



TITLE IX TRAINING FOR PRESIDENTS

Utah System of Higher Education

Andrea Stagg
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MEET YOUR FACILITATOR



Andrea Stagg (she/her)

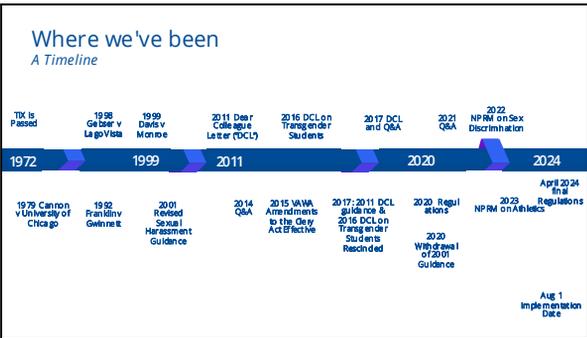
Andrea Stagg, J.D., joins Grand River Solutions as with extensive experience in higher education in-house legal settings at public and private colleges and universities. In this role, Andrea oversees the Consulting Services of Grand River Solutions. This includes Title IX and equity support, audits and compliance reviews, athletics consulting, accessibility and disability compliance, DEI initiatives, and Clery Act compliance solutions.

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Where we've been

A Timeline



1972	1999	2011	2020	2024
TIX is Passed	1992 Gabler v Lago Vista 1999 Davis v Monroe	2011 Dear Colleague Letter (DCL)	2016 DCL on Transgender Students 2017 DCL and Q&A 2021 Q&A 2022 NPRM on Sex Discrimination	Apr 8 2024 Final Regulations
1979 Cannon v University of Chicago	1992 Franklin v Gwinnett 2001 Revised Sexual Harassment Guidance	2014 Q&A 2015 VAWA Amendments to the Clery Act Effective	2017: 2011 DCL guidance & 2016 DCL on Transgender Students Rescheduled 2020 Regulations 2020 Withdrawal of 2011 Guidance	Aug 1 Implementation Date

WHERE WE ARE



- Implementation date was August 1, 2024.
- Seven lawsuits.
- Rolling preliminary injunctions and appeals.
- Request to the Supreme Court to intervene.
- OCR acknowledges injunctions and that it cannot enforce the new regulations in those states or against the named institutions.

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WHEN THE DUST SETTLES

- Possible outcomes to the litigation.
- First/next steps for implementation, if it occurs.

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CHANGES IN THE 2024 REGULATIONS

- Creates framework to respond to sex discrimination
- Expands employee reporting and response/notification obligations
- Not strictly limited by geography; impact matters
- Requires annual training for all employees and those implementing the policy.
- Allows access to the informal resolution process without "filing a complaint."

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COVERED CONDUCT – 2024 REGULATIONS

- **Discrimination on the basis of sex** includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
 - Incorporating *Bostock*.
 - Sex-based harassment is a form of sex discrimination and means sexual harassment, and other harassment *on the basis of sex, that is:*
 - Hostile environment sexual harassment
 - Quid Pro Quo
 - Specific Offenses (VAWA)
- How is this different from sexual harassment as defined in 2020?**

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GEOGRAPHY - 2024 REGULATIONS

- Generally, not required to respond to alleged sex discrimination off-campus unless it is "within the program or activity"
- But "within the program and activity" includes "conduct that is subject to the recipient's disciplinary authority"
- Some schools have broad disciplinary authority that includes off-campus. The Department is trying to address "two track" systems.



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PREGNANCY – 2024 REGULATIONS

- Not new, but clarified:
- Discrimination is prohibited.
 - Must provide reasonable modifications
 - Allow voluntary leaves or separate but comparable programs
 - Comparable treatment to other medical conditions
 - Modernized language around "related conditions."



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PREGNANCY – 2024 REGULATIONS

This is new:

When a student* informs any employee of the student's pregnancy or related conditions...the employee promptly:
(1) provides the Title IX Coordinator's contact information and
(2) informs that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access....



RESOLUTION OPTIONS – 2024 REGULATIONS

- Informal resolution does not require "making a complaint"
- Permits informal resolution in postsecondary setting between employees and students.
- Baseline procedural requirements in 106.45 are for sex discrimination other than sex-based harassment involving a student.
- Additional procedure requirements for sex-based harassment involving a student (106.46).
- Flexibility to use one (106.46 compliant) procedure for all matters
- Flexibility on whether to have a live hearing* and what type (advisor questioning, or questions through the hearing officer)

TRAINING REQUIREMENTS –2024 REGULATIONS

- All employees – not merely offered.
- Additional topics for those implementing grievance procedures, specific to their roles.
- Annually
- No required training for students (who aren't also employees); but VAWA!



WHAT'S BEEN ELIMINATED IN THE 2024 REGULATIONS

- No requirement to post training
- No recordkeeping requirement relating to actions taken meet obligations under the sections relating to pregnancy
- No "mandatory dismissals"
- No formal complaints required – oral or written are ok
- Fewer barriers to informal resolution

See 'A Goodbye GIF By The Rodgers & Hammerstein Organization

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OVERLAP WITH OTHER LAWS

- VAWA/Clery
- State nondiscrimination and antiharassment laws
- PUMP Act, PWFA, FMLA, and similar state laws
- Multi-layered training, notice, procedural requirements.



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TITLE IX TODAY

- Tremendously complex, risky, and evolving area of compliance.
- Title IX Coordinator is responsible for critical decisionmaking.
- Sexual harassment prevention remains a priority across agencies, including in sponsored research.



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TITLE IX TODAY

- What are the risks?
 - Litigation (I.E. study)
 - Investigations and findings by OCR, FSA, other agencies (including more and more federal agencies)
 - Reputational
 - Burnout and turnover of staff
 - Retention challenges
- **MOST IMPORTANT:** Harm to students, staff, and community members, and the harm can be and often is deeply devastating

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TITLE IX TODAY

- We all want safe, secure, healthy living, learning, working environments free from discrimination and harassment (based on sex or any other protected category)
- Challenges: encouraging reporting, recordkeeping; building and maintaining trust in the office and process, recruiting and retaining staff to do this work.
- How do you know how your Title IX Office doing?
 - Proper staffing
 - Data collection
 - Monitoring trends
 - Assessing training effectiveness

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TITLE IX TODAY

- Data
- Budget
- Measurable objectives
- How can we apply this approach to Title IX?

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