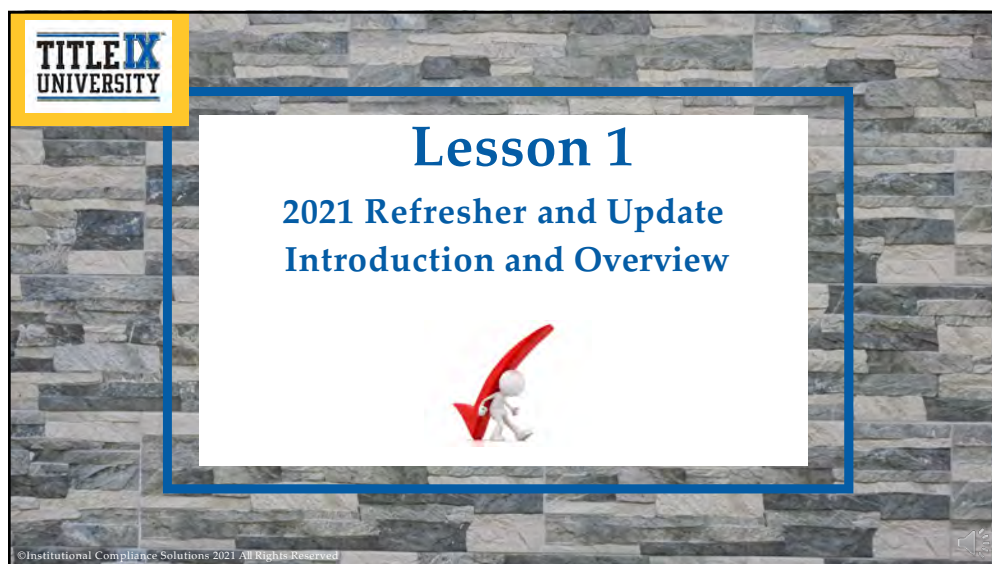




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Introduction

Courtney Bullard

Creator,
Title IX U

Education Law
Attorney

Founder, ICS



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Overview of the Course



- Lesson 1: Introduction and Overview
- Lesson 2: Title IX regulations refresher
- Lesson 3: "Living the regs"/Common Mistakes
- Lesson 4: Update
- Lesson 5: Wrap Up and Assessment of Knowledge

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Learning Objectives



- ✓ Review the Title IX regulations
- ✓ Understand lessons learned “living the regs”
- ✓ Recognize common mistakes made in investigations
- ✓ Understand updates in sub-regulatory guidance that could impact compliance

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Disclaimers



- ✓ Not legal advice
- ✓ Cannot possibly cover everything
- ✓ Pre-Requisite: Core Title IX U course for Title IX Investigators
- ✓ Rapidly evolving space, must continue professional development

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See you in Lesson 2!



Lesson 2 Title IX Regulations Refresher



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Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq

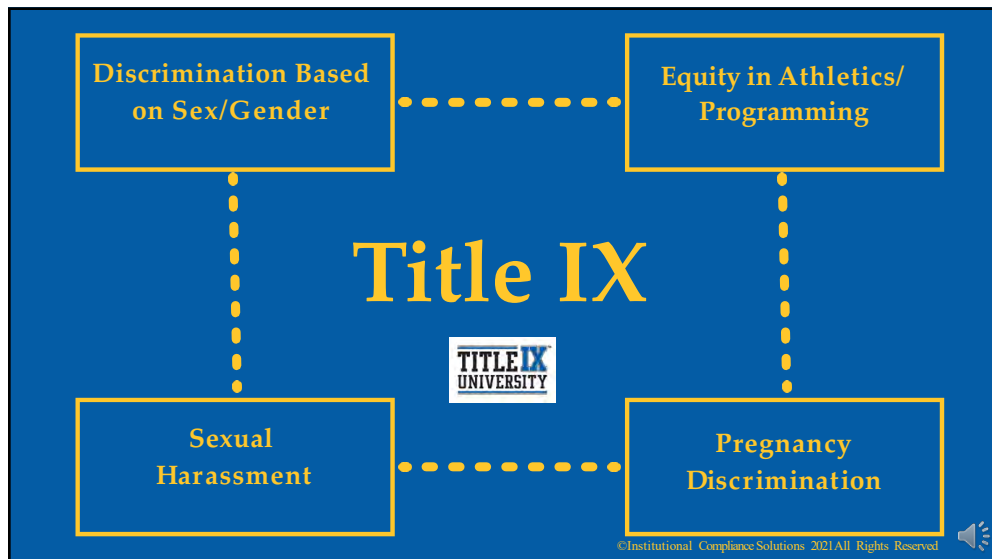


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No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.



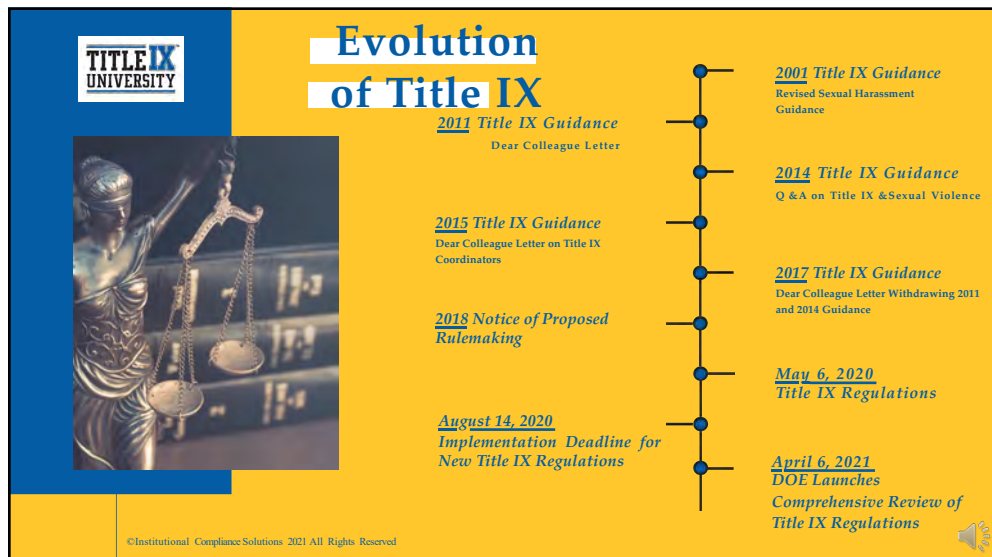
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REGULATIONS REQUIREMENTS OVERVIEW

Prescriptive Title IX Process

Officials with Authority

Policies and Procedures

Team and Training

Coordinator with Authority

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7

Title IX Team

Coordinator

- Investigator

May be the same as the Title IX Coordinator
- Decision-Maker

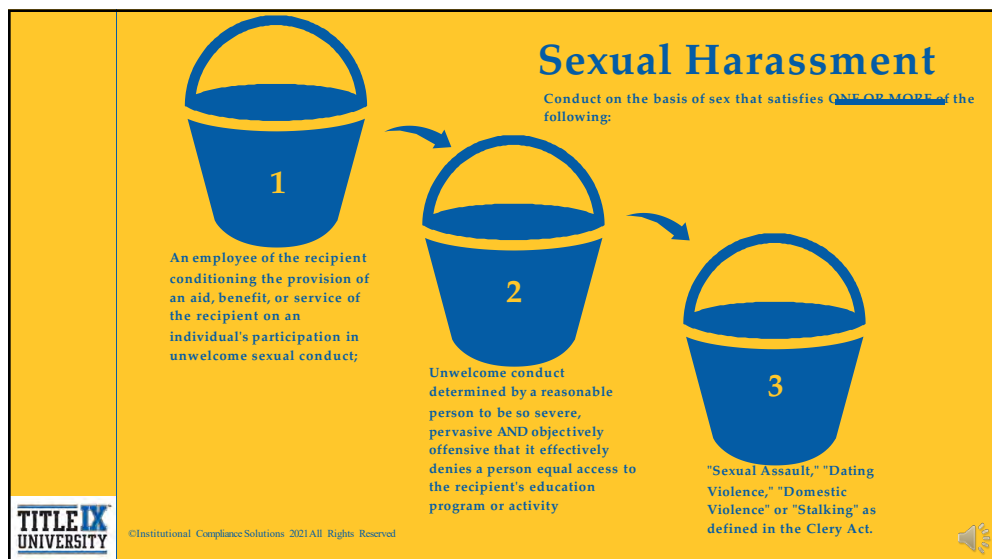
May **NOT** be the same as the Title IX Coordinator OR Investigator
- Appellate Decision-Maker

May **NOT** be the same as the Title IX Coordinator, Investigator, OR Decision-Maker
- Informal Resolution Facilitator

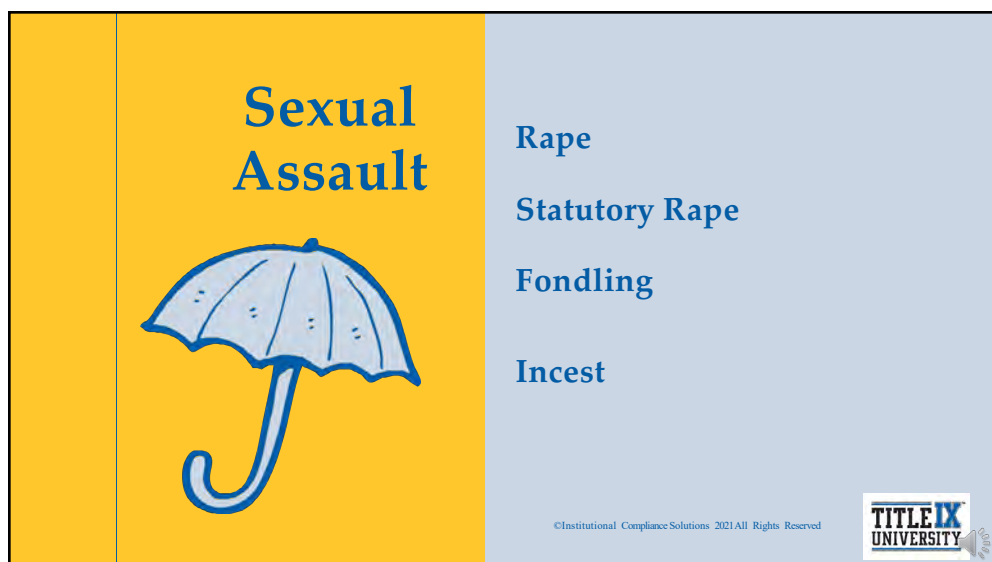
May be the same as the Title IX Coordinator (ONLY if policy allows for Informal Resolutions)

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SEXUAL ASSAULT

Sexual Assault: An offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Crime Reporting system.

A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

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DOMESTIC VIOLENCE

Domestic Violence: A felony or misdemeanor crime of violence committed

- by a current or former spouse or intimate partner of the victim;
- by a person with whom the victim shares a child in common;
- by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

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DATING VIOLENCE

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be based upon the reporting party's statement with consideration of the following factors:

- (i) The length of the relationship
- (ii) The type of relationship
- (iii) The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

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STALKING

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to

- (1) Fear for the person's safety or the safety of others; or
- (2) Suffer substantial emotional distress.

For purposes of this definition:

Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

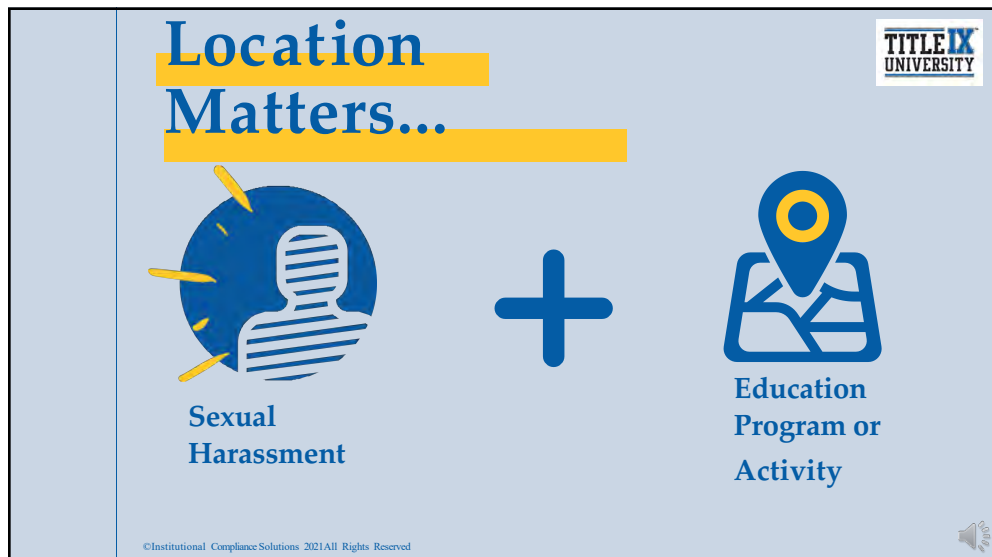
Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

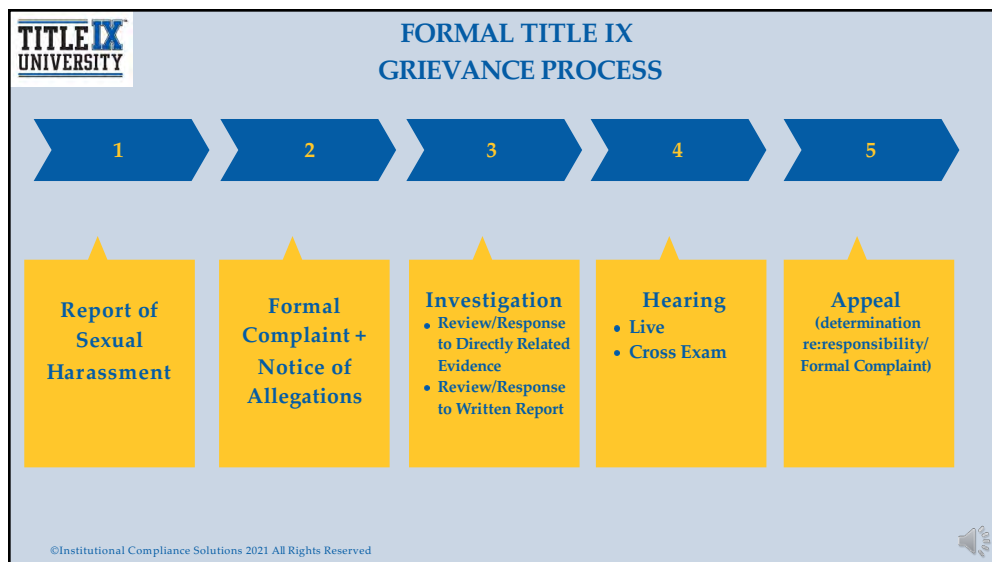
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16

Regulations say: Initial Response to Formal Complaint



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☒

NOTICE OF ALLEGATIONS

- UPON RECEIPT OF FORMAL COMPLAINT
- INCLUDES SUFFICIENT DETAILS
- PRESUMED NOT RESPONSIBLE
- ADVISOR OPTION
- INFORMAL RESOLUTION OPTION
- STANDARD OF EVIDENCE
- RIGHT TO REVIEW
- PROVISION FOR FALSE STATEMENTS

☒

SUPPORTIVE MEASURES FOR RESPONDENT


☒

UPDATES TO NOTICE OF ALLEGATIONS AS NECESSARY




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Regulations say: Supportive Measures/Options



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☒



SUPPORTIVE MEASURES

- PROMPTLY
- REGARDLESS OF WHETHER FORMAL COMPLAINT
- BURDEN ON INSTITUTION, NOT THE PARTY

☒

FORMAL COMPLAINT

- BY COMPLAINANT OR TITLE IX COORDINATOR
- ALLEGE SEXUAL HARASSMENT AGAINST RESPONDENT
- REQUEST INVESTIGATION

18

Regulations say: Investigation of Formal Complaint



- ☒ NOTICE OF MEETINGS WITH SUFFICIENT TIME TO PREPARE
- ☒ OPPORTUNITY FOR ADVISORS
- ☒ NOT RESTRICT DISCUSSION OR FACT GATHERING
- ☒ EQUAL OPPORTUNITY TO PRESENT WITNESSES
- ☒ BURDEN ON INSTITUTION, NOT THE PARTIES



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Regulations say: Opportunities for Review



- ☒ PROVIDE BOTH PARTIES EQUAL OPPORTUNITY
- ☒ INSPECT AND REVIEW EVIDENCE DIRECTLY RELATED TO THE ALLEGATIONS
 - PRIOR TO COMPLETION OF REPORT
 - AT LEAST 10 DAYS
- ☒ INVESTIGATIVE REPORT
 - 10 DAYS PRIOR TO HEARING




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Regulations say: Informal Resolution





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- ☒ NOT REQUIRED FOR INSTITUTION TO ALLOW OR FOR PARTIES TO PARTICIPATE
- ☒ AFTER FORMAL COMPLAINT
- ☒ PRIOR TO DETERMINATION
- ☒ NOTICE, AGREEMENT WRITTEN CONSENT, ABILITY TO WITHDRAW
- ☒ NOT WHEN RESPONDENT IS EMPLOYEE AND COMPLAINANT IS A STUDENT

21

Regulations say: Written Report





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- ☒ FAIRLY SUMMARIZES RELEVANT EVIDENCE
- ☒ YOU ARE NOT MAKING A DETERMINATION OF RESPONSIBILITY

22

Regulations say: Written Determination



MUST INCLUDE:

- IDENTIFICATION OF ALLEGATIONS
- DESCRIPTION OF PROCEDURAL STEPS TAKEN
- FINDINGS OF FACT
- CONCLUSIONS REGARDING APPLICATION OF FACTS TO THE CODE OF CONDUCT/POLICY
- STATEMENT OF AND RATIONALE FOR THE DETERMINATION OF EACH ALLEGATION
- STATEMENT OF AND RATIONALE FOR THE SANCTIONS/REMEDIES
- PROCEDURES AND PERMISSIBLE BASIS FOR APPEAL

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Regulations say: Appeals/Conflict of Interest



THREE BASES FOR APPEAL
PROVIDED –PROCEDURAL
IRREGULARITY, NEW EVIDENCE,
CONFLICT OF INTEREST/BIAS



**AVOID CONFLICT OF
INTEREST/BIAS**



THOROUGH, FAIR AND
IMPARTIAL INVESTIGATION



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See you next lesson!



Lesson 3: Living the Regs/Common Mistakes



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What Are You Investigating

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- Does everything go through one process or is it bifurcated?
 - Reports related to Culture
 - Non- Title IX Sexual Misconduct
 - Pregnancy
 - Discrimination
 - Other



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Incomplete Policy Definitions

- All Sexual Harassment as defined by the regulations including:
 - Rape
 - Fondling
 - Statutory Rape
 - Incest
 - Domestic Violence
 - Dating Violence
 - Stalking



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FAILURE TO UPDATE THE NOTICE OF ALLEGATIONS

- New Allegations/Additional Alleged Violations
- Change in Date/Time/Location
- Update of Name of a Party



A black and white photograph showing a hand holding a torn piece of white paper. The word "UPDATE" is written on the paper in a large, bold, hand-drawn style font. The background is dark and out of focus.

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Inequitable Treatment of the 10 Day Review Periods

- ✓ Access to Information
- ✓ Extensions
- ✓ Providing to Advisor

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NOT PLANNING AHEAD FOR 10 DAY REVIEW PERIODS

- Evidence shared:
 - Documents
 - Evidence
 - Videos
 - Photos
- Organization
- Communications about the review
- What to do with the responses

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FAILURE TO KEEP DETAILED RECORDS AND INVESTIGATIVE FILE

- Organized
- Clear
- Accessible
- Up to Date

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FORGETTING ABOUT VAWA AND CLERY IN NON- TITLE IX SEXUAL MISCONDUCT/HARASSMENT

- Advisors
- Support
- CSA Requirements
- Reporting
- Timely Warnings
- Etc.

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SHOWING YOUR WORK


VS

OVERLY COMPLEX REPORT

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CLUNKY TRANSITIONS

- Into Title IX Process
- Into Other Campus Process (Code of Conduct, Non Title IX etc.)
- Into Informal Resolution Process
- Out of Informal Resolution Process
- Into Hearing Process

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Lesson 4 Update



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How is Title IX Enforced?



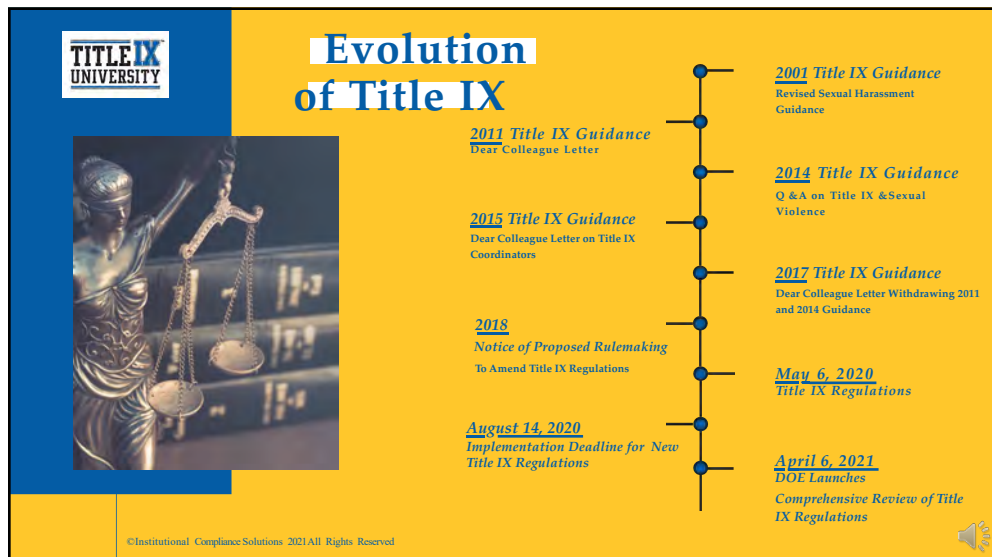
Office for Civil
Rights



Courts

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The Change in Administration











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Why Significant?






**BIDEN WAS VP TO
PRESIDENT OBAMA**

BIDEN AND VAWA

**BIDEN AND
TITLE IX**

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5





Dr. Jill Biden
First Lady

Dr. Miguel Cardona
Education Secretary

Suzanne Goldberg
Office for Civil Rights- Acting Secretary




Catherine Lhamon
Domestic Policy
Counsel/Asst. Sec. OCR

Dr. Rachel Levine
Assistant Secretary of Health



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Department of Education Sub-Regulatory Guidance



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Reminder



All Department of Education Guidance prior to the new regulations archived by Trump DOE, and Biden DOE has archived Trump DOE guidance as well.



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Guidance Regarding The Regs

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❖ May 2020 – January 2021: Various guidance released by OCR on the new regulations in blog posts

❖ Office for Civil Rights Open Center Response Repository



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Biden and the Regulations

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April 6, 2021 Announcement:

Department of Education's Office for Civil Rights Launches Comprehensive Review of Title IX Regulations to fulfill President Biden's Executive Order guaranteeing an educational environment free from sex discrimination

"The U.S. Department of Education's Office for Civil Rights (OCR) today announced a comprehensive review of the Department's regulations implementing Title IX of the Education Amendments of 1972, as part of implementing President Biden's March 8 Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity."

In a letter to students, educators, and other stakeholders, OCR outlined plans to solicit the public's input on the regulations, ultimately leading to possible revisions through a notice of proposed rule making."

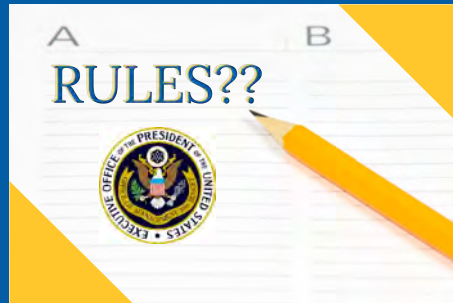
April 20, 2021: New DOE Blog – "Let's Talk About Title IX"



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PROPOSED RULE ANTICIPATED: MAY OF 2022

TITLE IX
UNIVERSITY



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TITLE IX
UNIVERSITY

Bottom Line: Constantly Evolving

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Guidance: Discrimination Sexual Orientation/Gender Identity

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Bostock v. Clayton County

2020: Supreme Court held Title VII prohibition on discrimination based on sex covers discrimination on the basis of gender identity and sexual orientation



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Discrimination based on sex to include gender identity or sexual orientation?

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Regulations: Do not define sex



❖ *June 16, 2021: U.S. Department of Education's OCR issued a Notice of Interpretation explaining that it will enforce Title IX's prohibition on discrimination on the basis of sex to include: (1) discrimination based on sexual orientation; and (2) discrimination based on gender identity.*



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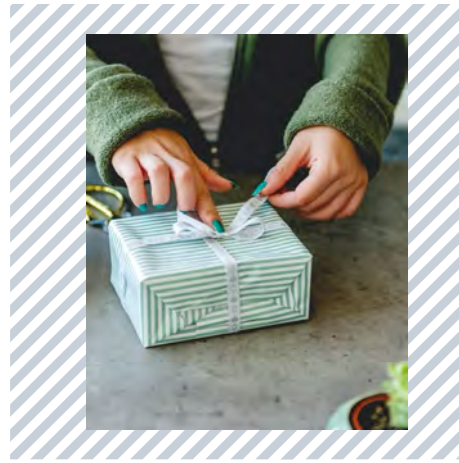
See you next lesson!



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Lesson 5 Wrap Up and Assessment



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Reminders



- ✓ Procedural guardrails in regs
- ✓ Theme: Equity in process
- ✓ Help out your decision makers
- ✓ Regulations will not be revised quickly
- ✓ Know your role for matters outside of non-Title IX sexual harassment/misconduct

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Learning Objectives



- ✓ Review the Title IX regulations
- ✓ Understand lessons learned “living the regs”
- ✓ Recognize common mistakes made in investigations
- ✓ Understand updates in sub-regulatory guidance that could impact compliance
- ✓ Evaluate your current role and apply knowledge to future work

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List of Course Downloads



- ☑ Title IX Regulations
- ☑ OCR Guidance
- ☑ Executive Orders
- ☑ Compliance Aids

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Questions???



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ASSESSMENT OF KNOWLEDGE

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