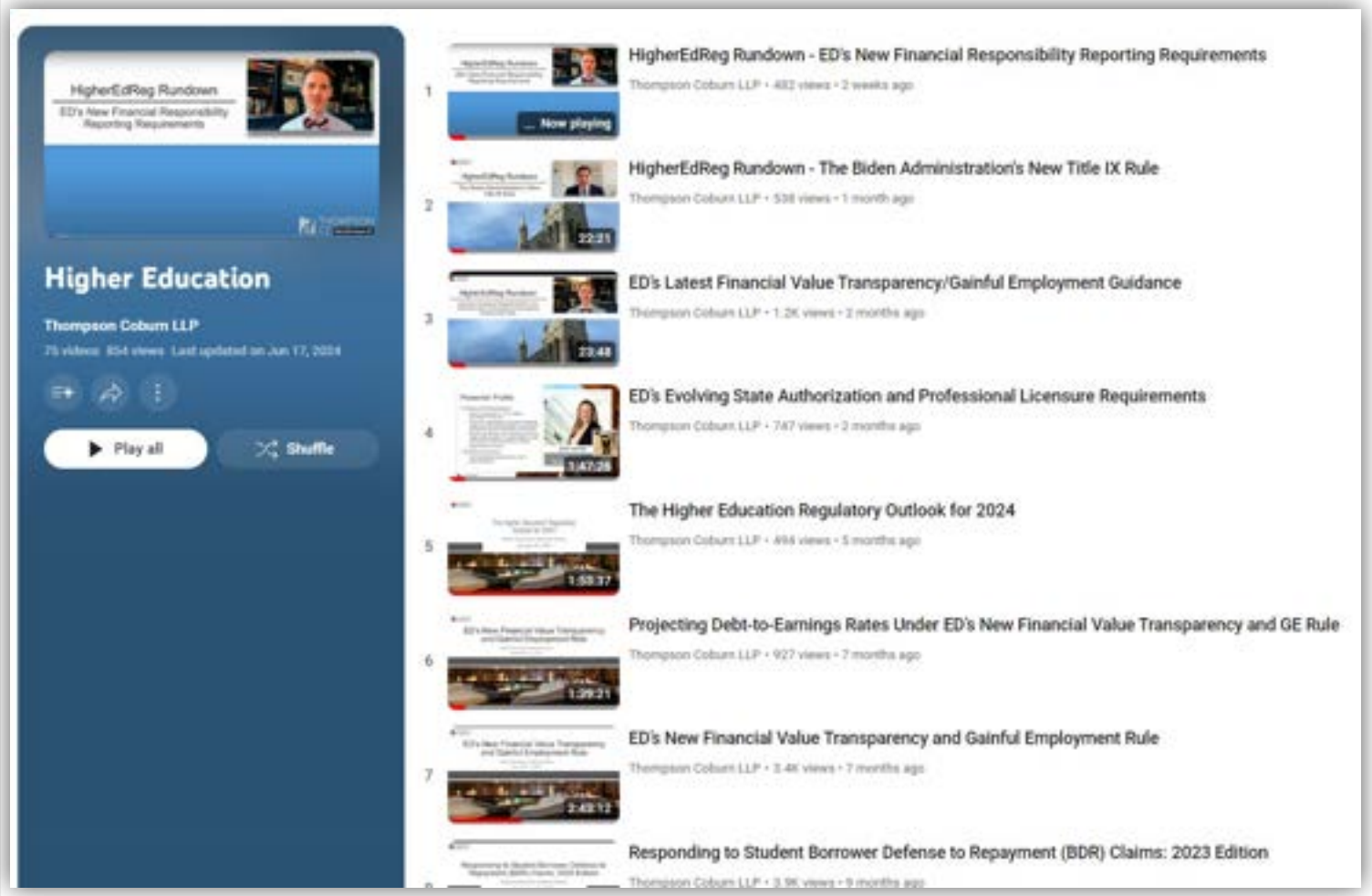

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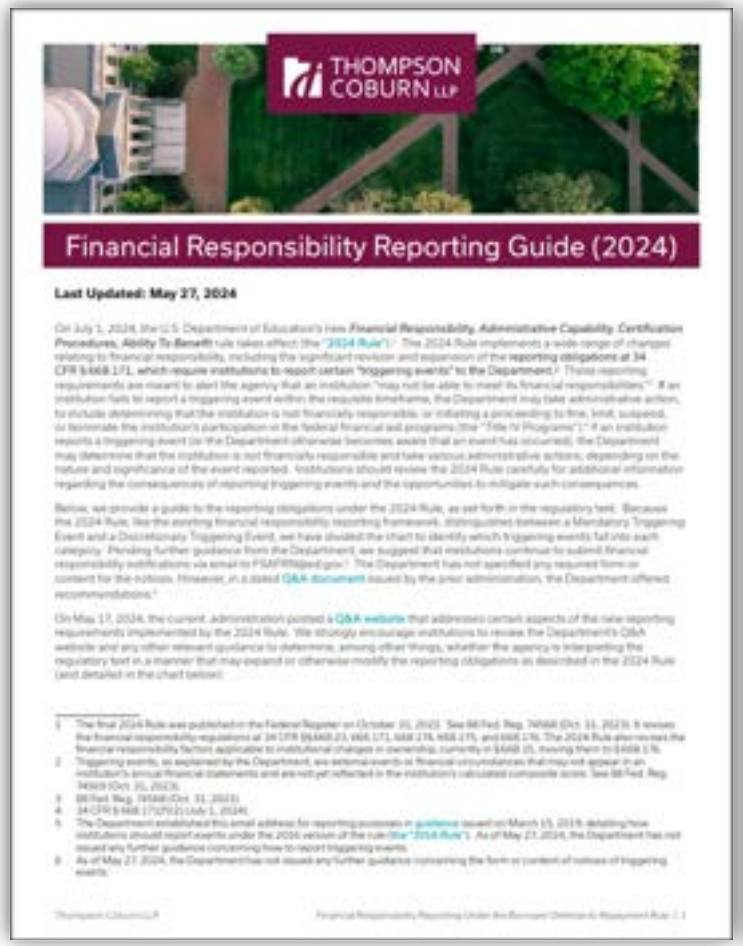

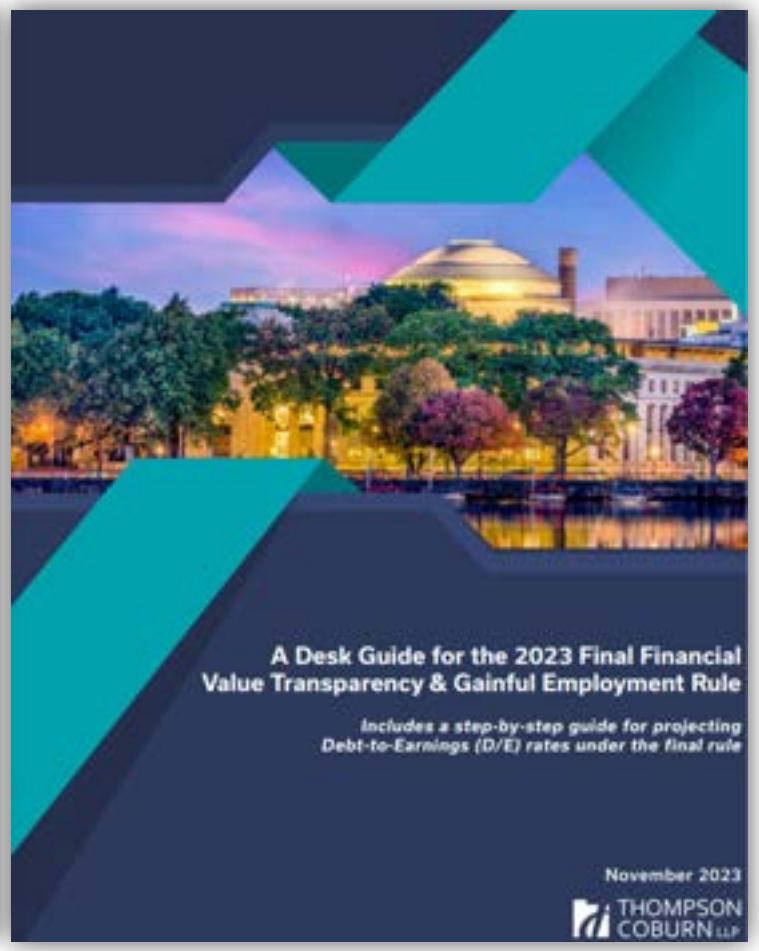

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Scott Goldschmidt Stephanie Fredman April 19, 2024

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Thompson Coburn's Higher Education team is currently in the process of reviewing the final rules*, including the preamble which provides the Department's response to the significant, relevant issues raised in public comments and a statement providing the basis and the purpose of the rule. We will be providing additional information about the rule and resources for institutions of higher education in the coming weeks.

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Presenter Profiles

TITLE IX
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Presenter Profile

- Practice and Experience
  - Assists institutions of higher education to navigate a wide range of legal and regulatory challenges, including those involving discrimination laws.
  - Represents institutions in administrative proceedings before the Department and other postsecondary regulators.
  - Graduate of Duke University and Vanderbilt University Law School.
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Aaron Lacey

Partner & Co-Chair
Higher Education Practice

THOMPSON COBURN LLP

Presenter Profile

- Practice and Experience
  - Former Deputy General Counsel for Catholic University.
  - Routinely assists with matters involving discrimination law, student affairs, contract drafting and review, and policy development.
  - Graduate of Catholic University of America Columbus School of Law and George Washington University.
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Scott Goldschmidt

Partner

Higher Education Practice

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Presenter Profile

- Practice and Experience
  - Labor and employment law litigator who assists schools with matters involving discrimination law, student affairs, and policy development.
  - In-house experience in both secondary and postsecondary institutions.
  - Graduate of Washington University School of Law, Harvard Graduate School of Education, and Emory University.
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Associate

Higher Education Practice

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Presenter Profile

- Practice and Experience
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Leah Northener

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Higher Education Practice

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Complaints of Sex-Based Harassment Involving a Student Party and Informal Resolutions

Thompson Coburn LLP

Title IX Training Series | Session 3 | July 2024

TITLE IX TRAINING SERIES

Thompson Coburn LLP

- Full-service law firm with over 400 attorneys.
- Offices in Chicago, Los Angeles, St. Louis, Dallas, New York, Birmingham, and Washington, D.C.
- Higher education practice provides legal counsel, compliance, policy and training services to colleges and universities.
- Our attorneys routinely assist institutions to understand and comply with Title IX and other non-discrimination laws.

THOMPSON COBURN LLP

Purpose of Training Series

- The new Title IX rule, effective August 1, 2024, creates new standards by which postsecondary institutions must address potential Sex Discrimination.
- This Title IX Training Series is designed to provide foundational training to those individuals who will help to administer this required process, including Title IX coordinators, investigators, adjudicators, advisors, appeal officers, and individuals responsible for managing informal resolutions.
- TC's Title IX Training Series on the 2020 Title IX rule is available here: Title IX Training Series – YouTube

THOMPSON COBURN LLP

Use of Training Series

- Institutions of higher education are welcome to use this foundational training series at their discretion.
- TC also will be releasing a series of videos covering best practices in investigations and adjudications.
- Custom training will be important to cover institutional policies, and to accommodate state and municipal requirements, as well as the impact of litigation.

THOMPSON COBURN LLP

Use of Training Series

- TC is available to prepare custom Title IX training sessions, hearing simulations, and other assistance with Title IX matters.
- We also have developed model Title IX policies, procedures, and notifications.
- For additional information contact Scott Goldschmidt or Aaron Lacey.

TITLE IX TRAINING SERIES

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Curriculum for Training Series

- The foundational training series includes the following four sessions:

1. An Introduction to the 2024 Title IX Rule
2. Complaints of Sex Discrimination
3. Complaints of Sex-Based Harassment w/ Students
4. Pregnancy and Related Conditions

TITLE IX TRAINING SERIES

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The Big Picture

Sex Discrimination Policies and Procedures: Institutions are generally obligated to designate a Title IX coordinator, adopt a nondiscrimination policy, publish grievance procedures for the resolution of complaints alleging sex discrimination, train employees, and develop recordkeeping policies. 34 CFR 106.8.

Responding to Complaints of Sex Discrimination: In response to complaint of possible sex discrimination (excluding alleged sex-based harassment involving a student party), institutions must follow grievance procedures that comply with 34 CFR 106.45.

Responding to Complaints of Sex-Based Harassment Involving a Student Party: In response to complaint of possible sex-based harassment involving a student, institutions must follow grievance procedures that comply with 34 CFR 106.45 and 106.46.

TITLE IX TRAINING SERIES

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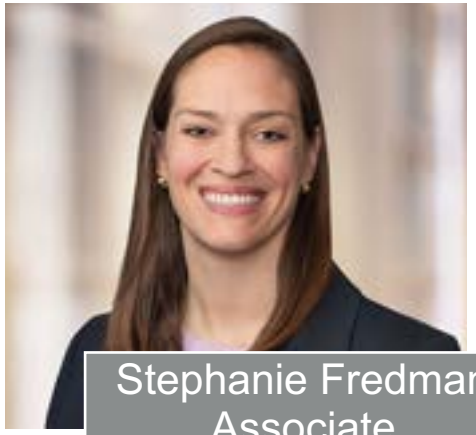
Session Presenters

Aaron Lacey
Co-Chair & Partner

Scott Goldschmidt
Partner



Stephanie Fredman
Associate

Leah Northener
Associate

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Syllabus for this Session

- Recap: General Grievance Procedure Concepts
- Additional Grievance Procedures for Sex-Based Harassment Involving a Student
- Informal Resolution
- Additional Considerations

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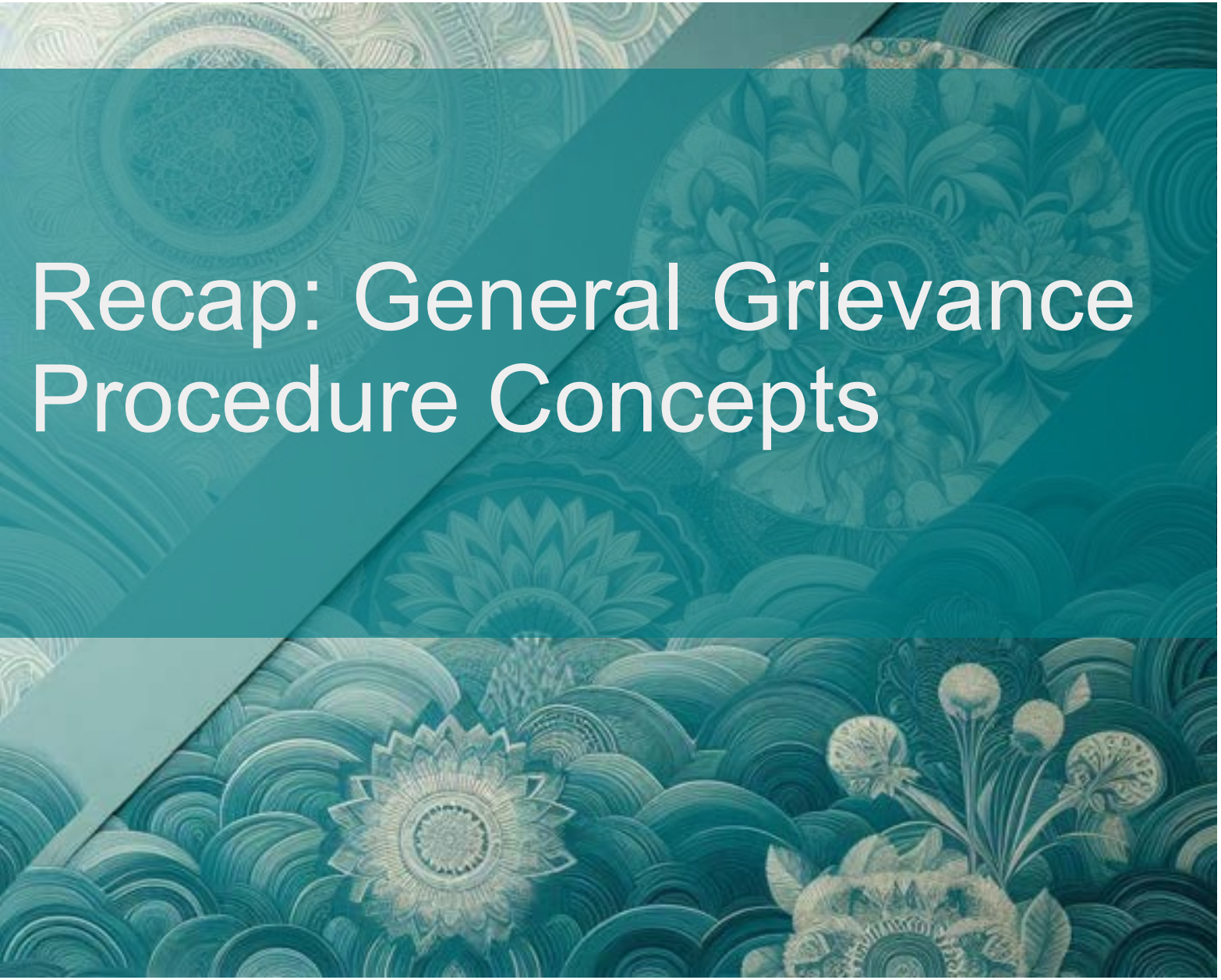
Recap: General Grievance Procedure Concepts



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Grievance Procedures

- Any complaint of sex discrimination must comply with the school grievance procedures found at 34 CFR § 106.45.
- Complaints of sex-based harassment involving student complainant or respondent must comply with 34 CFR § 106.45 and additional procedures found at 34 CFR § 106.46.

TITLE IX TRAINING SERIES

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Recap: Definitions

- Sex-Based Harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity:
  - Quid Pro Quo
  - Hostile Environment
  - Specific Offenses
    - Rape, Sodomy, Sexual Assault With An Object, Fondling, Dating Violence, Domestic Violence, Stalking

34 CFR § 106.2 (August 1, 2024).

TITLE IX TRAINING SERIES

THOMPSON COBURN LLP

Recap: Definitions

- Complainant means:
  1. A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations; or
  2. A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations and who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.

34 CFR § 106.2 (August 1, 2024).

TITLE IX TRAINING SERIES

THOMPSON COBURN LLP

Recap: Definitions

- Complaint is an oral or written request to the recipient that objectively can be understood as a request for the institution to investigate and make a determination about alleged discrimination under Title IX or its regulations.

34 CFR § 106.2 (August 1, 2024).

TITLE IX TRAINING SERIES

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Recap: Complaints

- The following people have a right to make a complaint of sex-based harassment, requesting that the institution investigate and make a determination about alleged sex-based harassment under Title IX:
  - A complainant;
  - A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
  - The Title IX Coordinator.

34 CFR § 106.45(a)(2) (August 1, 2024).

TITLE IX TRAINING SERIES

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Recap: Complaints

- A person is entitled to make a complaint of sex-based harassment only if:
  - They themselves are alleged to have been subjected to the sex-based harassment;
  - They have a legal right to act on behalf of such person; or
  - The Title IX Coordinator initiates a complaint.

34 CFR § 106.45(a)(2) (August 1, 2024).

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Additional Grievance Procedures for Sex-Based Harassment Involving a Student Party

TITLE IX

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Student Employees

- When a complainant or respondent is both a student and employee, fact-specific inquiry to determine which procedure applies.
  - In making this determination, the school must consider whether the primary relationship with the school is to seek an education and whether the alleged sex-based harassment occurred while the individual was performing employment related work.

34 CFR § 106.46(a), (b) (August 1, 2024).

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Written Notice

- Grievance procedures and Informal Resolution process
- Retaliation is prohibited
- Respondent is presumed not responsible until a determination is made at the conclusion of the grievance procedures.
- Advisor of choice, including attorney
- Equal opportunity to access the relevant and not otherwise impermissible evidence
- If applicable, Code of Conduct that prohibits making or submitting false statements

34 CFR § 106.46(c) (August 1, 2024).

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Dismissing a Complaint

Basis for optional dismissal

- The school is unable to identify the respondent following reasonable efforts to do so.
- The respondent is not participating in the school's education program or activity and is not employed by the school.
- The complainant voluntarily withdraws some or all allegations and the school determines that without the withdrawn allegations, the conduct that remains alleged would not constitute sex discrimination even if proven.
- The school determines the conduct alleged in the complaint, even if proven, and after making reasonable efforts to clarify with the complainant, would not constitute sex discrimination under Title IX.

34 CFR § 106.45(d) (August 1, 2024).

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Dismissal

- In addition, under sex-based harassment procedures, parties must be provided simultaneous written notice of the dismissal and the basis for the dismissal.
- If a complaint is dismissed based on complainant's voluntary withdrawal of the complaint or allegations, voluntary withdrawal must be obtained in writing.

34 CFR § 106.46(d) (August 1, 2024).

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Complaint Investigation

Notice	• Parties must be provided written notice of date, time, location, participants, and purpose.
Advisors	• Parties must be provided with same opportunities for advisors and others to attend any meeting or proceeding.
Expert Witnesses	• Institutions can choose whether to permit expert witnesses – as long as equitably applied.
Extensions	• Must allow for the reasonable extension of timeframes on a case-by-case basis for good cause.
Evidence	• Must provide equitable access to relevant evidence or a written report summarizing relevant evidence. Parties must be provided with a reasonable opportunity to review and respond to the evidence prior to the determination of whether sex-based harassment occurred. Must take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence.

34 CFR § 106.46(e) (August 1, 2024).

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Questioning Parties and Witnesses

- Must have process to adequately assess credibility of parties and witnesses to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment.
  - Decisionmakers must be able to ask questions to parties and witnesses during at a live hearing or individual meetings.

34 CFR § 106.46(f) (August 1, 2024).

TITLE IX TRAINING SERIES

THOMPSON COBURN LLP

Questioning Parties and Witnesses

- Institutions can choose to question parties and witnesses and evaluate credibility using a live hearing option or questioning by an investigator or decisionmaker.
  - Single investigator model an option.
- Institutions can also choose different methods for different sex-based harassment complaints.
  - As long as procedures identify consistent principles.

34 CFR § 106.46(f) (August 1, 2024).

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Questioning Parties and Witnesses

- Decisionmaker must determine whether a proposed question is relevant and not otherwise impermissible prior to the question being posed and must explain any decision to exclude a question as not relevant or impermissible.
  - Unclear or harassing questions not permitted.
  - Reasonable rules of decorum permitted if equitable.
- If Decisionmaker determines a question is relevant and not otherwise impermissible, the question must be asked unless unclear or harassing.

34 CFR § 106.46(f) (August 1, 2024).

TITLE IX TRAINING SERIES

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Questioning Parties and Witnesses

- Decisionmaker must give party the opportunity to clarify or revise an unclear or harassing question.
  - If question is appropriately clarified or revised, it must be asked.
- School may adopt and apply reasonable rules regarding decorum, provided they equally apply.

34 CFR § 106.46(f) (August 1, 2024).

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Questioning Parties and Witnesses

- A Decisionmaker may choose to place less or no weight on 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.

34 CFR § 106.46(g) (August 1, 2024).

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Investigator or Decisionmaker

- Process for questioning must:
  - Allow investigator or decisionmaker to ask questions during individual meetings;
  - Allow each party to propose questions during meetings and follow-up meetings; and
  - Provide each party with an audio or audiovisual recording or transcript with enough time for the party to have a reasonable opportunity to propose follow-up questions.

34 CFR § 106.46(f) (August 1, 2024).

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Investigator or Decisionmaker

- **How many individual meetings must occur to satisfy regulatory requirements?**
  - "It is not necessary to specify how many individual meetings must occur because the appropriate number will vary depending on the facts and circumstances of the case and the type and number of questions proposed by the parties,... but the Department also does not anticipate that there would be an endless cycle of meetings if at some point the follow-up questions proposed by the party are duplicative of questions that have already been asked or are designed to harass as opposed to assess credibility or elicit relevant information, the postsecondary institution may decline to hold additional meetings to ask the questions."

89 Fed. Reg. 33474, 33739 (April 29, 2024).

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Questioning by Live Hearing

- Process for questioning must:
  - Allow each party to propose questions and have those questions asked by the decisionmaker; or
  - Allow the party's advisor to ask any party or witness questions (but never the party personally).
- Subject to the requirement that a questions is relevant and not otherwise impermissible.

34 CFR § 106.46(f) (August 1, 2024).

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Live Hearing Procedures

- Live hearings may be conducted with parties physically present in the same geographic location.
- At the institution's discretion, the hearing may be conducted in separate locations using videoconferencing tools.
- Upon the request of either party, a live hearing must be conducted in separate locations using videoconferencing.

34 CFR § 106.46(g) (August 1, 2024).

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Written Determination

- Written notice of determination must include:
  - Description of the allegations;
  - Information about the policies and procedures;
  - Evaluation of the relevant evidence and determination of whether sex-based harassment occurred;
  - Whether sex-based harassment occurred and disciplinary sanctions and remedies if relevant; and
  - Information about appeal procedures.
- Determination of responsibility becomes final upon result or appeal or, if no appeal, date which appeal would not be considered timely.

34 CFR § 106.46(h) (August 1, 2024).

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Appeals

- Institutions must provide opportunity to appeal dismissal or determination based on:
  - Procedural irregularity that would change the determination;
  - New evidence not reasonably available that would change the determination;
  - Conflict of interest or bias of Title IX Coordinator, investigator, or decisionmakers that would change the outcome of the matter; or
  - Any other basis offered equally to the parties by the school.
- Must also comply with the requirements in 106.45(d)(3)(i), (iv), and (v) in writing.

34 CFR § 106.46(i) (August 1, 2024).

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Informal Resolution

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Informal Resolution

- A school may offer the parties an informal resolution process at any time prior to determining whether sex discrimination occurred, unless such a process would conflict with applicable laws.
- A school may not require or pressure the parties to participate in an informal resolution process.
- A school could decline to offer informal resolution despite one or more of the parties' wishes. Reasons for declining would include, but not be limited to, when the school determines that the alleged conduct would present a future risk of harm to others.

34 CFR § 106.44(k) (August 1, 2024).

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Informal Resolution

Before initiation of an informal resolution process, the school would be required to provide to the parties a notice with these elements.

- The allegations
- The requirements of the informal resolution process.
- That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the school's grievance procedures.
- That the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming grievance procedures arising from the same allegations.
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties.
- What information the school will maintain and whether and how the school could disclose such information in grievance procedures, if resumed

34 CFR § 106.44(k) (August 1, 2024).

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Informal Resolution

- Facilitator Qualifications
  - Must not be the same person as the investigator or the decisionmaker in the school's grievance procedures;
  - Must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent; and
  - Must have received the training required under 106.8(d)(3).

34 CFR § 106.44(k) (August 1, 2024).

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Informal Resolution

- Informal resolution agreements
  - May include, among others: terms (1) restricting contact or (2) restricting the respondent's participation in one or more of the school's programs or activities or attendance at specific events.

34 CFR § 106.44(k) (August 1, 2024).

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OCR Resources

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OCR Resources

- Fact Sheet
  - https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-factsheet.pdf
- Summary of Key Provisions
  - https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-summary.pdf
- Resource for Drafting Policies
  - https://www2.ed.gov/about/offices/list/ocr/docs/resource-nondiscrimination-policies.pdf
- Policy Guidance Portal
  - https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html

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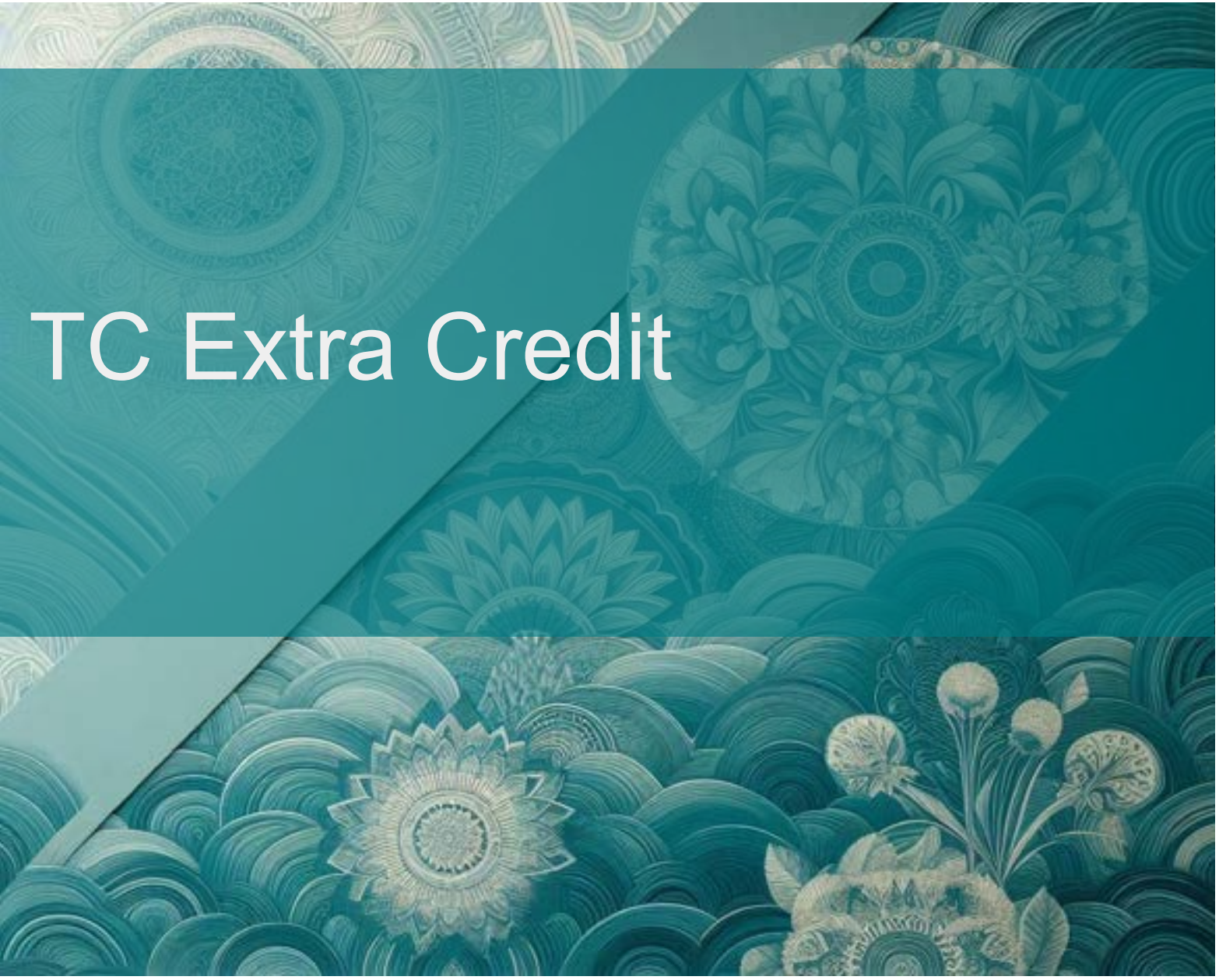

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Higher Education Resources Page

HIGHER EDUCATION RESOURCES

As part of our ongoing commitment to the postsecondary community, Thompson Coburn's higher education practice routinely creates complimentary resources designed to assist institutions with navigating the complexities of the higher education regulatory and policy environment. We have collected a number of these resources on this page, including our most recent webinars, training series, desk guides, whitepapers, and blog posts. We hope you find these resources helpful, and if you have any questions, please do not hesitate to contact us!

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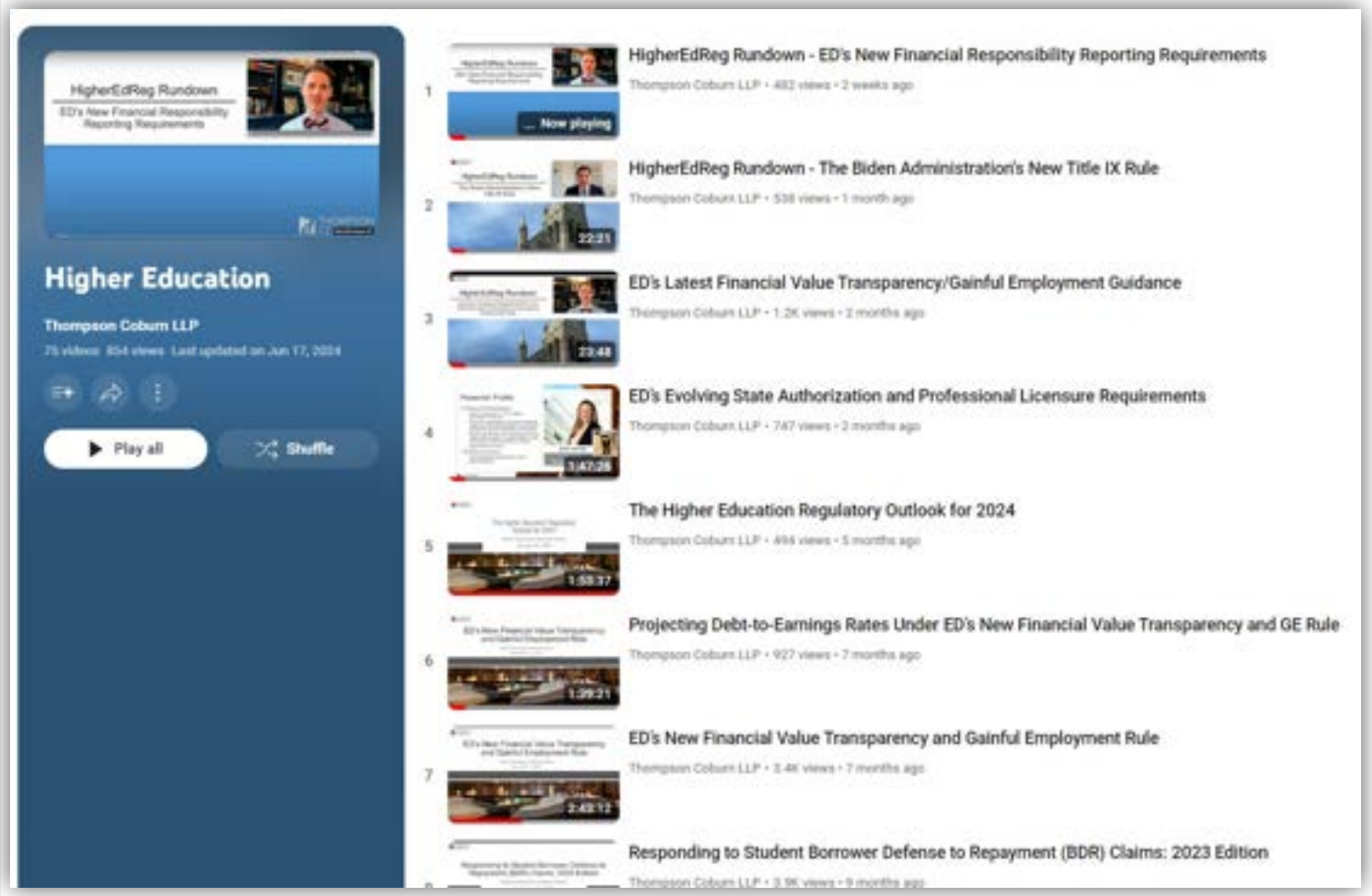

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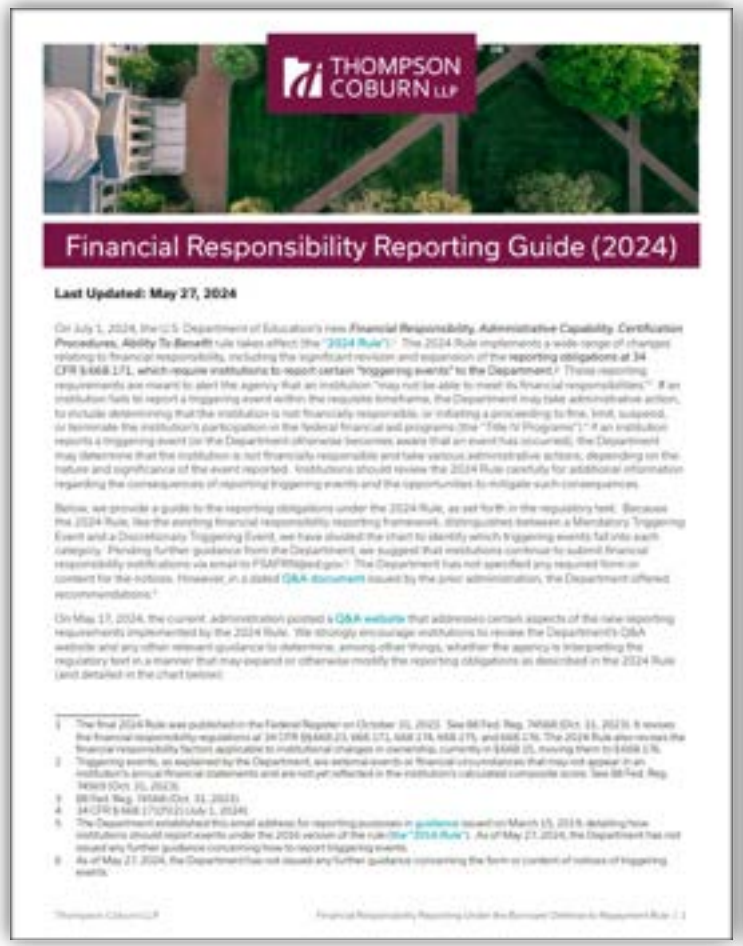

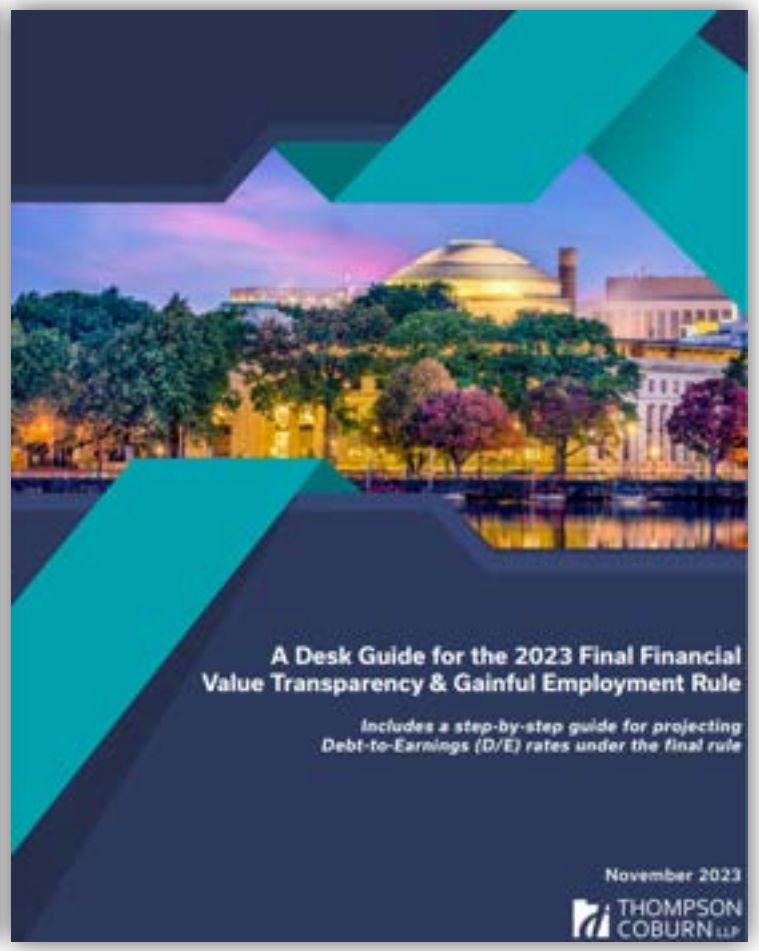

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  - Former Deputy General Counsel for Catholic University.
  - Routinely assists with matters involving discrimination law, student affairs, contract drafting and review, and policy development.
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  - Labor and employment law litigator who assists schools with matters involving discrimination law, student affairs, and policy development.
  - In-house experience in both secondary and postsecondary institutions.
  - Graduate of Washington University School of Law, Harvard Graduate School of Education, and Emory University.
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Discrimination Based on Pregnancy or Marital Status

Thompson Coburn LLP

Title IX Training Series | Session 4 | July 2024

TITLE IX TRAINING SERIES

Thompson Coburn LLP

- Full-service law firm with over 400 attorneys.
- Offices in Chicago, Los Angeles, St. Louis, Dallas, New York, Birmingham, and Washington, D.C.
- Higher education practice provides legal counsel, compliance, policy and training services to colleges and universities.
- Our attorneys routinely assist institutions to understand and comply with Title IX and other non-discrimination laws.

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Purpose of Training Series

- The new Title IX rule, effective August 1, 2024, creates new standards by which postsecondary institutions must address potential Sex Discrimination.
- This Title IX Training Series is designed to provide foundational training to those individuals who will help to administer this required process, including Title IX coordinators, investigators, adjudicators, advisors, appeal officers, and individuals responsible for managing informal resolutions.
- TC's Title IX Training Series on the 2020 Title IX rule is available here: Title IX Training Series – YouTube

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Use of Training Series

- Institutions of higher education are welcome to use this foundational training series at their discretion.
- TC also will be releasing a series of videos covering best practices in investigations and adjudications.
- Custom training will be important to cover institutional policies, and to accommodate state and municipal requirements, as well as the impact of litigation.

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Use of Training Series

- TC is available to prepare custom Title IX training sessions, hearing simulations, and other assistance with Title IX matters.
- We also have developed model Title IX policies, procedures, and notifications.
- For additional information contact Scott Goldschmidt or Aaron Lacey.

TITLE IX TRAINING SERIES

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Curriculum for Training Series

The foundational training series includes the following four sessions:

- An Introduction to the 2024 Title IX Rule
- Complaints of Sex Discrimination
- Complaints of Sex-Based Harassment w/ Students
- Pregnancy and Related Conditions

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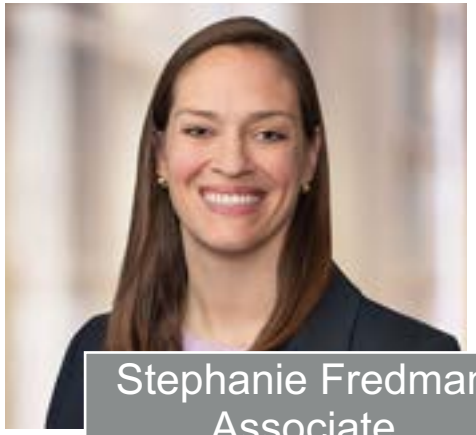
Session Presenters

Aaron Lacey
Co-Chair & Partner

Scott Goldschmidt
Partner



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Syllabus for this Session

- A Focus on Pregnancy
- Student Requirements
- Employee Requirements

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A Focus on Pregnancy

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History and Context

- Other laws and guidance have addressed pregnancy and pregnancy related conditions for many years:
  - Title VII and the Pregnancy Discrimination Act (1978) prohibit discrimination "on the basis of pregnancy, childbirth, or related medical conditions."
  - EEOC guidance from 2015 reinforces the prohibition of discrimination "based on current pregnancy, past pregnancy, potential or intended pregnancy, and medical conditions related to pregnancy or childbirth, including lactation."
  - The Affordable Care Act, which amended the Fair Labor Standards Act "require[s] employers to provide reasonable break times and a private place, other than a bathroom, for covered employees who are breastfeeding to express milk for one year after the child's birth[.]"

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An Expansion

- The Rule expands on current law to continue to address sex discrimination by considering the historical context and adding clarifications.
- The Rule states that schools "must not adopt a policy, practice, or procedure concerning a student's [or employee's] current, potential, or past parental, family, or marital status that treats students [or employees] differently on the basis of sex."

34 CFR § 106.40, 106.57 (August 1, 2024).

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Definitions

- Pregnancy or related conditions means:
  - 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.

34 CFR § 106.2 (August 1, 2024).

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Student Requirements

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Nondiscrimination

- A school must not adopt or implement any policy, practice, or procedure concerning a student's current, potential, or past parental, family, or marital status that treats students differently on the basis of sex.
- A school must not discriminate in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions.
  - Note: A school does not engage in discrimination when it allows a student, based on pregnancy or related conditions, to voluntarily participate in a separate program or activity (provided a comparable program or activity).

34 CFR § 106.40 (August 1, 2024).

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Response to Notice of Pregnancy

- When a student (or person with a legal right to act on behalf of the student) informs any employee of the student's pregnancy or related conditions, the employee must promptly:
  - Provide the contact information of the Title IX Coordinator; and
  - Inform that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the school's education program or activity.
- Such notice does not need to be provided if the employee reasonably believes the Title IX Coordinator has been notified.

34 CFR § 106.40 (August 1, 2024).

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Responsibility to Provide Information

- When a student (or person with a legal right to act on behalf of the student) informs the school of the student's pregnancy or related condition, the school must provide information about the following:
  - Reasonable modifications;
  - Voluntary access to separate and comparable portion of program or activity;
  - Voluntary leaves of absence;
  - Lactation spaces;
  - The School's limitations on requesting supporting documentation and certifications;
  - The School's obligation to treat pregnancy and related conditions in the same manner as other temporary medical conditions; and
  - Prohibited disclosures of personally identifiable information (34 CFR § 106.44(j));
- The school's notice of nondiscrimination must also be provided.

34 CFR § 106.40 (August 1, 2024).

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Reasonable Modifications: Overview

- Reasonable modifications must be provided to a student, if needed to prevent sex discrimination and ensure equal access to the school's education program or activity.
- Each reasonable modification must be based on the student's individualized needs.
  - A school must consult with the student.

34 CFR § 106.40 (August 1, 2024).

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Reasonable Modifications

- A modification that would fundamentally alter the nature of a school's education program or activity is not a reasonable modification.
- The student has discretion to accept or decline each reasonable modification offered by the school. If a student accepts a school's offered reasonable modification, the school must implement it.

34 CFR § 106.40, 106.57 (August 1, 2024).

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Examples of Reasonable Modifications

Breaks during class to attend to related health needs	Expressing breast milk or breastfeeding	Intermittent absences to attend medical appointments
Access to online or other homebound education	Changes in schedule or course sequence	Extensions of time for coursework and rescheduling of tests and examinations
Sit or stand or request a larger desk	Carry or keep water nearby	Counseling

34 CFR 106.40 (August 1, 2024).

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Separate Programs

- The school must allow the student to voluntarily access any separate and comparable portion of the school's education program or activity.

34 CFR § 106.40 (August 1, 2024).

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Voluntary Leave of Absence

- A school must allow the student to take a voluntary leave of absence to cover at a minimum what is medically necessary (as determined by the student's doctor).
- Must allow the longest leave available.
- When a student returns, the student must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began.

34 CFR § 106.40 (August 1, 2024).

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Lactation Space

- A school must ensure that a student can access a lactation space.
- A lactation space must be
  - A clean space other than a bathroom,
  - Private and shielded from view,
  - Free from intrusion from others (it can lock),
  - That may be used by a student for expressing breast milk or breastfeeding, as needed.

34 CFR § 106.40 (August 1, 2024).

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Supporting Documentation

- A school cannot require documentation unless the documentation is necessary and reasonable for the school to determine the reasonable modifications to make or whether to take additional specific actions, such as granting a voluntary leave of absence.

34 CFR § 106.40 (August 1, 2024).

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Supporting Documentation

- Examples of situations when requiring supporting documentation is not necessary and reasonable include, but are not limited to:
  - When the student's need for a specific action is obvious, such as when a student who is pregnant needs a bigger uniform;
  - When the student has previously provided the recipient with sufficient supporting documentation;
  - When the reasonable modification because of pregnancy or related conditions at issue is allowing a student to carry or keep water nearby and drink, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom;
  - When the student has lactation needs; or
  - When the specific action is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.

34 CFR § 106.40 (August 1, 2024).

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Temporary Disability

- Pregnancy or related conditions must be treated in the same manner and under the same policies as any other temporary medical conditions.
  - This requirement is with respect to any medical or hospital benefit, service, plan, or policy the school administers, operates, offers, or participates in with respect to students admitted to the school's education program or activity.

34 CFR § 106.40 (August 1, 2024).

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Certification Requirements

- Generally, a school cannot require a certification to participate in a program unless a certification is required from all students.
- Unless:
  - A specific level of physical ability is necessary for participation in the class, program, or extracurricular activity;
  - A certification is required for all students participating in the class program, or extracurricular activity; and
  - Cannot be used as a basis for discrimination.

34 CFR § 106.40 (August 1, 2024).

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Employee Requirements

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Status

- A school must not adopt or implement any policy, practice, or procedure, or take any employment action, on the basis of sex:
  - Concerning the current, potential, or past parental, family, or marital status of an employee or applicant for employment, which treats persons differently; or
  - That is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

34 CFR § 106.57 (August 1, 2024).

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Nondiscrimination

- A school must not discriminate against any employee or applicant for employment on the basis of current, potential, or past pregnancy or related conditions.

34 CFR § 106.57 (August 1, 2024).

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Temporary Medical Conditions

- A school must treat pregnancy or related conditions as any other temporary medical conditions for all job-related purposes, including:
  - Commencement, duration and extensions of leave; payment of disability income;
  - Accrual of seniority and any other benefit or service; and reinstatement; and
  - Under any fringe benefit offered to employees by virtue of employment.

34 CFR § 106.57 (August 1, 2024).

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Voluntary Leaves of Absence

- If a school does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a school must treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period of time.
- At the conclusion of leave, the employee must be reinstated to the status held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

34 CFR § 106.57 (August 1, 2024).

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Lactation Time and Space

- A school must provide reasonable break time for an employee to express breast milk or breastfeed as needed.
- A school must ensure that an employee can access a lactation space, which must
  - A clean space other than a bathroom,
  - Private and shielded from view,
  - Free from intrusion from others (it can lock),
  - That may be used by a student for expressing breast milk or breastfeeding, as needed.

34 CFR § 106.57 (August 1, 2024).

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Pre-Employment Inquiries

- A school cannot make a pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is “Miss or Mrs.”
- A school may ask an applicant for employment to self-identify their sex, but only if the question is asked of all applicants and if the response is not used as a basis for discrimination.

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OCR Resources

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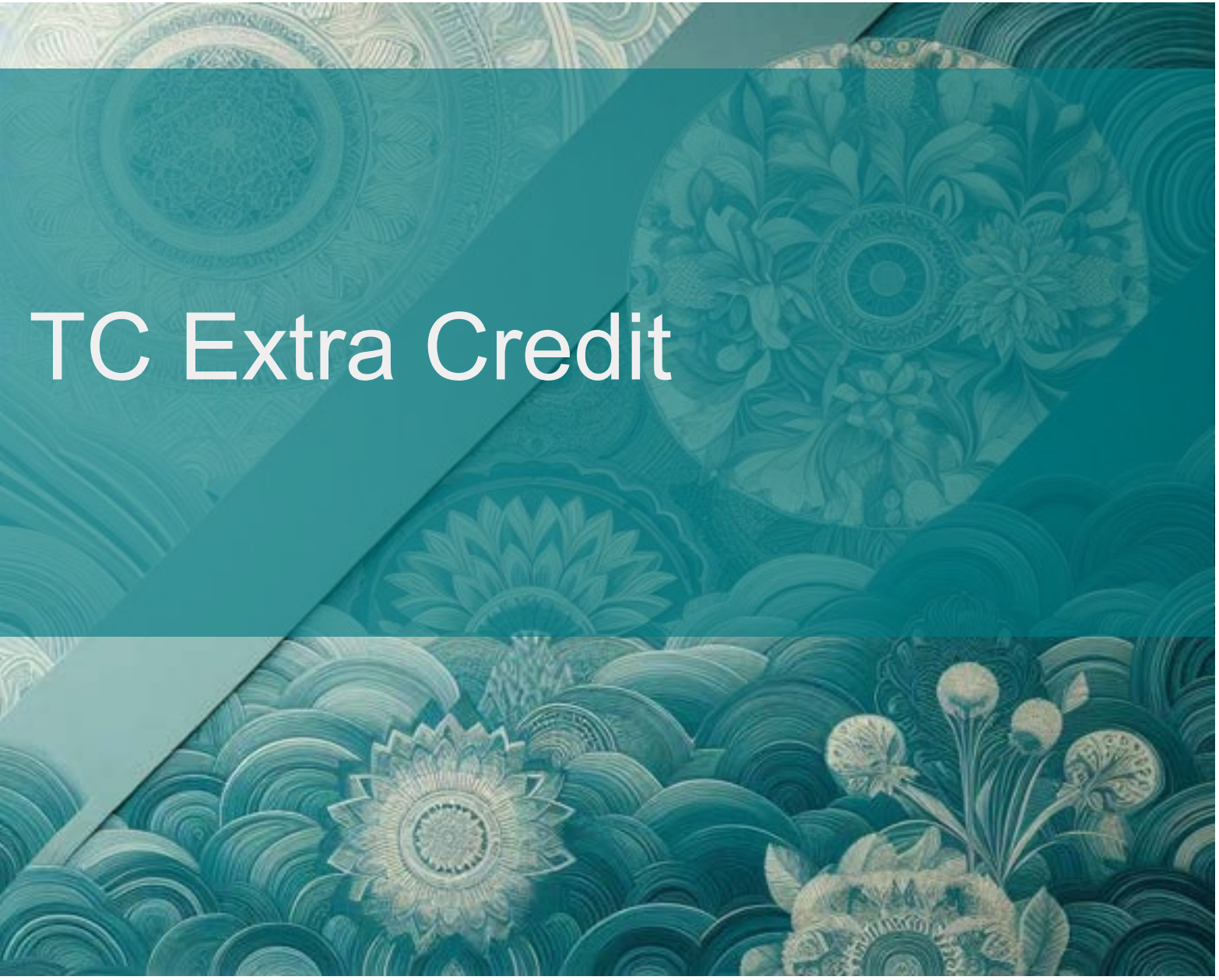
OCR Resources

- Fact Sheet
  - https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-factsheet.pdf
- Summary of Key Provisions
  - https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-summary.pdf
- Resource for Drafting Policies
  - https://www2.ed.gov/about/offices/list/ocr/docs/resource-nondiscrimination-policies.pdf
- Policy Guidance Portal
  - https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html

TC Extra Credit



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Higher Education Resources Page

HIGHER EDUCATION RESOURCES

As part of our ongoing commitment to the postsecondary community, Thompson Coburn's higher education practice routinely creates complimentary resources designed to assist institutions with navigating the complexities of the higher education regulatory and policy environment. We have collected a number of these resources on this page, including our most recent webinars, training series, desk guides, whitepapers, and blog posts. We hope you find these resources helpful, and if you have any questions, please do not hesitate to contact us!

COMPLIANCE RESOURCES

COMPLIANCE RESOURCE: FINANCIAL RESPONSIBILITY GUIDE

We provide a guide to the reporting obligations under ED's new Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit Rule.

COMPLIANCE RESOURCE: TCPA AND OTHER TELEMARKETING RULES

This guide helps colleges and universities understand TCPA regulations for text messages and calls to students, ensuring permission is obtained for promotional messages.

COMPLIANCE RESOURCE: A DESK GUIDE FOR THE 2023 FINAL FINANCIAL VALUE TRANSPARENCY & GAINFUL EMPLOYMENT RULE

We have developed this Desk Guide to assist institutions as they contemplate compliance with the final version of the GE rule.

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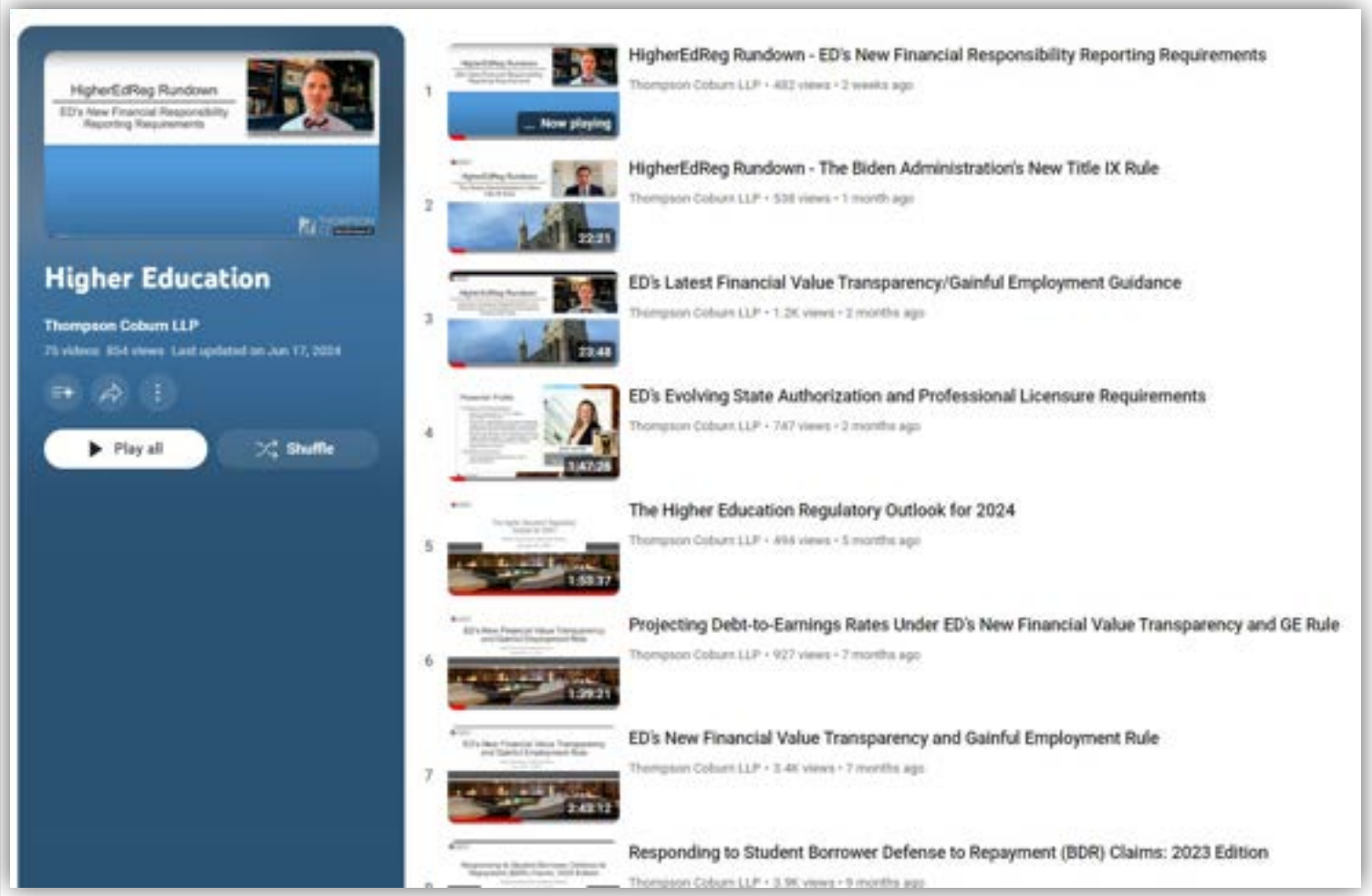
Webinars and Training Series



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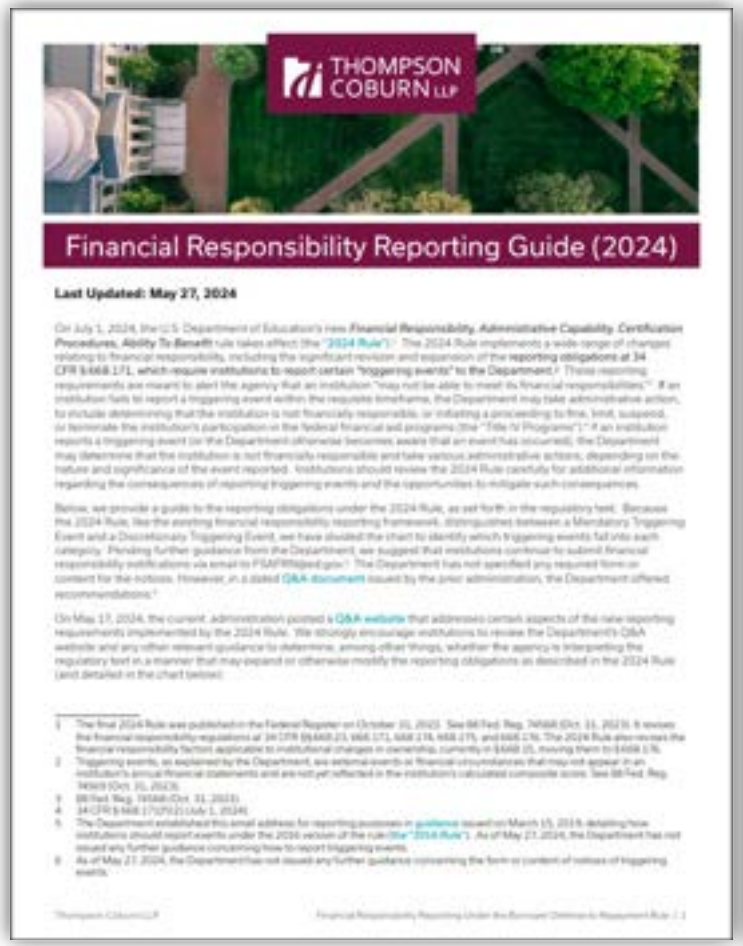
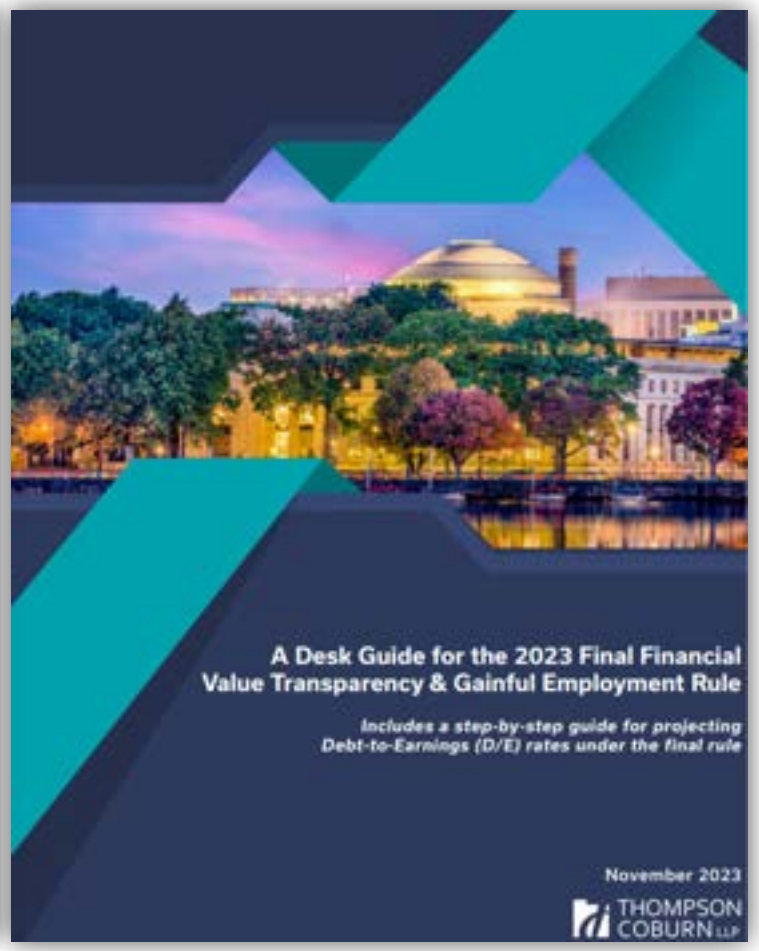
Compliance Materials





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REGucation (our blog)

Title IX (Joe's Version) Dropped This Morning

Scott Goldschmidt Stephanie Fredman April 19, 2024

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CONTRIBUTORS

We interrupt your Tortured Poets Department** listening party to inform you that the Biden administration has released its long awaited Title IX rules. The new rules, published this morning in unofficial form, will be formally published in the Federal Register shortly.

In its press release announcing the new rules, the Department also published a fact sheet, a summary of the major provisions of the final regulations, and a resource for drafting Title IX nondiscrimination policies, notices of nondiscrimination, and grievance procedures.

Thompson Coburn's Higher Education team is currently in the process of reviewing the final rules*, including the preamble which provides the Department's response to the significant, relevant issues raised in public comments and a statement providing the basis and the purpose of the rule. We will be providing additional information about the rule and resources for institutions of higher education in the coming weeks.

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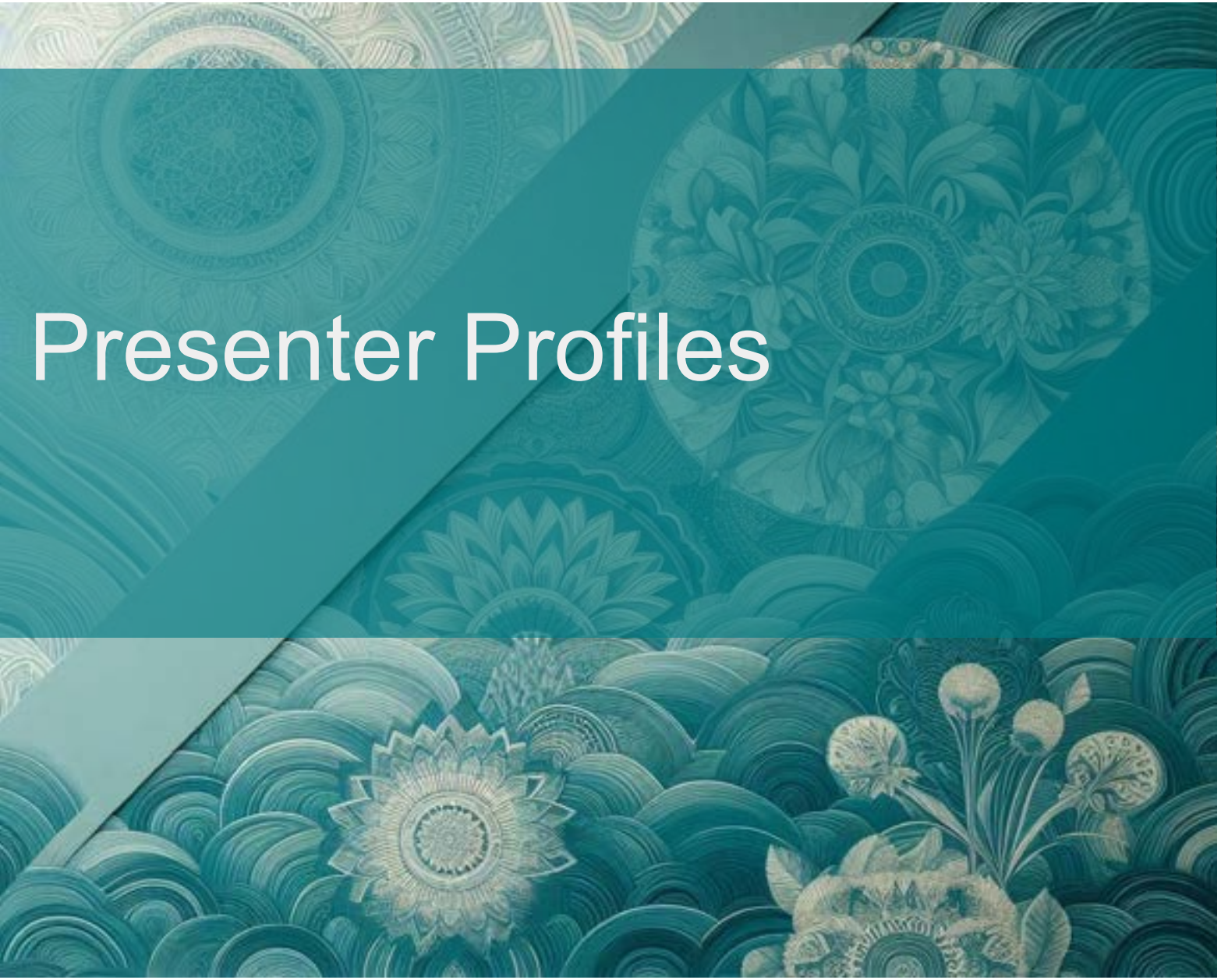

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