

TITLE IX FAQs

1) What is Title IX?

Title IX is a federal law that requires educational institutions that receive federal funding to prohibit sex discrimination in their education programs and activities. In 2011, the U.S. Department of Education issued a “Dear Colleague Letter” to universities to inform them of their responsibility to respond appropriately to complaints of sexual harassment and sexual violence by students and employees as well as provide appropriate supportive measures and resources. (Dear Colleague letters are letters issued by the U.S. Department of Education to provide guidance to K-12 schools and institutions of higher education on implementation of and compliance with related laws and regulations.)

2) When were changes to Title IX released?

Updated, final federal regulations were released by the Biden Administration April 19, 2024.

3) What areas of Title IX do the proposed regulations change?

There are a number of changes to the requirements of the grievance procedure process, clarifications related to protections for pregnant and parenting individuals, and the definitions of sex discrimination and sex-based harassment.

The various work groups and teams are still evaluating how those specific changes will affect Universities of Wisconsin policies, rules, and regulations.

4) How do the new regulations define confidential employees?

The new sex discrimination regulations provide the following definition of a confidential employee.

(1) An employee of a recipient whose communications are privileged or confidential under Federal or State law. The employee’s confidential status, for purposes of this part, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;

(2) An employee of a recipient whom the recipient has designated as confidential under this part for the purpose of providing services to persons related to sex discrimination. If the 1507 employee also has a duty not associated with providing those services, the employee’s confidential status is only with respect to information received about sex discrimination in connection with providing those services; or

(3) An employee of a postsecondary institution who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex

discrimination—but the employee’s confidential status is only with respect to information received while conducting the study.

[See 34 C.F.R. § 106.2 *Confidential employee*.]

5) What rules were proposed for Title IX as they relate to athletics or in regards to sex-related eligibility requirements in athletics?

These regulations do not make any changes related to sex-related eligibility criteria for athletics.

In 2023, DOE proposed separate Title IX rule changes to address the needs of transgender athletes. Updates will continue to be shared as more information is available. The final rules regarding sex discrimination do not apply to issues related to standards for including transgender athletes on sex-segregated athletics teams.

6) Has there been any changes to the standard of evidence in these Title IX regulations?

No, there are no changes to the standard of evidence in the new regulations.

7) What is the process and timeline for implementing these regulations?

These regulations are contained both in state law (or code) and in Board of Regent policy. State code provisions must go through a process known as rulemaking, which includes legislative oversight, to be changed.

A process called emergency rulemaking will be required to make changes to code quickly in order to be in compliance by August 1, 2024, and will remain in effect for a limited time.

Once the emergency rules are in effect, the Universities of Wisconsin will go through a longer process known as permanent rulemaking to put permanent code language into place. Permanent rulemaking will take up to one year to implement. Please note, any rulings on pending litigation regarding these changes could alter the timeline for implementing any permanent rules.

8) What are the Universities of Wisconsin doing to respond to the changes to Title IX?

The Universities of Wisconsin have stood up three teams to discuss the issues related to Title IX, prepare for potential changes, and review the final federal rulemaking when published.

- 1) An overarching **Title IX Team** was created to assist in reviewing, revising, and implementing any final changes made to Title IX; develop an action plan and timeline

for reviewing and implementing any changes to Title IX, and develop a communications plan for keeping leadership and stakeholders apprised of planning and proposed actions.

- 2) A **Policy Work Group** was created to help identify where there may be policy choices in how the Universities of Wisconsin implements the new regulations.
- 3) A **Code Work Group** was created to help identify where the Universities of Wisconsin System may update code language, what code provisions are likely to be impacted, and possible rulemaking constraints.

9) What training is needed to comply with the new regulations?

A training plan for Universities of Wisconsin Title IX practitioners and all faculty and staff is being developed and will be implemented in the summer and fall of 2024.

10) What happens if we do not comply with Title IX?

Failure to comply with Title IX could result in legal sanctions, litigation, or loss of federal funding. The Universities of Wisconsin receive significant federal funding.