

2022 PROPOSED TITLE IX REGULATIONS POLICY AND PROCESS CONSIDERATIONS CHECKLIST

This checklist is designed as a companion to the ATIXA NPRiMer for Higher Education training and certification course and to provide a roadmap for Title IX Coordinators to follow as they prepare their institutions for policy and process changes necessitated by the impending 2023 Title IX Regulations. Note that this checklist is based on the Notice of Proposed Rulemaking (NPRM) published on July 12, 2022, and the Final Rule may include changes that are not reflected in this document.

POLICY

Decision Point: Which other laws and policies does your institution need to consider in implementing Title IX-related policies and procedures? (Slide 17)

- Title VII (applies to all employers with more than 15 employees)
- Fair Housing Act (applies to institutions with students/employees in residence)
- Clery Act/VAWA (applies to institutions of higher education)
- State definitions of sexual harassment (if applicable)
- State laws (e.g., California, Texas, New York, Massachusetts) or case law from your jurisdiction (e.g., 1st Circuit, 3rd Circuit, 6th Circuit)

Action Items:

- Determine which other laws or policies that your institution may need to consider.
- Inventory policy overlap and any conflicts or gaps and develop a plan for addressing each.

Stakeholder Collaboration:

- Connect with legal counsel to determine the most effective way to navigate compliance with all nondiscrimination requirements applicable to the institution.

Notes:

Decision Point: How will the institution structure its policies and procedures? (Slide 40)

Guiding Questions:

- Does the institution currently have a stand-alone sex discrimination policy/procedure (i.e., a policy that applies only to incidents of sexual harassment and sexual misconduct?)
 - Yes
 - No

- If so, will the institution maintain a stand-alone sex discrimination policy/procedure when the proposed regulations are finalized?
 - Yes
 - No

- How will the institution structure its policies and procedures?
 - A stand-alone sex discrimination policy and two procedures that comply with § 106.45 and § 106.46, other legal requirements, and case law
 - A stand-alone sex discrimination policy and one procedure that complies with § 106.45 and § 106.46, other legal requirements, and case law
 - One policy and procedure to address all civil rights laws, including other legal requirements, and case law (**ATIXA Best Practice**)
 - Other

Action Items:

- Review the proposed rule to understand the anticipated required changes, including revised definitions and broadened scope and jurisdiction.
- Understand the institution's policy revision process.
- Review current policies and practices.
- Review existing publications and websites to determine where updates will need to be published and outdated materials removed. Identify who is responsible for enacting such changes for each and notify them of the anticipated changes.
- Determine a timeline for completing policy/procedure updates and communicate it to stakeholders and change makers.

Stakeholder Collaboration:

- Work with shared governance structures to determine how many policies/procedures will be implemented and/or updated.
- Notify key stakeholders that policy revisions are forthcoming.
- Work with union leaders to determine how the proposed rule impacts collective bargaining agreements.

Notes:

Decision Point: Which standard of proof will the institution use for Title IX complaints? (Slide 57)

Guiding Questions:

- Which standard of proof does the institution currently use for Title IX complaints?
 - Preponderance of the Evidence (**ATIXA Best Practice**)
 - Clear and Convincing Evidence

- Does the institution have any groups with contract rights (e.g., collective bargaining agreements (CBAs)) that require the use of clear and convincing evidence?
 - Yes
 - When does the CBA next come up for bargaining?
 - Will you attempt to negotiate the use of the preponderance of the evidence standard?
 - No

Action Items:

- Identify which standard of proof is used in each type of comparable proceedings, including other discrimination complaints (e.g., Title VI, Title VII).
- Determine which standard of proof is required for each type of complaint (i.e., what is used when the Respondent is a student and what is used when the Respondent is an employee).
- Find out when any CBAs that require a clear and convincing standard of proof are up for bargaining.
- Determine whether the institution will attempt to negotiate the use of the preponderance of the evidence standard of proof when contracts are up for bargaining.

Stakeholder Collaboration:

- Work in partnership with legal counsel and other stakeholders to ensure standard of proof alignment across all comparable procedures.
- Partner with labor relations, human resources, and/or legal counsel to negotiate the use of the preponderance of the evidence when a CBA comes up for bargaining if current CBAs use the clear and convincing standard of proof, if applicable.

Notes:

PROCESS

Decision Point: How will your institution comply with § 106.45 (All sex discrimination complaints that do not allege sex-based harassment involving a student)? (Slides 39-50)

Guiding Questions:

- ❑ What supportive measures are available at the institution?
 - Examples of supportive measures include:
 - Referral to counseling, medical, and/or other healthcare services
 - Referral to the Employee Assistance Program
 - Referral to community-based service providers
 - Visa and immigration assistance
 - Student financial aid counseling
 - Education to the institutional community or community subgroup(s)
 - Altering campus housing assignment(s)
 - Altering work arrangements for employees or student-employees
 - Safety planning
 - Providing campus safety escorts
 - Providing transportation assistance
 - Implementing contact limitations (no contact orders) between the parties
 - Academic support, extensions of deadlines, or other course/program-related adjustments
 - Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
 - Timely warnings
 - Class schedule modifications, withdrawals, or leaves of absence
 - Increased security and monitoring of certain areas of the campus
 - Any other actions deemed appropriate by the Title IX Coordinator

- ❑ What is the range of sanctions for violating your current policy?
 - Examples of student sanctions include:
 - Verbal or Written Warning
 - Required Counseling
 - Conduct/Disciplinary Probation
 - Suspension
 - Expulsion
 - Withholding Diploma
 - Revocation of Degree
 - Loss of privileges
 - Mental Health Assessment
 - Psychoeducation
 - Residence Hall Relocation or Eviction

- Alcohol/Drug Assessment and/or Classes
 - Limited Access to Institutional Facilities
 - Transcript Notation
 - Denial of Ability to Represent Institution in an Official Capacity
 - Other Actions: In addition to or in place of the above sanctions/responsive actions, the Recipient may assign any other responsive actions as deemed appropriate.
- Examples of employee sanctions include:
 - Verbal or Written Warning
 - Performance Improvement Plan/Management Process
 - Enhanced Supervision, Observation, or Review
 - Required Counseling
 - Required Training or Education
 - Probation
 - Denial of Pay Increase/Pay Grade
 - Loss of Oversight or Supervisory Responsibility
 - Demotion
 - Transfer
 - Reassignment
 - Delay of (or referral for delay of) Tenure Track Progress
 - Assignment to New Supervisor
 - Restriction of Stipends, Research, and/or Professional Development Resources
 - Suspension/Administrative Leave with Pay
 - Suspension/Administrative Leave without Pay
 - Termination
 - Other Actions: In addition to or in place of the above sanctions/responsive actions, the Recipient may assign any other responsive actions as deemed appropriate.
- ❑ What remedies are available?
 - Examples of remedies include:
 - Retroactive Withdrawal
 - Withdrawal for Current Term
 - Scholarship Reinstatement
 - Financial Aid Reinstatement
 - Tuition and Fees Refund
 - Leave Hours Restored
 - Course Incomplete
 - Other Actions: In addition to or in place of the above remedies, the Recipient may provide any other remedial actions deemed appropriate.

- ❑ Will the institution add any policy provisions in addition to those required under § 106.45?
 - Additional Advisors or support persons for the parties
 - Appeals **(ATIXA Best Practice)**
 - What are the grounds for appeal?
 - What is the timeline for submitting an appeal request?
 - What are the appeal procedures?
 - Permit the parties to offer expert witnesses
 - Other:

- ❑ Will the Investigator(s) prepare a written report?
 - Yes **(ATIXA Best Practice)**
 - Will you allow the parties to review the draft report prior to the issuance of the final report?
 - Yes **(ATIXA Best Practice)**
 - What platform will you use to provide the parties access for review? (e.g., SharePoint, Google Drive, Box, Locklizard)
 - How long will the parties have to review the draft report?
 - No
 - No
 - How will you document the investigation sufficiently to provide the parties with a fair and equitable opportunity to review the evidence as part of the investigation process?

- ❑ How will the determination of responsibility be made?
 - Made by the Investigator in the final investigation report
 - Made by a separate Decision-maker

- ❑ Will the Decision-maker prepare a written outcome letter?
 - Yes **(ATIXA Best Practice)**
 - No
 - How will the parties know how the determination was made? (i.e., rationale, information relied upon, information not relied upon, credibility assessment)

- ❑ Will they also determine sanctions?
 - Yes **(ATIXA Best Practice)**
 - Yes, in consultation with relevant administrators **(ATIXA Best Practice)**
 - No
 - Who will determine sanctions?
 - How will sanctions be communicated to the parties?

- Will you offer informal resolution?
 - o Yes (**ATIXA Best Practice**)
 - Supportive Measures Only
 - Respondent Accepts Responsibility and Sanctions
 - Alternative Resolution (e.g., conflict coaching, restorative practices, facilitated dialogue, shuttle negotiation)
 - What forms of AR will be offered?
 - o No

Action Items:

- Have internal discussions with key stakeholders about the requirements of § 106.45 and how the institution will proceed once the proposed regulations are finalized.
- Determine the institution's range of sanctions for violating sex discrimination policies.
- Develop a list of supportive measures and remedies that may be appropriate in response to a complaint depending upon the circumstances.
- Determine who will make the determination of responsibility at the end of an investigation.
- Determine whether any existing policies/practices at the institution satisfy the requirements of § 106.45 and if so, whether those policies/practices will be maintained or modified.
- Ensure that the institution has the necessary resources in place to offer any forms of Informal Resolution included in policy.
- If the institution intends to use external Investigators or Decision-makers, establish agreed upon training, experience, and work product criteria with legal counsel and other institutional partners.
 - o Establish a list of third parties who meet the agreed upon criteria before needing to contract for services.

Stakeholder Collaboration:

- Work with legal counsel to determine the most appropriate way to implement the requirements of § 106.45 at the institution.
- Discuss the requirements of § 106.45 with human resources, union leaders, other key stakeholders and determine whether any changes will need to be made to existing processes to comply with the final rule.
- Engage in discussion with community agencies that offer informal resolution services to ascertain whether partnerships can be developed, or services can be contracted for if need be.

Notes:

Decision Point: How will the institution comply with § 106.46 (All sex-based harassment complaints involving a student as either Complainant or Respondent)?
(Slides 44, 45, and 62)

Guiding Questions:

- Will the institution allow the parties to present expert witnesses?
 - Yes **(ATIXA Best Practice)**
 - No

- Do existing policies prohibit false statements?
 - Yes **(ATIXA Best Practice)**
 - No, but this provision will be added to new/updated policies
 - No

- How will you provide the evidence collected throughout the investigation to the parties for their review?
 - In a draft report that includes all relevant evidence **(ATIXA Best Practice)**
 - As a file of relevant and not otherwise impermissible evidence

- How long will the parties and their Advisors have to review the evidence?

- Will you offer a live hearing?
 - Yes, my jurisdiction requires live hearings
 - Yes, my institution prefers live hearings and will not change our current practices
 - How will cross-examination take place?
 - Advisor-led cross-examination?
 - Decision-maker-facilitated cross-examination?
 - No

- Will you add any additional provisions to the grievance procedures?
 - Additional Advisors or support persons for the parties
 - Others:
 - No

Action Items:

- Consult with key stakeholders and legal counsel regarding how to determine what choices to make to comply with § 106.46.
- If no longer offering live hearings, determine how that information will be communicated to the community and prepare to respond to any community reaction in consultation with legal counsel and public relations/communications staff.

- Ensure procedures clearly meet the requirements of § 106.46 and are widely disseminated to the community and published on the institution's website.

Stakeholder Collaboration:

- Make procedure decisions in conjunction with legal counsel, human resources, student affairs, and other appropriate stakeholders.
- Work with public relations/communications staff to communicate procedural changes to the community.
- Work with information technology staff to ensure the website is properly updated with the new procedures and the old ones are archived.
- Host town hall meetings with the community or smaller constituency groups to ensure they understand any procedural changes and have the opportunity to ask questions and voice concerns.

Notes:

STAFFING

Decision Point: Which employees will be designated as confidential for purposes of receiving disclosures under Title IX? (Slide 20)

- Mental Health Providers
- Student Health Providers
- Clergy/Pastoral Counselors/Student Ministry Professionals
- Student Legal Services
- Employee Assistance Program Staff
- Victim/Survivor Advocates
- Athletic Trainers
- Ombudspersons
- Women's/LGBTQIA+ Center Staff
- Prevention Educators
- Other:

Action Items:

- Determine which employment roles have a confidential designation.
- Inform confidential employees that they are required to provide information related to the Title IX program and the Title IX Coordinator's contact information when an employee or student discloses information that may implicate Title IX.
- Provide confidential employees with the information that needs to be shared with individuals who disclose information that may implicate Title IX (e.g., business card, brochures).
- Determine whether confidential employees are (or will be) required to provide de-identified information for Title IX and/or Clery statistical reporting purposes.
 - If they will, train them on what information they need to report, to whom, and when.
- How will the confidential employee list be disseminated to the institutional community?
- Determine whether your state/jurisdiction has additional reporting requirements for confidential employees (e.g., the State of Texas requires that confidential employees report specific information to the Title IX Coordinator).

Stakeholder Collaboration:

- Engage in institution-wide conversations with legal counsel, campus police/public safety, confidential resources, and other policy makers to make the appropriate decisions for your community.
- Work with marketing and communications stakeholders to disseminate the list of confidential employees and which constituents they serve broadly.

Notes:

Decision Point: Who are the institution's mandated reporters? (Slide 19)

- All non-confidential employees (**ATIXA Best Practice**)
- Those required by the proposed regulations:
 - Any non-confidential employee who has the authority to institute corrective measures must report to the Title IX Coordinator incidents related to students and employees
 - Any non-confidential employee who has responsibility for administrative leadership, teaching, and advising **MUST** report student issues to the Title IX Coordinator and for employee issues, they can report to the Title IX Coordinator **OR** they can let that person know about the institution's Title IX program and how to contact the Title IX Coordinator
 - All other employees who are not confidential employees must either notify the Title IX Coordinator **OR** they can let that person know about the institution's Title IX program and how to contact the Title IX Coordinator

Action Items:

- Determine which employees are mandated reporters.
- Update policies, resources, and any websites to reflect this information.
- Train mandated reporters on their obligation to report and what information they need to report. Consider using ATIXA's Mandated Reporter eTraining!
- Provide mandated reporters and non-mandated reporters (if any) with the information they are required to disseminate to individuals disclosing information that may implicate Title IX policies (e.g., business cards, brochures).
- Disseminate comprehensive information to the community to ensure individuals know how disclosures related to sex discrimination will be handled by employees.

Stakeholder Collaboration:

- Work with institutional leadership to determine how employees will be trained.
- Partner with public relations/communications staff to develop materials for employees to share with individuals disclosing information that may implicate Title IX policies (i.e., Title IX Coordinator contact information and information related to the institution's Title IX program).
- Collaborate with information technology staff to ensure institutional websites or online reporting forms do not contain any outdated information related to reporting requirements.

Notes:

Decision Point: Which institutional employees will hear dismissal appeals? (Slide 31)

Guiding Question:

- Will the institution have a single Appeal Decision-maker who hears all dismissal appeals or use a pool of trained Appeal Decision-makers?
 - Single Appeal Decision-maker who hears all dismissal appeals
 - Pool of Appeal Decision-makers who can be rotated and used individually or in combination **(ATIXA Best Practice)**

Action Items:

- Ensure whoever is selected to serve in the dismissal appeal capacity understands the dismissal process under the proposed regulations.
- Identify a back-up if using a single Appeal Decision-maker to ensure the process does not stall if there is a conflict or the Appeal Decision-maker is otherwise unavailable.
- Provide required training to all individuals identified to hear dismissal appeals.
- Determine if the Appeal Decision-maker or the Title IX Coordinator will communicate the appeal decision to the parties.
- Provide appeal decisions in writing and create a template for the Appeal Decision-maker(s) to use. **(ATIXA Best Practice)**

Stakeholder Collaboration:

- Consult with legal counsel, human resources, student affairs, and other appropriate stakeholders to determine who will hear appeals
- Ensure the institution's practice is included in institutional policy.

Notes:

**Decision Point: Who has the authority to modify or reverse supportive measures?
(Slide 33)**

Guiding Question:

- Will the institution have a single administrator who hears all supportive measure modification/reversal requests or use a pool of trained administrators?
 - Single administrator who hears all supportive measure modification/reversal requests
 - Pool of administrators who can be rotated depending upon institutional role and prior involvement in the complaint

Action Items:

- Identify employees who have received or will receive appropriate training and who will generally not be involved in initial supportive measure decisions. Ensure there are an appropriate number of trained employees to perform this function.
- Ensure policy states that supportive measures:
 - Are designed to restore or preserve a party's access to the education program or activity.
 - May not be used to impose burdensome measures for punitive or disciplinary reasons.
 - May be continued, modified, or terminated at the conclusion of the grievance process or informal resolution.
 - Or a lack thereof may be modified or reversed as deemed appropriate upon request of a party.

Stakeholder Collaboration:

- Work with institutional leadership to determine the individual(s) who will serve in this capacity.

Notes:

Decision Point: Who will conduct safety and risk analyses and determine whether to remove a student Respondent on an emergency basis? (Slide 34)

Decision Point: Who will hear Emergency Removal challenges? (Slide 35)

Guiding Questions:

- Does the institution have a Behavioral Intervention or Care Team that is trained to conduct safety and risk analyses (e.g., violence risk assessments)?
 - Yes (**ATIXA Best Practice**)
 - No, our BIT/Care Team does not have the requisite training
 - No, our BIT/Care Team does not have the requisite training, but we are planning to train at least three members
 - No, we don't have a BIT/Care Team (learn more at: <https://www.nabita.org/>)

- Who will conduct these assessments?
 - Internal staff
 - External provider

- With whom will the assessor share their results?
 - Title IX Coordinator
 - All Core BIT/Care Team Members
 - Other

- How will the assessor share their results?

- Who will make the emergency removal determination after the assessment?

- Who will communicate the terms of any emergency removal to a student Respondent?

- What will happen if a student Respondent does not comply with the assessment?

- Who will conduct the show-cause meeting if a student Respondent challenges the removal decision?

- Other than the Respondent and their Advisor, who will be permitted to attend the show-cause meeting?

- Is a Complainant able to challenge an emergency removal decision?

Action Items:

- Ensure employees or external assessor(s) have requisite training to conduct violence risk assessments.
- Provide anyone involved in recommending or determining that emergency removal is warranted receive training in interpreting violence risk assessment results.
- Familiarize yourself with existing policies and procedures for placing an employee on administrative leave.
- Ensure Emergency Removal/Administrative Leave processes are outlined in policy/procedures.
- Determine what other policies apply to Emergency Removals/Administrative Leave and cross reference them in the Title IX policy.

Stakeholder Collaboration:

- Work with stakeholders across the institution to determine how these processes will be handled and request legal counsel review the process once determined.
- Connect with external resources as necessary to ensure all assessors have requisite training.

Notes:

Decision Point: Who will facilitate Informal Resolutions? (Slide 36)

Guiding Questions:

- Does the institution currently offer Informal Resolution for Title IX complaints?
 - Yes **(ATIXA Best Practice)**
 - Will the institution continue with its current offerings?
 - Yes
 - Yes, but we intend to make policy or process changes
 - No, we will no longer offer Informal Resolution
 - No
 - Does the institution intend to add Informal Resolution for Title IX complaints as an option in its policy?
 - Yes
 - No

- Are there any employees who have the requisite training in both Title IX and informal resolution processes to facilitate Informal Resolution for Title IX complaints?
 - Yes
 - Are the currently trained individuals needed to fulfill Investigator or Decision-maker roles for Title IX complaints?
 - Yes
 - Who else can fulfill these responsibilities to ensure a separation of roles for each complaint?
 - No
 - No
 - Are there external resources who have the requisite training that could fulfill the Informal Resolution Facilitator role?
 - Are there employees who can receive the requisite training to fulfill the Informal Resolution Facilitator role?

Action Items:

- Assess whether the institution currently employs individuals who conduct Informal Resolutions for matters unrelated to Title IX (i.e., ombudspersons, mediation programs, student conduct).
 - If the institution employs such individuals, assess whether they would be appropriate and available to conduct Informal Resolutions under Title IX.
- Evaluate whether the institution has adequate resources available to implement and maintain an Informal Resolution program if one does not currently exist.
- Determine whether the institution is in a jurisdiction that requires compliance with other laws that may impact the structuring of an Informal Resolution process (e.g., California's SB-331 Settlement and non-disparagement agreements law).

- ❑ If the institution has a current Title IX Informal Resolution program, review any available assessment data, and determine whether any revisions need to be made to the existing policy or the program.

Stakeholder Collaboration:

- ❑ Collaborate with relevant stakeholders to determine whether existing programs can be expanded to support Title IX, if applicable.
- ❑ Consult with legal counsel to craft a policy that meets legal requirements and meets the specific institution's needs for informal resolution.
- ❑ Discuss ways in which the Title IX Team can support other departments that offer their staff to serve as Informal Resolution Facilitators.

Notes:

Decision Point: Who will fulfill the roles of Investigator, Decision-maker, Appeal Decision-maker, and institution-appointed Advisor for Title IX complaints? (Slides 42, 55, and 59)

Guiding Questions:

- ❑ Will the institution use single Investigators or pairs?
 - Single Investigators
 - Paired Investigators **(ATIXA Best Practice)**

- ❑ Will the institution employ full-time Investigators, have the Title IX Coordinator serve as Investigator, or use a pool of trained Investigators from across multiple departments?
 - Full-time Investigators who investigate all Title IX complaints **(ATIXA Best Practice)**
 - Title IX Coordinator as Investigator
 - Who is the back-up for the Title IX Coordinator in the event of a conflict of interest or if the Title IX Coordinator is otherwise unavailable?
 - Pool of Investigators who can be rotated and used individually or in combination
 - Other:

- ❑ Will Investigators make determinations for the complaints they investigate?
 - Yes
 - No, but they will make recommended findings, determinations, and sanctions that are not binding on the Decision-maker **(ATIXA Best Practice for processes not involving live hearings)**
 - No **(ATIXA Best Practice for processes involving live hearings)**

- ❑ If the institution will use separate Investigators and Decision-makers, will the institution use a single Decision-maker or a panel?
 - Single Decision-maker(s)
 - Will the Title IX Coordinator serve as the Decision-maker?
 - Yes
 - Who is the back-up for the Title IX Coordinator in the event of a conflict of interest or if the Title IX Coordinator is otherwise unavailable?
 - No
 - Will more than one person be trained to serve as a Decision-maker?
 - Yes
 - No

- Panel **(ATIXA Best Practice)**
 - Who will be trained to serve on the panel?
 - How many people will serve on a single panel?
 - How will a chairperson be determined?

- ☐ Will the Decision-maker(s) also determine sanctions, if any?
 - Yes **(ATIXA Best Practice)**
 - Yes, in consultation with other appropriate administrators **(ATIXA Best Practice)**
 - No
 - Who will determine sanctions?
 - How will the sanction determination be communicated to the parties?

- ☐ Will the institution use a single Appeal Decision-maker or a panel?
 - Single Appeal Decision-maker(s)
 - Will the Title IX Coordinator serve as the Appeal Decision-maker?
 - Yes
 - Who is the back-up for the Title IX Coordinator in the event of a conflict of interest or if the Title IX Coordinator is otherwise unavailable?
 - No, the TIXC will be an Investigator and/or Decision-maker
 - No **(ATIXA Best Practice)**
 - Will more than one person be trained to serve as an Appeal Decision-maker?
 - Yes
 - No
 - Panel **(ATIXA Best Practice)**
 - Who will be trained to serve on the panel?
 - How many people will serve on a single panel?
 - How will a chairperson be determined?

- ☐ Will the institution provide Advisors for all Title IX complaints, upon request?
 - Yes **(ATIXA Best Practice)**
 - Will the Advisor assist the party from intake through appeal, or only for the Decision-making portion of the process?
 - Full Process **(ATIXA Best Practice)**
 - Only Decision-making
 - No

- Who will serve as institution-appointed Advisors?
 - Employees
 - Third-party resource

- Will the institution provide training for institution-appointed Advisors?
 - Yes **(ATIXA Best Practice)**
 - No

- Will the institution offer training to external Advisors?
 - Yes
 - No

Action Items:

- Assess the institution's current staffing structure for Investigators, Decision-makers, Appeal Decision-makers, and Advisors and determine if changes are needed.
- Evaluate whether the institution has adequate staffing resources available to fulfill the Title IX compliance requirements in comparison to the anticipated caseload.
 - If not, begin the process of requesting additional resources in preparation for the regulatory changes.
- Determine whether the institution is in a jurisdiction that has any specific requirements or case law decisions regarding who may or may not serve in any specific role within the formal grievance process or whether a panel must be used.
- Ensure all Investigators, Decision-makers, Appeal Decision-makers have received the required training before engaging with a complaint.
- Provide training to any employees serving as Advisors.

Stakeholder Collaboration:

- Meet with relevant stakeholders to determine a staffing structure that will fulfill compliance obligations and meet institutional needs.
- Discuss ways in which the Title IX Team can support other departments that offer their staff to serve as Decision-makers, Appeal Decision-makers, and Advisors, if applicable.
- Collaborate with human resources, faculty affairs, student affairs, and other appropriate stakeholders to consider compensation and/or recognition for individuals who take on Title IX roles in addition to their full-time job responsibilities.

Notes:

TITLE IX COORDINATOR RESPONSIBILITIES

Decision Point: How will your institution train employees not involved in the Title IX grievance process? (Slides 23 and 68)

- How often will employees be trained?
 - Annually
 - At the beginning of each term
 - Other frequency:

- How will employees be trained?
 - Online (asynchronous)
 - Online (synchronous facilitated via Zoom, Teams, Webex, etc.)
 - Face-to-face
 - Hybrid
 - Other modality:

- How will your institution track training completion?

- How will your institution ensure compliance?
 - Attach training to employee evaluation/merit pay/advancement
 - Inability to access the institution's technology until training is completed
 - Warning in employment file
 - Other actions:

Action Items:

- Determine who will conduct the training and/or which vendor will be used.
- Customize third-party training products as appropriate and available.
- Ensure the training covers the following topics:
 - The institution's obligation to address sex discrimination in its education program or activity.
 - The scope of conduct that constitutes sex discrimination, including the definition of sex-based harassment.
 - All applicable notification and information requirements, including but not limited to notifying an individual who discloses alleged sex discrimination or pregnancy of the Title IX Coordinator.

Stakeholder Collaboration:

- Work with the president/chancellor and their cabinet to ensure leadership engagement and support for training requirements.
- Consult with information technology staff to determine how to track employee training completion in a centralized system, especially for training facilitated via technology.

- ❑ Partner with human resources and faculty affairs to determine employee incentives/penalties for completion/non-completion.
- ❑ Develop a communication plan with marketing and communications to inform employees and supervisors of the training requirements.
- ❑ Work with institutional leadership to ensure appropriate resources are available to train all employees.

Notes:

Decision Point: How will your institution train employees involved in the Title IX grievance process? (Slide 34)

- Title IX Coordinator
- Deputy Title IX Coordinators
- Dismissal Appeal Decision-makers
- Investigators
- Decision-makers
- Appeal Decision-makers
- Informal Resolution Facilitators
- Employees responsible for the implementation, modification, and/or termination of supportive measures
- Others involved in the grievance process:

Action Items:

- Develop a comprehensive training plan for all Title IX Team members, including necessary funding to meet training needs. Research available training, scholarships, and other sources of funding. Be sure to visit ATIXA's [website](#) for the latest training and scholarship information.
- Ensure your Title IX Team is trained on the following topics:
 - o The institution's obligations under § 106.44 (Action by an institution to operate its education program or activity free from sex discrimination).
 - o The institution's grievance procedures under § 106.45 and § 106.46.
 - o How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
 - o The meaning and application of the term *relevant* in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under § 106.45 and § 106.46.
- Ensure your Informal Resolution Facilitators are trained on the above and:
 - o The rules and practices associated with the institution's Informal Resolution process.
- Ensure the Title IX Coordinator and any Deputies or Designees are trained on the above and:
 - o Their specific responsibilities as a Title IX Coordinator, Deputy, or Designee.
 - o Their requirement to act on receipt of notice of pregnancy discrimination.
 - o How to respond to notice of conduct that constitutes sex discrimination.
 - o How to implement supportive measures (**ATIXA Best Practice – train entire Title IX Team on supportive measure implementation**).
 - o The institution's recordkeeping system.
 - o How to take appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the institution's education program or activity.
 - o How to provide remedies to an individual Complainant.
 - o Any other training necessary to coordinate the institution's compliance with Title IX.
- Ensure training materials are posted on the institution's website.
- Follow instructions at: <https://www.atixa.org/2020-regulations-requirement-posting-of-training-materials/> to post your ATIXA training(s)!

Stakeholder Collaboration:

- Co-create a plan for ensuring appropriate funding with relevant vice presidents/institutional leaders.
- Work with information technology staff to determine ensure training materials are posted on the institution's website.
- Strategize a plan with administrative support staff to track training completion across the institution.
- In consultation with human resources, faculty affairs, and legal counsel, determine how to remove a Title IX Team member for training non-compliance.

Notes:

Decision Point: How will the institution monitor its education program or activity for barriers to reporting information and take reasonable steps to address such barriers? (Slide 26)

- Who will be responsible for collecting data regarding potential reporting barriers?

- From where will data be collected?
 - Surveys
 - Focus Groups
 - Reporting Trends
 - Complaints
 - De-Identified from Confidential Resources
 - Others

- How often will data be reviewed and analyzed?
 - Who will be involved in analyzing and interpreting the collected data?
 - What is the process for translating the analysis into an action plan to alleviate any identified barriers?
 - How will success in alleviating reporting barriers be evaluated?

Action Items:

- Develop a plan for collecting data about potential reporting barriers.
- Determine who has the necessary skill to analyze and interpret the collected data.
- Establish a timeline for data collection, analysis, action planning, implementation, and evaluation.
- Decide whether barrier analysis information and the resulting action plan will be shared with the institutional community, and if so, how.

Stakeholder Collaboration:

- Consult with institutional research to determine the most effective means for data collection.
- Consider whether there are applicable research connections for faculty or graduate students who may be able to aid in the analysis and interpretation of the data.
- Identify individuals from across the institution who will be responsible for implementing changes resulting from the action plan.

Notes:

PREGNANCY AND RELATED CONDITIONS

Decision Point: How many lactation spaces does the institution need to comply with the proposed rule? (Slide 72)

- How many fixed lactation spaces does the institution currently have?
- How will you survey your community to determine whether you have enough lactation spaces or need to add additional spaces?
- Does each major/high-usage campus building have a dedicated lactation space?
 - Yes
 - No
- Are the lactation spaces located in areas that can be accessed by both students and employees during regular business hours?
 - Yes
 - No
- Are the lactation spaces located in areas that can be accessed by both students and employees during evening and weekend hours?
 - Yes
 - No
- How are employees/students made aware of how to access the lactation space(s)?
- Do you have existing policies that govern the use of lactation spaces?
 - Yes
 - Will the policy need to be updated?
 - No
 - Do you need to develop a policy?

Action Items:

- Determine how many fixed lactation spaces are needed.
- Identify how many fixed lactation spaces are currently available.
- If there is not a fixed lactation space available in each building, assess whether employees or students need to walk far distances to access the available spaces.
- Determine whether there are concerns with employees and students sharing the same lactation space.

Stakeholder Collaboration:

- Meet with human resources to determine how employees will access lactation spaces.
- Consult with legal counsel to determine whether there are additional requirements for lactation spaces under state or local law (e.g., in California, employers are required to provide lactation spaces that are in close proximity to where breastfeeding employees work, and the spaces must provide a place to sit and a surface for a pump, electrical outlets, and be located near running water and a refrigerator to store pumped breast milk).
- Work with student affairs to determine what accommodations for breastfeeding students exist at the institution.
- Work with facilities management to determine which additional space(s) may be designated as lactation spaces.

Notes: