

# Title IX Training

## Texas County Technical College Employees

August 2024

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# Agenda

- Background on why TCTC has a new Title IX Policy.
- Obligations to address sex discrimination in TCTC's educational program and activities.
- What is Sex Discrimination?
- What is Sex-Based Harassment?
- Notification and Reporting Requirements:
  - Sex Discrimination
  - Sex-based Harassment
  - Pregnancy

How Did We Get Here?

# A Little History...

- Obama-era Title IX policies were aimed at forcefully addressing campus sexual assault.
- Trump-era Title IX rules overhauled the former policies and increased procedural protections in schools' grievance resolution procedures.
  - Presumption that respondent was not responsible for misconduct;
  - Respondent required to have notice of charges, access to all evidence, and have live hearings with cross-examination;
  - Narrowed definition of sexual harassment and limited jurisdictional reach of Title IX.

# What Has Changed?

# Themes in the 2024 Amendments

- The term “sex” has been expanded to include gender identity and sexual orientation, consistent with the Supreme Court’s reading of Title VII in *Bostock*.
- The term “sexual harassment” has been broadened and re-defined as “sex-based harassment.”
- The jurisdiction for Title IX conduct is broader – more conduct is now subject to the Title IX process.
- No more prohibitions on informal resolution for cases at the post-secondary level.
- Institutions have greater choice on how to process cases.

# Overview - TCTC's Training Requirements

- All employees must receive training promptly upon hiring or change of position that alters their duties under the TCTC's Title IX Policy on:
  - ❑ TCTC's obligation to address sex discrimination in its education or activity;
  - ❑ The scope of conduct that constitutes sex discrimination under the TCTC's Title IX Policy, including the definition of sex-based harassment; and
  - ❑ Employees' notification and information obligations under TCTC's Title IX Policy.
- Certain employees involved in the investigation and resolution of Title IX complaints must receive additional training.

# Sex Discrimination





# Expanded Jurisdiction

- The Title IX 2024 Amendments apply to the education program or activity operated by a recipient of Federal financial assistance.
- TCTC must address sex discrimination that occurs:
  - In its education program or activity in the United States;
  - When conduct is subject to TCTC's disciplinary authority (which may include off-campus behavior);  
or
  - Outside TCTC's education program or activity, if it creates a sex-based hostile environment in TCTC's education program or activity (even if some of this conduct occurs outside the United States).

# Scope of Prohibited Sex Discrimination

- Discrimination “on the basis of sex” includes discrimination on the basis of:
  - ❑ Sex stereotypes
    - Sex stereotyping violates Title IX when it operates to exclude a person from participation in, deny a person the benefits of, or otherwise subject a person to discrimination under a school’s education program or activity.
    - Taking adverse action based on a person’s failure to conform to beliefs about how they should look, behave, or act as a male or female.
    - Can include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on the student’s nonconformity with stereotypical notions of masculinity and femininity
  - ❑ Sex characteristics
    - Physiological sex-based characteristics, including person’s anatomy, hormones, and chromosomes associated with male or female bodies.
  - ❑ Pregnancy or related conditions
    - Pregnancy, childbirth, termination of pregnancy, or lactation.
    - The rule also covers related medical conditions and recovery associated with to pregnancy, childbirth, termination of pregnancy, or lactation
  - ❑ Sexual orientation
    - The Department declined to define this term in the rules stating it was “now well understood as it is used widely in laws and policies.”
  - ❑ Gender identity
    - An individual’s sense of their gender, which may or may not be different from their sex assigned at birth.

# Sex Discrimination (cont.)

- Sex discrimination bars discrimination based on traits that are “inextricably bound up with” sex.
- These bases are intended to provide notice on the broad scope of prohibited sex discrimination.
- Nothing in the Department’s interpretation of the scope of discrimination “on the basis of sex” under Title IX turns on resolving the meaning of the term “sex.”
  - Impossible to discriminate against a person on one of these bases without discriminating against that individual based, at least in part, on sex, even if “sex” is understood only in terms of certain physiological sex characteristics.
- Title IX covers discrimination based on one person’s perception of another, regardless of whether those perceptions are accurate.

# Pregnant and Lactating Students and Employees

- Since 1975, the Title IX regulations have required that recipients not discriminate based on pregnancy or related conditions, including childbirth, termination of pregnancy, and recovery.
- 2024 Amendments update these existing protections and clarify that a recipient must protect students, employees, and applicants from discrimination based on pregnancy, childbirth, termination of pregnancy, lactation, related medical conditions, or recovery, including by providing reasonable modifications for students, reasonable break time for employees for lactation, and a clean, private lactation space for both students and employees.

# Pregnancy - Modifications

- TCTC must consult with the student on modifications to meet student's individualized needs.
- TCTC has no obligation to make modifications for a pregnant student that fundamentally alter the nature of the education program or activity.
- No matter when informed by the student, TCTC needs to respond promptly and effectively to ensure that equal access to educational program or activity.
- Modifications: allow pregnant student food/water in class; sit or stand in class as needed; restroom and other intermittent breaks; class absences for medical appointments; access to online education; changes in schedule or course sequence; extensions for class work and exams; change in physical space or supplies (e.g., different desk; larger uniform; footrest); elevator access.
- TCTC cannot require supporting documentation for a student to obtain the above modifications.

# Sex-Based Harassment



# Sex-Based Harassment Definition

- A form of sex discrimination.
- TCTC's jurisdiction to address sex-based harassment under the Title IX Policy is when either the complainant or respondent is a TCTC student or employee.
  - If a party is both a student and an employee, TCTC must perform a fact-specific inquiry to determine whether the party's primary relationship with TCTC is to receive an education.
- Includes not only conduct of a sexual nature, but also other forms of harassment that may not be "sexual" but that are nonetheless based on sex, such as harassment based on pregnancy, gender identity, or sex stereotypes.
- Conduct that is sex-based, unwelcome, subjectively and objectively offensive, and sufficiently severe or pervasive to limit or deny a student's ability to participate in or benefit from TCTC's education program or activity.
  - Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex are within the purview of Title IX and may constitute sex-based harassment provided they meet the requirements of the definition.
- Department of Education Office of Civil Rights states that prompt and effective response to known sex-based harassment is most important thing a school can do when confronted with such an issue.

# Sex-Based Harassment - Types

- *Quid pro quo harassment* occurs when an employee or other person authorized by TCTC to provide aid, benefit, or service to a student or other person under TCTC's education program or activity explicitly or impliedly conditions the provision of such an aid, benefit, or service on the student or other person's participation in unwelcome sexual conduct.
- *Hostile environment harassment* occurs when a person is subject to unwelcome sex-based conduct that is subjectively and objectively offensive and is so severe or pervasive that it limits or denies the person's ability to participate in or benefit from the TCTC's education program or activity (i.e., creates a hostile environment).
  - Determined through a fact-based inquiry under TCTC's Title IX Grievance Procedures:
    - One stray remark is not considered pervasive.
    - Balanced with First Amendment rights: A statement of opinion or a person's point of view on an issue of debate with which another person disagrees, is not the kind or degree of conduct that creates a sex-based hostile environment.
  - TCTC is not expected to monitor the online activity of students or faculty; but when an employee, has information about conduct among students that took place on social media or other platforms and that reasonably may have created a sex-based hostile environment, the employee is required to take action.



# Sex-Based Harassment – Types (cont.)

- *Sexual assault*
  - An offense classified as a forcible or nonforcible sex offense
- *Dating violence*
- *Domestic violence*
  - Felony or misdemeanor crimes
- *Stalking*
  - Conduct directed at a specific person that would cause a reasonable person to (i) fear for their safety or the safety of others; or (ii) suffer substantial emotional distress

# Reporting and Information Obligations



# TCTC's Responsibilities

- When TCTC has *knowledge* of conduct that reasonably may constitute sex discrimination in its education program or activity, it must respond promptly and effectively.
  - Does not require the filing of a complaint to trigger TCTC's obligations to act.
- Knowledge can be acquired through oral or written statements made to employees.
  - May not need to come directly from the impacted party if the conduct described reasonably may constitute sex discrimination in TCTC's education program or activity.
- TCTC must objectively understand the oral or written statement as an allegation of conduct that may constitute sex discrimination.
  - A complainant need not use any particular "magic words"—such as "I want to initiate grievance procedures."
  - Discussion with an employee that amounts to more than a student's general inquiry about grievance procedures.

# Reporting Issues – Sex Discrimination

- What does an employee have to do when the employee learns about suspected sex discrimination?
  - Once a student has provided information *to any employee* (either orally or in writing), the employee must either notify the Title IX Coordinator or provide the Title IX Coordinator's contact information and information about how to make a complaint of sex discrimination.
    - Certain TCTC employees *are required to notify the Title IX Coordinator* when they have information about conduct that reasonably may constitute sex discrimination. Those are TCTC employees who either have authority to take corrective action on behalf of TCTC or who have responsibility for administrative leadership, teaching, or advising, *must* notify the Title IX Coordinator.
    - All other TCTC employees are obligated to either notify the Title IX Coordinator or provide the contact information of the Title IX Coordinator and information about how to make a complaint of sex discrimination to any person who provides the employee with information about conduct that reasonably may constitute sex discrimination.
    - The Department believes that oral reports are necessary to ensure College is learning of and addressing all sex discrimination in its education program or activity.
  - TCTC is not expected to monitor the online activity of students or faculty; but when an employee, has information about conduct among students that took place on social media or other platforms and that reasonably may have created a sex-based hostile environment in the TCTC's education program or activity, the employee must report.

# Reporting Issues - Pregnancy

- What does an employee have to do when a student discloses pregnancy or a related condition to the employee?
  - ❑ TCTC employees are required to share Title IX Coordinator contact information if a student discloses pregnancy or a related condition, and to provide student with information on the Title IX Coordinator's ability to coordinate specific actions to prevent sex discrimination and ensure equal access to the TCTC's educational program or activity.
    - Being so advised of the resources available through the Title IX Coordinator, it then becomes the choice of the student to go to the Title IX Coordinator.
  - ❑ There is no employee obligation to inform Title IX Coordinator if the employee learns a student is pregnant.
  - ❑ An employee must provide the information only when directly informed by the student of pregnancy or a related condition.
    - No employee duty to act based on secondhand information.
    - No obligation for employee to follow up with the student to see whether the student has advised Title IX Coordinator of her condition.
    - No duty to act based on supposition or observation.