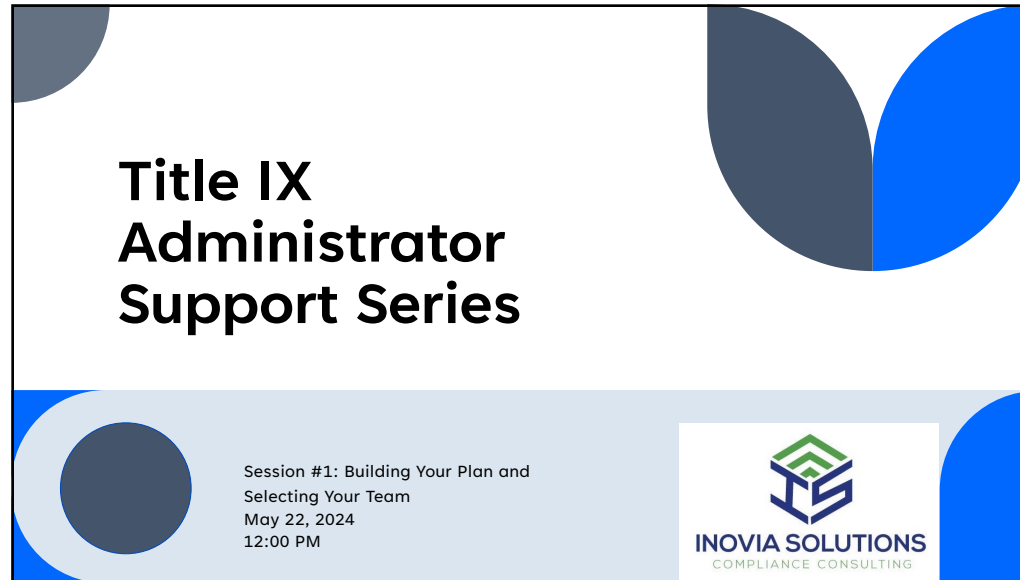


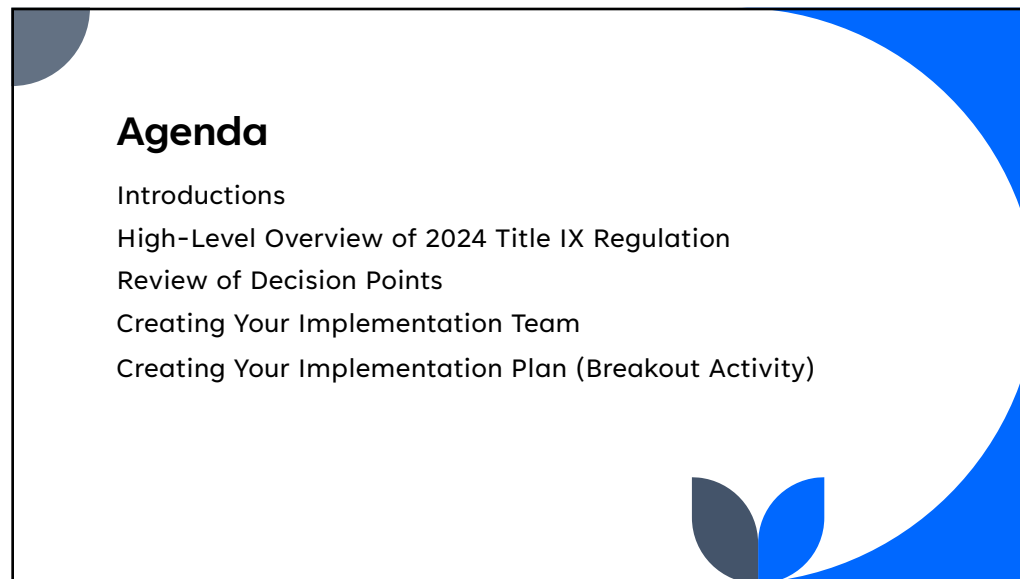
The slide features a white background with decorative blue and grey circular shapes in the corners. The title is in a large, bold, black font. Below the title, session details are listed in a smaller black font. The Inovia Solutions logo, consisting of a stylized 'IS' icon and the company name, is positioned on the right side of the slide.

Title IX Administrator Support Series

Session #1: Building Your Plan and
Selecting Your Team
May 22, 2024
12:00 PM


INOVIA SOLUTIONS
COMPLIANCE CONSULTING

1

The slide has a white background with decorative blue and grey circular shapes in the corners. The title 'Agenda' is in a bold black font. Below it, a list of agenda items is presented in a standard black font.

Agenda

- Introductions
- High-Level Overview of 2024 Title IX Regulation
- Review of Decision Points
- Creating Your Implementation Team
- Creating Your Implementation Plan (Breakout Activity)

2

Disclaimer

This presentation does not constitute legal advice. While this training will address important topics related to compliance, we are not giving you legal advice and you are encouraged to consult with your legal counsel about this issues discussed in this training or specific issues.

3

Title IX Coordinator Support Series

- May 22, 2024: Session #1 - Selecting Your Team and Preparing Your Plan
- June 19, 2024: Session #2 - Don't Reinvent the Wheel: Repurposing Existing Trainings, Policies, and Procedures
- July 10, 2024: Session #3 - Preparing Your Communications and Training Plan
- July 24th-25th, 2024: FICURMA Member Compliance Conference at the University of Tampa
 - Annual Clery Act Training - Bricker Graydon
 - Training on 2024 Title IX Regulation - Bricker Graydon
 - Best Practices in Investigations and Decision Making Training by Rebecca Veidlinger
- August 14, 2024: Session #4 - Support and Debrief

4

Additional Resources for FICURMA Members

- Free Access to Bricker Graydon Webinars and Trainings
 - Digging in to the 2024 Title IX Regs: <https://www.brickergraydon.com/insights/resources/key/2024-title-ix-regulations-released-higher-education-webinar-recording>
 - Title IX Policy Drafting Bootcamp on June 4th or June 21st: <https://www.brickergraydon.com/insights/events/title-ix-policy-drafting-higher-education-bootcamp>
 - Title IX in Focus Webinar Series: <https://www.brickergraydon.com/insights/resources/key/title-ix-in-focus-free-webinar-series>
 - Use Code: CLIENT2024 for free access
- SUNY SCI
- Vector Solutions
- United Educators
- Peer Support and Resource Library for Members in FICURMA Collaboration Portal

Questions about Resources? Contact Joy Roesner at joy.roesner@ficurma.org

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Breakout Activity #1

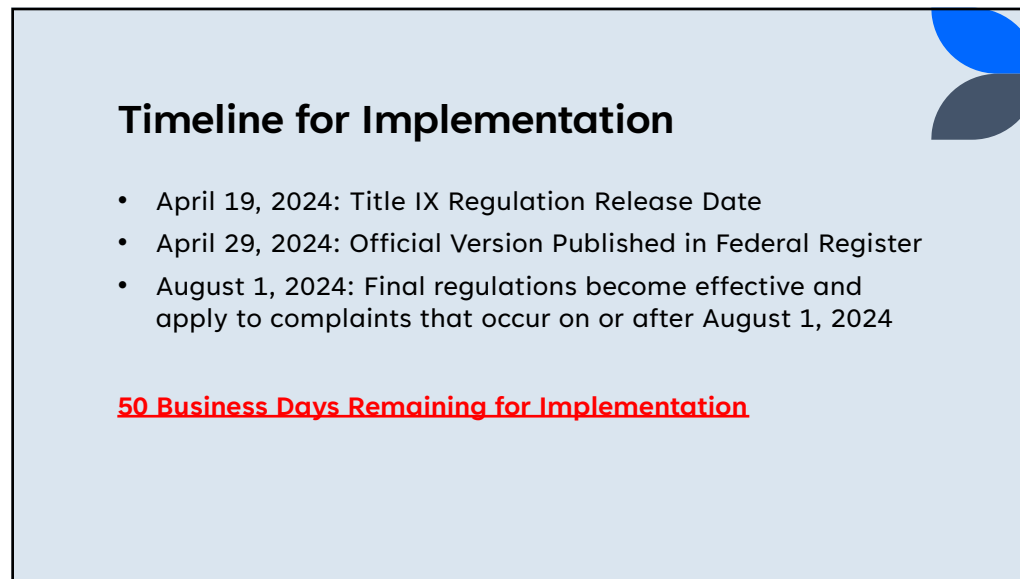
Within your breakout room, introduce yourself and your role on your campus.

Share whether you were involved in implementing the 2020 regulations and, if so, share one key take away from that experience.

6



7



8

So What's Changed? (Jurisdiction & Scope)

- Shift from “sexual harassment” to all “sex-based discrimination”, including Sex stereotypes, characteristics, pregnancy or related conditions, sexual orientation, and gender-identity
- Sexual harassment now referred to as sex-based harassment, and continues to include quid pro quo, Clery crimes, and a broader definition of hostile environment harassment:
 - 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.”
- Jurisdiction includes institution's programs or activities occurring within the United States, including:
 - Conduct occurring in building owned/controlled by recognized student org or
 - Conduct that is subject to institution's “Disciplinary authority”
- Could include conduct occurring outside of US to address any hostile environment within a program or activity stemming from that conduct:
 - *Institution has an obligation to address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States.*

9

So What's Changed? (Training)

- ALL employees must be trained UPON HIRE, after CHANGE IN ROLE, and ANNUALLY on:
 - Recipient obligation to address sex discrimination
 - Scope of conduct that constitutes sex discrimination
 - Applicable notification requirements regarding pregnancy and sex-discrimination
- Title IX Administrators (Investigators, decision makers, informal resolution staff, and other staff responsible for grievance procedures/modification of supportive measures) must receive all employee training + training on grievance procedures, relevancy and permissible evidence, conflict of interest/bias, avoiding prejudgment of facts, and informal resolutions
- Additional training requirements for Title IX Coordinators and Designees
- No longer required to post trainings
 - Maintain records for 7 years
 - Make available upon request

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So What's Changed (Mandatory Reporting)

- Institutions may designate confidential employees:
 - Must notify community of designation of confidential employees
 - Confidential employees must disclose status as confidential employee and no obligation to report conduct to TIXC + how to contact TIXC and make report + available resolution methods and supportive measures
- Non-Confidential employees that either:
 - Have authority to institute corrective measures –OR–
 - Have responsibility for administrative leadership, teaching, or advising

MUST (1) Notify TIXC and (2) Provide TIXC Contact Info

- All Other Employees must either notify TIXC or provide TIXC contact info and Reporting Information

*Institutions Must Make Determinations Regarding Reporting Responsibilities of Student Employees

11

So What's Changed? (Informal Resolution)

- Prior to a determination regarding responsibility, institutions **MAY**, but are not required to, offer Informal Resolution at the Title IX Coordinator's discretion:
 - Formal Complaint no longer required
 - Investigator/decision maker does not facilitate informal resolution
 - Can now be used for Higher Education complaints involving student and employee (not in K-12)

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So What's Changed? (Grievance Procedures)

- Formal Complaints can be Oral or Written
- Two Grievance Resolution Paths
 - 106.45:
 - Sex-Based Discrimination
 - Sex-Based Harassment that does NOT include a student complainant/respondent= employee or third parties
 - 106.46:
 - All sex-based harassment complaints involving a student Complainant or Respondent
- Must conduct an analysis for complaints involving student employees to determine context in which conduct occurred and party's primary relationship to institution (education or employment)
- Dismissals permitted (w/ right of appeal by both parties) when:
 - unable to identify the Respondent after taking reasonable steps to do so
 - Respondent is no longer enrolled or employed
 - Complainant voluntarily withdraws any or all of the allegations in the complaint
 - The alleged conduct would not constitute sex discrimination, if proven

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Path #1: 106.45 (Base Path)

- Decision Maker can be Title IX Coordinator or Investigator, BUT no conflict of interest or bias (Could use single investigator model)
- Must provide notice of allegations. Notice must be amended for new allegations
- Written grievance procedures with:
 - Reasonably Prompt Time Frames for Each stage, with notification for extension of deadlines
 - Presumption that Respondent is not responsible, treat parties equitable
 - Burden on the institution to gather evidence and conduct investigation
 - Exclusion of evidence that is privileged, medical, or Complainant's prior sexual conduct or history with exceptions
 - Provide evidence or description of evidence (w/access upon request) for opportunity to respond
 - Protect Privacy and unauthorized disclosures
 - Description of Sanctions and Supportive Measures
 - Preponderance of the evidence unless clear and convincing standard is used for all other comparable proceedings
- Decision Maker must question parties/witnesses to assess credibility when in dispute and relevant
- Written Determination
- Right of appeal comparable to other procedures
- Does not require or prohibit advisors BUT must still comply with Clery Act for sexual assault, dating violence, domestic violence and stalking

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Path #2: 106.46 (Heightened Path)

- Includes all requirements of 106.45, Plus:
 - Notice must be written and be delivered with sufficient time before initial interview, though can be delayed due to safety concerns
 - Right to advisor of choice, including an attorney
 - Prohibition of knowingly making false statements or providing false information
 - Access to relevant evidence and investigation report and Opportunity to respond to the evidence/report
 - No specific timeline required for review period
- No requirement for Live Hearings BUT must permit decision makers and parties to question parties and witnesses (relevancy of questions must still be determined before asked):
 - Option 1: Live hearing with decision maker or advisor facilitated cross-examination. Can be conducted live but from different locations using technology. (Note: if using advisor facilitated cross-examination, institution must provide advisors to parties at no cost)
 - Option 2: Parties submit questions, decision maker/investigator asks questions and records/transcribes responses, parties receive recording/transcription, parties submit follow up questions and process repeats

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So What's Changed? (Appeals)

106.45:

- Must be the same as offered for other comparable policies, including discrimination policies

106.46:

- Appeals required on three grounds (+ more at discretion of institution if applied equitably):
 - Procedural irregularity that would change the outcome.
 - New evidence that would change the outcome and that was not reasonably available when the determination was made
 - 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

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So What's Changed? (Pregnancy & Related Conditions)

- Employees must provide name and contact information of Title IX Coordinator to students or legal representative
- Provide reasonable modifications to policies, procedures, and practices that are reasonable, do not fundamentally alter program, and can be accepted/declined by party.
 - Cannot require documentation unless necessary
- Leaves of absence and lactation spaces
- Comparable treatment to other temporary conditions for employees

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Decision Points

Guiding Questions for Important Decisions

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Guiding Principles

1. What is our ethic of care?
2. What are our core values?
3. How does our ethic of care and core values guide our decision making?
4. What communities and stakeholders were left out of prior regulatory implementation in 2020?
5. If we alter our procedures, what communities or individuals will be impacted? Who will benefit?
6. How will we explain the decisions we make?

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Mandatory Reporting

1. Who should be designated "confidential"?
 - a. What is the role and purpose of a confidential employee?
 - b. Who is already confidential?
 - c. Do the resources of the confidential employees apply equitably to all parties?
 - d. How does designation as confidential support/contradict the employee's fulltime role?
2. Who has the Authority to Implement Corrective Measures?
3. Who has responsibility for Administrative Leadership, teaching, or advising?
4. Who is currently designated as a mandated reporter and would otherwise not fit one of these categories?
5. How familiar is the campus community with current mandatory reporting rules?
6. What would the impact of a change in this designation be?
7. What new training would have to take place if this were to change?
8. How would we document provision of contact information/reporting options w/o reporting to TIXC?

20

Breakout Activity: In your groups, discuss the choices you can make and how they may impact certain campus groups. If you change your current mandatory reporting process and designation, what impact will that have on faculty and staff?

Breakout Activity #2 – Impact of Changes



21

Grievance Procedures

1. What procedures already exist in campus policies:
 - a. How are reports of discrimination/harassment outside of Title IX resolved:
 - 1) For students?
 - 2) For employees?
 - b. What is the current process for informal resolution and how well does it work?

2. What staffing resources would be needed to make changes to current procedures?
3. What technology resources would be needed to make changes?
4. What process would best align with our ethics and philosophy of care?
5. Define 106.45 process and, if different process for different reports, describe how such a determination will be made.
6. Live hearing or asynchronous process? Process for credibility assessment?
7. What will be your reasonably prompt timeframes?
8. Whether to offer informal resolutions and, if so, when/how it will be utilized and methods for conducting informal resolution.
9. How will we provide access to evidence?
10. How will we prevent unauthorized disclosures?
11. Additional grounds for appeal in 106.46?

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Breakout Activity: In your groups, discuss the choices you can make and how they may impact certain campus groups. If you move to an asynchronous investigator/decision maker questioning model and stop live hearings, how will students be impacted? How will they benefit?

Breakout Activity #3 – Impact of Changes



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Training

1. What trainings are currently utilized for:
 - a. All employees?
 - 1) Annually?
 - 2) At Hire?
 - b. All students?
 - 1) New?
 - 2) Returning?
 - c. Title IX Team (TIXC/Deputies, Investigators, Decision Makers, Advisors, Informal Resolution, etc).
2. What other regulations require similar training?
 - a. Clery?
 - b. State Law?
 - c. Insurance?
 - d. NCAA?
3. When are faculty and staff most receptive to training and have the time to do it?
4. What resources are available to administer training?
5. How will training be tracked and enforced?
6. What updates to training content will need to be made to reflect 2024 Regulatory changes?

24

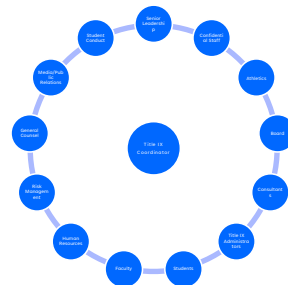


Creating Your Implementation Team

Who, what, when, where, and how

25

Your Implementation Team



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Procedure Design

- What administrative divisions will be impacted?
 - Student Conduct?
 - Title IX?
 - Human Resources?
 - Campus Safety/Security?
 - Confidential Staff?
 - Students?
 - Broader Campus Community?
 - Collective Bargaining Agreements?
- Who did not get buy-in in 2020 and wants it now?
- What works well/doesn't work well under the current regs?
 - Live hearing process?
 - Informal Resolution?
 - Mandatory Reporting?

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Policy Drafting and Approval

- What is your institution's process for approving and implementing changes to existing policies?
- What approval is required to expedite that process?
- Who needs to be involved?
 - General Counsel?
 - Senior Leadership?
 - Faculty senate/governance?
 - Board?

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Communication, Awareness, and Training

- Who can be a good advocate for change?
- Who has authority to communicate changes?
- Who can mandate and enforce trainings?
- Who has the trust of students, faculty, and staff?
- Which administrators will play an active and community facing role in reporting or resolution procedures?

29

Stakeholder and Community Involvement

- For each identified stakeholder, determine why they are involved and what their level of access and involvement will be.
- Who will be part of your core implementation team?
- Who will you consult?
- Who will you inform?
- Who will have decision making authority?
- How will summer schedules impact the availability of your stakeholders?
- How will you inform your board?
- How will you roll out final changes to community?

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Thank you!



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