

Quick Reference Highlighting Key Differences Between the 2024 and 2020 Title IX Rules

The Title IX regulations underwent significant revisions between 2020 and 2024, reflecting shifts in federal policy regarding sex discrimination in educational settings. The 2024 regulations introduced significant changes compared to the 2020 rules. Many colleges just recently adjusted their policies and procedures to reflect changes made under the 2024 rules. However, under the current administration, institutions were instructed that the 2024 rules are vacated and we should return to the 2020 rules. Below are the key differences between the 2020 and 2024 Title IX rules:

1. Expanded Definition of Sex Discrimination:

- *2020 Regulations:* Focused primarily on sexual harassment, defining it narrowly and requiring conduct to be "severe, pervasive, and objectively offensive" to be actionable.
- *2024 Regulations:* Broaden the scope to include discrimination based on sex stereotypes, sex characteristics, sexual orientation, gender identity, and pregnancy-related conditions. The standard for harassment is adjusted to conduct that is "so severe or pervasive" that it limits or denies a person's ability to participate in the educational program.

2. Scope of Institutional Responsibility:

- *2020 Regulations:* Limited institutional responsibility to incidents occurring within programs or activities under substantial control of the institution, generally excluding off-campus conduct.
- *2024 Regulations:* Expand responsibility to address conduct within the institution's disciplinary authority, including certain off-campus and online behaviors. Institutions must also address hostile environments in their programs even if some underlying conduct occurred outside their programs or the U.S.

3. Grievance Procedures and Standards of Evidence:

- *2020 Regulations:* Mandated specific grievance procedures, including live hearings with cross-examination in postsecondary institutions, and allowed institutions to choose between "preponderance of the evidence" and "clear and convincing evidence" standards.
- *2024 Regulations:* Provide more flexibility in grievance procedures, removing the requirement for live hearings and cross-examination. Institutions are required to use the "preponderance of the evidence" standard unless they apply the "clear and convincing evidence" standard in all comparable proceedings.

4. Employee Reporting Obligations:

- *2020 Regulations:* Required only designated employees, such as Title IX Coordinators, to act on reports of sexual harassment.

- *2024 Regulations:* Obligate a broader range of employees to notify the Title IX Coordinator when they have information about conduct that may constitute sex discrimination.

5. Protections for LGBTQ+ Individuals:

- *2020 Regulations:* Did not explicitly address protections based on sexual orientation or gender identity.
- *2024 Regulations:* Explicitly include protections against discrimination based on sexual orientation and gender identity, aligning with the Supreme Court's decision in *Bostock v. Clayton County*.

6. Pregnancies:

- *2020 Regulations:* No such rule
- *2024 Regulations:* An employee who knows of a student's pregnancy or related condition must inform them of the Title IX coordinator's role and contact information. The Title IX coordinator must then inform the student of their rights.).

7. Evidence:

- *2020 Regulations:* Schools must use either a "preponderance of the evidence" standard or "clear and convincing evidence" standard in sexual harassment investigations, as long as the school uses the same standard for students and employees.
- *2024 Regulations:* Schools must use a "preponderance of the evidence" standard in all investigations of sex-based harassment (or other sex discrimination) unless the school uses a "clear and convincing evidence" standard in all "comparable" proceedings (such as for race and disability discrimination or physical assault).

8. Cross Examination:

- *2020 Regulations:* In institutions of higher education's (IHEs) following an investigation of sexual harassment, the school must allow the parties' advisors to conduct cross-examination at a live hearing.
- *2024 Regulations:* In IHEs, for complaints of sex-based harassment involving 1+ students, the school must (1): interview each party or witness in individual meeting(s); or (2) have a decision-maker question all parties and witnesses at a live hearing, where the school has the option of also allowing the parties' advisors to conduct cross-examination.

8. Informal Resolution:

- *2020 Regulations:* Schools can use an informal resolution process, such as mediation or a restorative process, to resolve a complaint of student-on-student sexual harassment.
- *2024 Regulations:* Schools can use an informal resolution process, such as mediation or a restorative process, to resolve a complaint of any sex discrimination, except employee-on-student sex-based harassment in a K-12 school.

9. School's Duty to Respond:

- *2020 Regulations:* Schools must respond to sexual harassment in a way that is not “deliberately indifferent.”
- *2024 Regulations:* Schools must respond to sex-based harassment (or other sex discrimination) with “prompt and effective action.”).

10. Dismissal of Complaints:

- *2020 Regulations:* Schools can dismiss a complaint of sexual harassment at any time if the respondent is no longer a student or employee at the school.
- *2024 Regulations:* Schools can still dismiss a complaint of sex- based harassment (or other sex discrimination) at any time if the respondent is no longer a student or employee at the school, but they must also offer supportive measures.

11. Burden of Proof:

- *2020 Regulations:* Schools must address sexual harassment if it is so “severe” and “pervasive” that it “effectively denies” a person equal access to a school program or activity.
- *2024 Regulations:* Schools must address sex-based harassment if it is so “severe or pervasive” that it “denies or limits” a person’s ability to participate in a school program or activity.

Key Considerations for Institutions Under the 2020 Regulations: With the Trump administration's reinstatement of the 2020 Title IX rules, institutions must adhere to the following:

- **Narrow Definition of Sexual Harassment:** Institutions should ensure that their policies reflect the 2020 definition, focusing on conduct that is "severe, pervasive, and objectively offensive."
- **Jurisdictional Limitations:** Policies must address only those incidents occurring within programs or activities under substantial control of the institution, typically excluding off-campus conduct.
- **Grievance Procedures:** Institutions are required to implement specific procedures, including live hearings with cross-examination for postsecondary institutions, and may choose between the "preponderance of the evidence" and "clear and convincing evidence" standards.
- **Employee Reporting:** Only designated employees are mandated to act on reports of sexual harassment, so institutions should clearly identify these individuals.
- **Policy Updates and Training:** Institutions must review and possibly revise their policies and training programs to ensure compliance with the 2020 regulations, focusing on due process protections and the specific procedural requirements outlined.
- **Reporting and Formal Complaints:** The 2020 regulations focus on the "formal complaint" requirement, which initiates the institution's obligations. This is a shift from

"reporting" of sex discrimination or sex-based harassment from the 2024 regulations. This emphasize on formal reporting can limit the number of incidents that schools will be required to respond to.

It's essential for institutions to stay informed about these regulatory changes and adjust their policies and procedures accordingly to maintain compliance.