



Association of
Title IX Administrators

2024 Title IX Regulations

An Overview of the Final Rule

NOT FOR DISTRIBUTION

TNG Partners



Brett A. Sokolow, J.D.

Chair: TNG Board of Directors; TNG
Management Committee;
ATIXA Advisory Board



Daniel C. Swinton, J.D., Ed.D.

Chief Consulting Officer and
Partner, TNG



Joseph Vincent, M.L.S.

Partner and Vice President for
Investigations, TNG



Kimberly Pacelli, M.Ed., J.D.

Partner, TNG



Sandra K. Schuster, M.S., J.D.

Partner, TNG; President, ATIXA



Sharon Perry Fantini, Ph.D.

Partner, TNG



W. Scott Lewis, J.D.

Managing Partner, TNG; Chair,
NABITA Advisory Board



Strategic Risk
Management Solutions



Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

2024 Title IX Final Rule

- Issued **April 19, 2024**
- Effective and enforceable **August 1, 2024** (99 days from today)
 - Apply to incidents occurring **on or after August 1, 2024**, regardless of when the incident is reported
 - Incidents occurring **before August 1, 2024**, must be resolved using 2020 regulatory training and procedures, in perpetuity
- Combination of 2011 Dear Colleague Letter, 2020 Regulations, and new approaches
- 1561 pages total (1504 Preamble and 57 Regulations)
- More flexibility for Recipients in how to structure and staff grievance processes

Overarching Themes

- 2024 restores discretion and a high level of flexibility on process (not policy)
- Return of Stop/Prevent/Remedy framework with strong focus on community remedies
- Overall Final Rule about 10% substantively different from NPRM
- Although regulations maintain the NPRM split between § 106.45 and § 106.46, Recipients may address all allegations under the same process regardless of what/where, if they choose to
- Broad scope includes sex discrimination (disparate treatment; pattern/practice)
- 2024 regulations 65% or so changed from 2020 (more changed than not)
- Significantly broadens reporting access and jurisdiction over conduct

Scope

- Discrimination on the basis of:
 - Sex stereotypes
 - Sex characteristics
 - Pregnancy or related conditions
 - Sexual orientation
 - Gender identity
- Sex-based harassment:
 - Quid pro quo harassment
 - Hostile environment harassment
 - Sexual assault
 - Dating violence
 - Domestic violence
 - Stalking

§ 106.10; Final Rule pg. 1522

§ 106.2; Final Rule pg. 1513-5

Hostile Environment Sex-Based Harassment

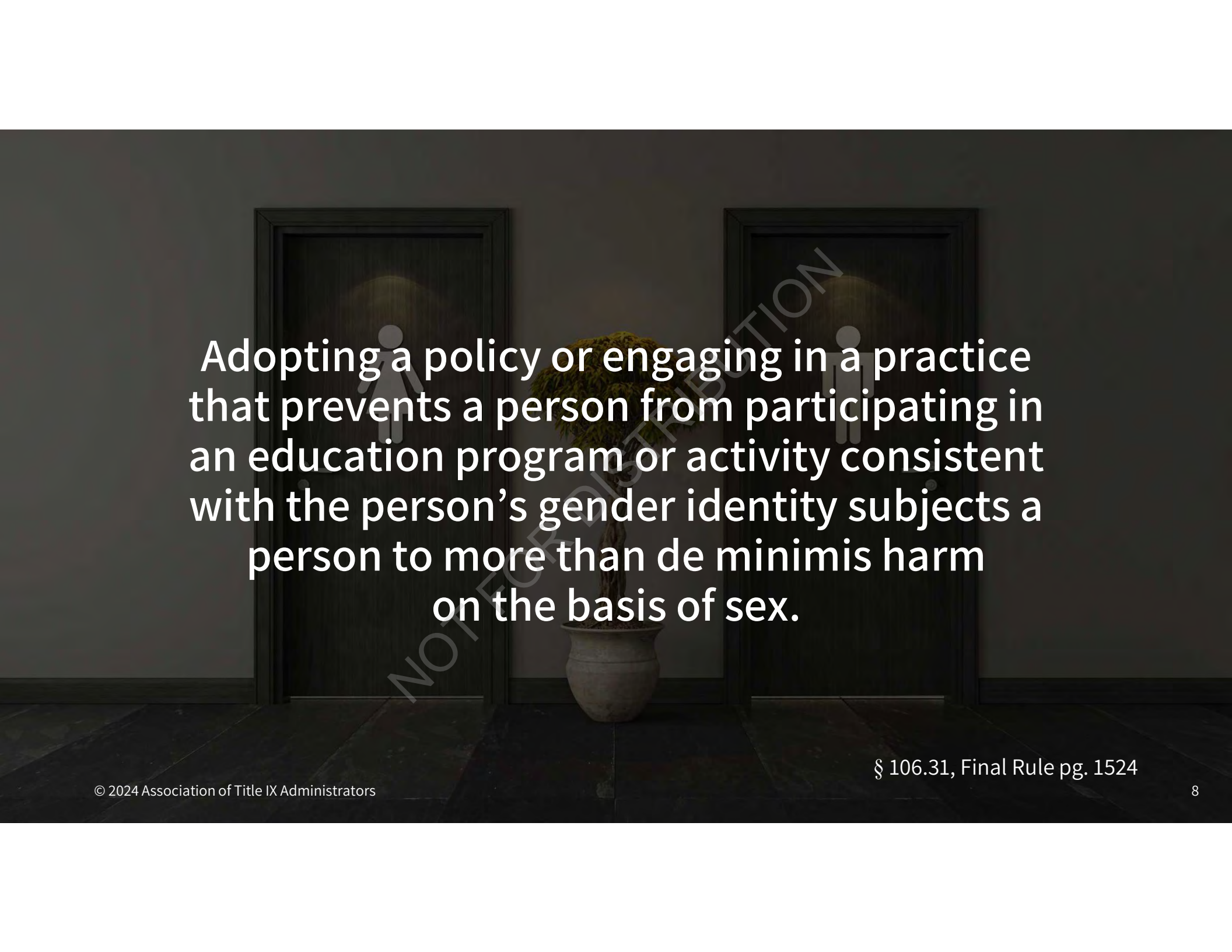
Definition

- **Unwelcome, sex-based conduct**, that based on the totality of the circumstances, is **subjectively and objectively offensive** and is **so severe or pervasive** that it **limits or denies** a person's ability to participate in or benefit from the Recipient's education program or activity

Totality of the Circumstances Factors

- Degree that the conduct affected the Complainant's ability to access
- Type, frequency, and duration of the conduct
- Ages, roles, previous interactions, and other relevant factors about the parties
- Location/context of the conduct
- Other sex-based harassment in the program or activity

§ 106.2; Final Rule pg. 1513



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.

§ 106.31, Final Rule pg. 1524

Applicability

Recipient's education program or activity in the United States

- Conduct occurring in a building owned or controlled by an officially recognized post-secondary **student organization**
- Conduct that is subject to the Recipient's **disciplinary authority**
- A sex-based hostile environment under Recipient's education program or activity, even when some alleged conduct occurred outside the Recipient's education program or activity or outside the United States
 - **Downstream or in-program effects of external conduct**

§ 106.11; Final Rule pg. 1522

Definitions & Concepts

- Actual Knowledge redefined as “with knowledge of conduct that may constitute...” §106.44(a) (pg. 1529)
- Complainant (pg. 1506)
- Complaint (pg. 1506)
- Confidential employee (pg. 1506)
- Evaluation (pg. 1542)
- Parental status (pg. 1509)
- Peer retaliation (pg. 1510) and Retaliation (pg. 1512)
- Pregnancy or related conditions (pg. 1510)
- Codified dating violence, domestic violence, and stalking definitions (pg. 1514-5)

Training Requirements

All employees must be trained upon hiring, change in role, and annually on:

- Recipient obligation to address sex discrimination
- Scope of conduct that constitutes sex discrimination
- Applicable notification requirements

Training must be completed, not just made available.

All other training requirements are similar to the 2020 regulations.


§ 106.8; Final Rule pg. 1519-20
Preamble; Final Rule pg. 277



Higher Ed. Notification Requirements

EMPLOYEE ROLE	DISCLOSURE FROM	NOTIFY TIXC	PROVIDE TIXC CONTACT INFO
Confidential Employees	<ul style="list-style-type: none"> ▪ Student ▪ Employee 	NO	YES
Employees with the authority to institute corrective measures	<ul style="list-style-type: none"> ▪ Student ▪ Employee 	YES	YES
Employees with responsibility for administrative leadership, teaching, and advising	<ul style="list-style-type: none"> ▪ Student ▪ Employee 	YES	YES
All other employees who are not confidential employees	<ul style="list-style-type: none"> ▪ Student ▪ Employee 	CHOOSE ONE OR THE OTHER	

§ 106.44, Final Rule pg. 1529-31



Slight Change for K-12:
All non-confidential elementary or secondary school employees must notify the Title IX Coordinator of information about conduct that could reasonably construe sex discrimination.

§ 106.44, Final Rule pg. 1529-30

Intake & Evaluation

- Upon notice of sex discrimination allegations, TIXC must:
 - Treat parties equitably
 - Offer and coordinate supportive measures
 - Notify the Complainant of procedures, and in the event of a complaint, the Respondent
 - Initiate grievance procedures or Informal Resolution as requested
- TIXC may initiate a complaint if the alleged conduct:
 - Presents an imminent and serious health or safety threat
 - Prevents the Recipient from ensuring equal access to its education program or activity on the basis of sex

§ 106.44; Final Rule pg. 1532-4

Supportive Measures

- Must not unreasonably burden either party
- Must be designed to protect the safety of the parties or the educational environment or to provide support during the resolution process
- May **not** be imposed for punitive or disciplinary reasons
- May be modified or terminated at the conclusion of the resolution process
- Parties may challenge a decision to provide, deny, modify, or terminate supportive measures applicable to that party
 - Must be heard by an impartial employee with the ability to modify or reverse original decision

§ 106.44; Final Rule pg. 1535-6

Informal Resolution

Prior to a determination, institutions may, but are not required to, offer Informal Resolution at the TIXC's discretion

- Does not require a complaint
- Cannot require parties to waive their right to an investigation and determination
- Not permitted when a K-12 student alleges sex-based harassment against an employee

§ 106.44; Final Rule pg. 1538-40



Which Grievance Procedures Apply?

	§ 106.45	§ 106.46
K-12	All sex discrimination and sex-based harassment complaints	N/A
Higher Education	<ul style="list-style-type: none"> Sex discrimination complaints that are not sex-based harassment Sex-based harassment complaints without a student Complainant or Respondent (employees/third parties) 	All sex-based harassment complaints involving a student Complainant or Respondent

- If a party is a **student employee**, TIXC must consider whether:
 - The party’s primary relationship is to receive an education
 - The alleged sex-based harassment occurred while the party was performing employment-related work

§ 106.45, Final Rule pg. 1540

§ 106.46, Final Rule pg. 1550

Basic Grievance Procedure Requirements

- TIXC, Investigator(s), and Decision-maker(s) may not have:
 - A conflict of interest
 - A bias for or against Complainants or Respondents generally
 - A bias or an individual Complainant or Respondent
- Decision-maker may be the TIXC or Investigator
- Presumption of non-responsibility
- Reasonably prompt timeframes
- Objective evaluation of all relevant evidence

§ 106.45; Final Rule pg. 1541-2

Notice of Allegations

§ 106.45	§ 106.46
<ul style="list-style-type: none"> ▪ Not required to be written ▪ Must be amended if additional allegations come forward or allegations are dismissed 	<ul style="list-style-type: none"> ▪ Must be written ▪ Sufficient time to prepare for initial interview ▪ May be reasonably delayed for to address safety
<ul style="list-style-type: none"> ▪ Grievance Procedures ▪ Informal Resolution Process, if any ▪ Identities of the parties ▪ Description of alleged conduct ▪ Dates and locations of the alleged conduct ▪ Prohibition on retaliation ▪ Equal opportunity to access relevant evidence 	<ul style="list-style-type: none"> ▪ Everything in § 106.45 ▪ Presumption of non-responsibility ▪ Right to Advisor of choice ▪ Prohibition of knowingly making false statements or providing false information, if applicable ▪ Equal opportunity to access investigation report

§ 106.45, Final Rule pg. 1543-4

§ 106.46, Final Rule pg. 1551-2

Dismissals

- **A Recipient may dismiss a sex discrimination complaint when:**
 1. The Recipient is unable to identify the Respondent after taking reasonable steps to do so
 2. The Respondent is no longer enrolled or employed by the Recipient
 3. The Complainant voluntarily withdraws any or all of the allegations in the complaint
 4. The alleged conduct would not constitute sex discrimination, if proven
- Dismissals may be appealed by either party
- Appeal Decision-Maker cannot have been previously involved in the complaint

§ 106.45; Final Rule pg. 1544-5

§ 106.46; Final Rule pg. 1552

Investigation Under § 106.45

Recipient must provide for an adequate, reliable, and impartial investigation

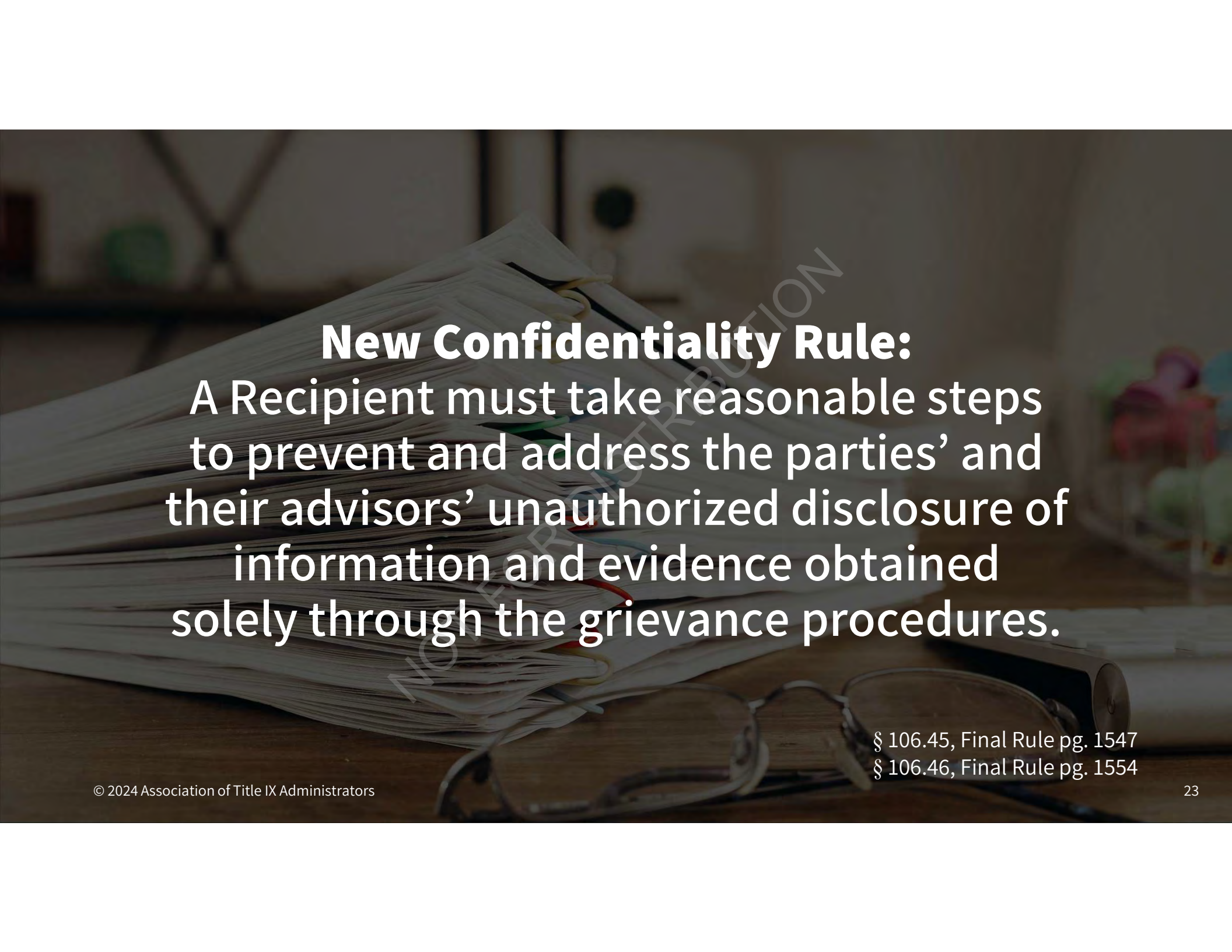
- Burden is on the Recipient to investigate and gather sufficient relevant evidence
- Equal opportunity for parties to:
 - Provide fact witnesses and inculpatory and exculpatory relevant evidence
 - Access relevant evidence (Directly Related Evidence is gone)
 - Reasonable opportunity to respond to the evidence

§ 106.45; Final Rule pg. 1546-7

Investigation Under § 106.46

- Written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare
- Provide the parties with the same opportunities to:
 - Be accompanied by an Advisor of choice
 - Have any persons other than an Advisor present
 - Present expert witnesses, if permitted at all
 - Access to relevant evidence and investigation report
 - Opportunity to respond to the evidence/report (10 + 10 is gone)
- Reasonable extension of timeframes on a case-by-case basis for good cause

§ 106.46; Final Rule pg. 1552-4



New Confidentiality Rule:
A Recipient must take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the grievance procedures.

§ 106.45, Final Rule pg. 1547
§ 106.46, Final Rule pg. 1554

Questioning & Decision-Making Under § 106.45

- Decision-maker must be able to question parties and witnesses to adequately assess credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination
- Preponderance of the evidence unless clear and convincing standard is used for all other comparable proceedings
- Written determination
 - Rationale
 - Grounds for Appeal, if applicable
- TIXC coordinates remedies and sanctions when there is a policy violation

§ 106.45; Final Rule pg. 1547-9

Questioning & Decision-Making Under § 106.46

- Decision-maker must be able to question parties and witnesses to adequately assess credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination
- Live hearing is optional under Title IX, but may be required in some jurisdictions
- If no live hearing:
 - Investigator(s) or Decision-maker(s) must be able to ask parties and witnesses questions during individual meetings
 - Parties may suggest questions of other parties or witnesses for Investigator(s) and/or Decision-maker(s)
 - Provide parties with a recording or transcript

§ 106.46; Final Rule pg. 1554-8

Live Hearing Under § 106.46

- Decision-maker must be able to question parties and witnesses to adequately assess credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination
- Parties may ask questions through the Decision-maker(s) or through their Advisors
 - If an institution offers Advisor-conducted questioning, it must appoint an Advisor for if a party does not have an Advisor
 - Appointed Advisor cannot be a confidential employee
- Decision-maker must determine relevance prior to each question being posed

§ 106.46; Final Rule pg. 1556-8

Appeals

- **Section 106.45:** at minimum, must be the same as offered for all other comparable proceedings, if any, including other discrimination complaints
- **Section 106.45:** must offer all parties the opportunity to appeal on the following bases:
 1. Procedural irregularity that would change the outcome.
 2. New evidence that would change the outcome and that was not reasonably available when the determination was made
 3. TIXC, Investigator, or Decision-maker 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

May equitably offer additional appeal grounds

§ 106.45; Final Rule pg. 1549

§ 106.46; Final Rule pg. 1558

Pregnancy and Related Conditions: Students

- Employees must provide TIXC's contact information and inform the student (or legal representative) that the TIXC works to prevent sex discrimination and ensure equal access
- Reasonable modifications to policies, practices, or procedures
 - Cannot fundamentally alter the education program or activity
 - Student can accept or decline each reasonable modification
 - Cannot require documentation unless necessary to provide the modification
- Voluntary access to a separate and comparable portion of the education program or activity
- Voluntary leaves of absence
- Lactation space

§ 106.40; Final Rule pg. 1525-8

Pregnancy and Related Conditions: Employees

- Comparable treatment to other temporary medical conditions for all job-related purposes
 - Leave commencement, duration, and extensions
 - Disability payment income
 - Seniority accrual
 - Any other benefit or service
 - Reinstatement
 - Fringe benefits
- Voluntary leaves of absences
- Lactation time and space

§ 106.57; Final Rule pg. 1559-60

Become an ATIXA Member



ATIXA Super Membership for Higher Education Includes:

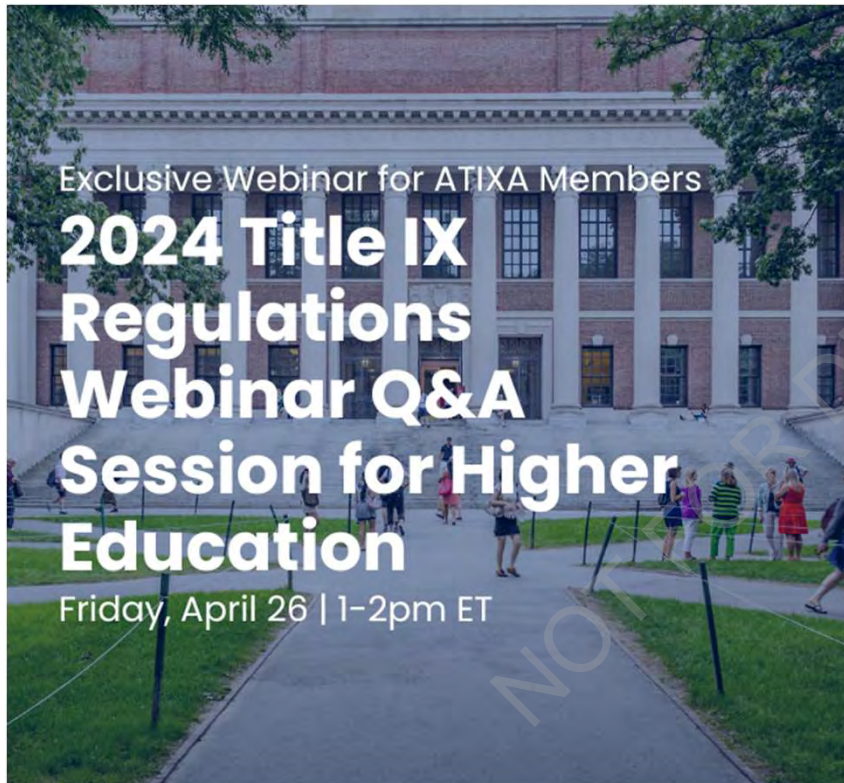
- Access to ATIXA services and products worth up to \$20,000, without per-item fees
- Three complimentary registrations to ATIXA Higher Education certification courses
- All 20-Minutes-to...Trained video modules
- The ATIXA Title IX Toolkit (TIXKit), which includes more than 350 state-of-the-art templates to ensure your policies and procedures are compliant with current Title IX Regulations
- Free Mandated Reporter training module
- Unlimited sub-users with full access
- VIP Socials at ATIXA Annual Conference and other events
- Access to live webinars
- Online Communities, including a higher-ed-specific community
- Self-care savings
- And more!



ATIXA K-12 Professional Development Membership Package Includes:

- Access to ATIXA services and products worth up to \$20,000, without per-item fees
- Six complimentary registrations to ATIXA K-12 Certification Courses
- All 20-Minutes-to...Trained video modules
- Unlimited online training modules, webinars, and on-demand recordings
- The ATIXA K-12 Title IX Toolkit (TIXKit), which includes more than 350 state-of-the-art templates to ensure your policies and procedures are compliant with current Title IX Regulations
- VIP Socials at ATIXA Annual Conference and other events
- Access to live webinars
- Online Communities, including a K-12-specific community
- Self-care savings
- And more!

Register today at ATIXA.org/regs



Implementing the Title IX Regulations Certification Courses

Implementing the Title IX Regulations for Higher Education

May 7 | Virtual

June 2 | ATIXA's Summer Symposium
Denver, CO

This course focuses on the revised regulatory requirements and the policy, procedural, and practice changes needed to ensure compliance. Title IX professionals will leave this course with an understanding of:

- The elements of the various phases of the Title IX Grievance Process
- Training and reporting requirements
- Awareness and response requirements for pregnant and parenting students and employees
- Protections for LGBTQIA+ individuals
- Title IX scope and applicability

Implementing the Title IX Regulations for Higher Education: Nuances & Best Practices

May 7-8 | Virtual

June 2-3 | ATIXA's Summer Symposium
Denver, CO

This two-day course will delve deeper into specific sections of the Final Rule, the nuances of each, anticipating challenges, and exploring how to implement key provisions. Expert presenters will place this discussion against the backdrop of ATIXA's best practices approach for institutional sex-based discrimination and harassment grievance procedures, as well as more specific protections for non-discrimination based on pregnancy or related conditions.

Implementing the Title IX Regulations for K-12 Schools and Districts

May 13 | Virtual

June 2 | ATIXA's Summer Symposium
Denver, CO

This one-day certification course provides a comprehensive review of the procedural and substantive elements of the final Title IX regulations, with a focus on practical implementation strategies for Title IX administrators. Course content focuses on the revised regulatory requirements and the policy, procedural, and practice changes needed to ensure compliance.

June 2-7, 2024 | Denver, CO

ATIXA's 2024 Summer Symposium

This event features 20 certification courses and workshops including:

- Implementing the Title IX Regulations for Higher Education
- Implementing the Title IX Regulations for Higher Education: Nuances & Best Practices
- Implementing the Title IX Regulations for K-12 Schools and Districts
-

Multi-Course Discounted Rates:

Discounts are provided on a sliding scale based on the applicable registrations in the same order.

2-4 grouped individuals

15% discount on registrations

5+ grouped individuals:

25% discount on registrations

www.ATIXA.org/Denver



Association of
Title IX Administrators

Further Assistance

Want ATIXA to ask OCR a question?

regs@atixa.org

Need policy or other consulting support?

inquiry@tngconsulting.com



Association of
Title IX Administrators

**ALL ATIXA PROPRIETARY TRAINING MATERIALS ARE COVERED BY
THE FOLLOWING LIMITED LICENSE AND COPYRIGHT.**

By purchasing, receiving, and/or using ATIXA materials, you agree to accept this limited license and become a licensee of proprietary and copyrighted ATIXA-owned materials. The licensee accepts all terms and conditions of this license and agrees to abide by all provisions. No other rights are provided, and all other rights are reserved. These materials are proprietary and are licensed to the licensee only, for their use. This license permits the licensee to use the materials personally and/or internally to the licensee's organization for training purposes, only. If these materials are used to train Title IX personnel, they are subject to 34 CFR Part 106.8(f)(3), requiring all training materials to be available for inspection upon request. ATIXA does not permit any licensee/purchaser to publicly display, share, or publish these materials. If you have lawfully obtained ATIXA materials by registering for an ATIXA training, you are licensed to use the materials provided for that training. Licensees may download and save a PDF version of training materials for their completed training to provide them to a third-party for inspection upon request in compliance with federal regulations. No right to disseminate, post, or provide a copy of the materials publicly or to any third-party is permitted.

You are not authorized to copy or adapt these materials without ATIXA's explicit written permission. No one may remove this license language from any version of ATIXA materials. Should any non-licensee post these materials to a public website, ATIXA will send a letter instructing the licensee to immediately remove the content from the public website upon penalty of copyright violation. These materials may not be used for any commercial purpose except by ATIXA.