



# Title IX Countdown

A Practical Guide to Title IX Compliance



# Speakers

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# *Disclaimers*

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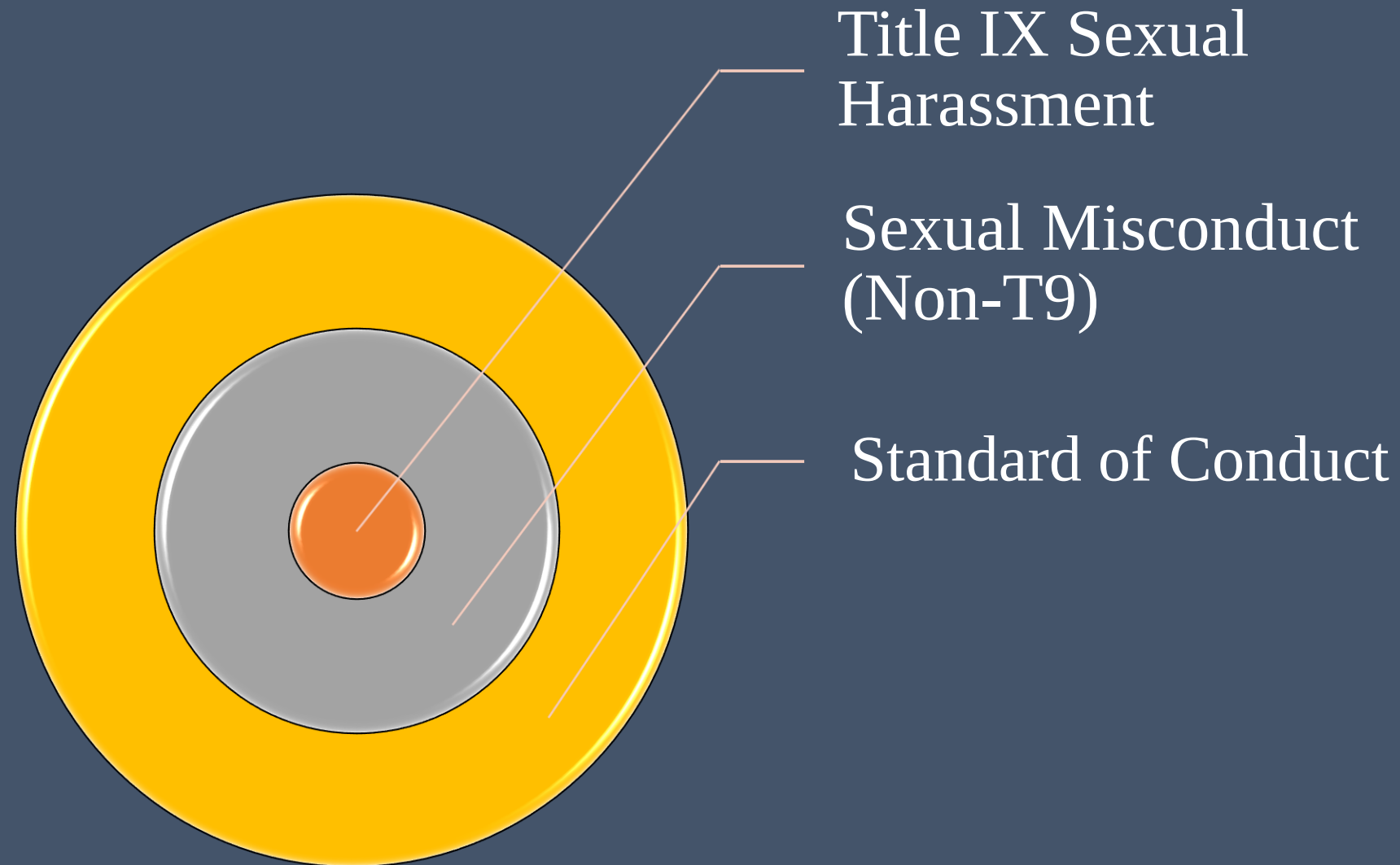
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# Overview of New Rule

- Narrow Definition & Scope of Actionable Conduct
  - Sexual Harassment: 3-pronged definition
  - Notice & Scope
- Emphasis on Due Process, Objectivity, Consistency
- Title IX Roles & Training
- School's Mandatory Response/Supportive Measures
- Formal Complaint
- Investigation
- Grievance Process
  - Live Hearing w/ cross-examination
  - Appeal
- Record Keeping

# Title IX Sexual Harassment in Context



| Title                                            | Responsibilities                                                                                               | Training                                                                                                                                           | Status                                                  |
|--------------------------------------------------|----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| Title IX Coordinator<br>(multiple &/or deputies) | Coordinate, Intake Reports & Complaints, T9 analysis, Initiate Formal Complaint, Implement Supportive Measures | Sexual Harassment, Investigation & Grievance Procedure Hearings, Appeals & informal resolution (as applicable); Impartiality, Relevance, Privilege | Must be Employee<br>May Not Serve as Decision-Maker     |
| Investigator                                     | Conduct Fair, Objective and Impartial Investigation, Differentiate b/w Related & Relevant Evidence, Privilege  | Sexual Harassment; How to Conduct an Investigation , Impartiality, Relevance, Privilege, Report-Writing                                            | Staff or External<br>May Not Serve as Decision-Maker    |
| Decision Makers                                  | Evaluate Evidence, Make & Write Decision, “Rule” on Relevancy during Cross                                     | Sexual Harassment, Hearing Process, Technology, Evidence/Relevancy                                                                                 | Staff or External<br>Cannot Serve in Any Other Capacity |
| Advisor(s)                                       | Question Opposing Party & Witnesses                                                                            | None required                                                                                                                                      | Party provided<br>Staff or External                     |
| Informal Resolution Facilitator                  | Informal Resolution Processes                                                                                  | Informal Resolution Processes                                                                                                                      | Staff or External                                       |

# Training Basics

- Must not rely on sex stereotypes
- Must promote impartial investigations & adjudications
- ALL materials must be publicly available on web-site & maintained for seven years

# Supportive Measures

- What are Supportive Measures?
  - Individualized, appropriate & reasonably available
- When are they required?
  - Required in ALL cases
- What are they intended to accomplish?
  - designed to preserve or restore equal access
- Who pays for them?
  - Without fee or charge
- What they can't do:
  - Non-disciplinary & Non-punitive
  - Without unreasonably burdening the other party
- Confidential



# Grievance Process

- Rules Must Apply Equitably
  - Remedies
  - Objective Evaluation of all Evidence
  - No Conflict or Bias
  - Presumption of “innocence”
  - Reasonably Prompt Timeframes
  - Standard of Evidence
  - Notice of Allegations
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# Investigation

- Impartial, Fair & Objective
- Burden on School
- No Gag-orders
- Right to an Advisor
- Dismissal
- Written Notice w/Sufficient Time to Prepare
- Opportunity to Inspect & Respond to Evidence
- Investigative Report

# Hearing

- Must be Live w/Cross-Exam
- Only Relevant Questions Permitted
  - Decision-maker must determine whether question is relevant each and every time prior to party answering & provide rationale
- Rape-Shield Protections & Exceptions
  - Sexual predisposition or prior sexual behavior
- Refusal to Submit to Cross
  - Cannot Rely on Statements
  - Cannot Draw Inference on Responsibility
- Opportunity to Present Witnesses/Evidence
- Must be Recorded or Transcribed

# Tip: Explore the Resources

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- Regs are effective August 14, 2020
  - Learn the [new regulations](#):
    - No way around it – you can't comply with something you don't understand
    - The actual regs are less than 30 Word pages
  - Watch OCR's Webinar: Title IX Regulations Addressing Sexual Harassment (1 hour, 11 mins, 20 secs)
    - <https://www.youtube.com/watch?v=TdfT5R8ibm4&feature=youtu.be>
  - Email OCR OPEN Center with questions at [T9questions@ed.gov](mailto:T9questions@ed.gov)
  - Read the Department's Summary Documents:
    - [U.S. Department of Education Title IX Final Rule Overview](#)
    - [Summary of Major Provisions of the Department of Education's Title IX Final Rule and Comparison to the NPRM](#)
    - [Summary of Major Provisions of the Department of Education's Title IX Final Rule](#)
    - [Office for Civil Rights Blogs](#)
    - [Questions and Answers for Postsecondary Institutions Regarding the COVID-19 National Emergency](#)
  - Attend as many webinars you can or find an organization (hint: T9Now) to help you answer questions

# Tip: All Hands On Deck

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- Engage all the stakeholders; especially your executive team: you need a buy-in for all the resource approvals.
  - Prepare your proposal with consideration for COVID19, current economy, staff availability, student presence, number of campuses, etc.
  - Determine short term staffing plan: hiring vs. outsourcing
- Discuss how this will be managed remotely: keep your team engaged and prepared
- Understand the composition and training needs of your Title IX team
  - Establish your TIX team (internal and external)
    - Designate the TIX Coordinator(s)
    - Identify pool of Investigator(s), Adjudicator(s)

# Tip: Policy Updates & Communication

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- Begin Interim Policy changes:
  - Incorporate interim disclaimers to notify your community that to the extent possible you will comply with new regulations. Consider phased approach!
  - Policies will need to incorporate key terms, describe when will you respond to sexual harassment, explain Formal Complaint, and commit to basic elements of formal complaint framework.
  - Determine standard of evidence: preponderance OR clear and convincing? Pick one and stick to it.
- Notify your students, staff, applicants, prospects
- Publish on your website:
  - Name or title, business address, email address and phone number of your Title IX Coordinator
  - Training materials used by Title IX Coordinator, investigators, and adjudicator



# Tip: Training Strategy

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- Develop a “stop-gap” training strategy
  - Fill in the gaps; don’t start from scratch
  - Title IX Coordinator needs to be up-to-speed and trained by Aug. 14, but other roles need to be trained *prior* to serving in roles
    - If you have few cases probably won’t need to have a fully trained team by Aug. 14
    - Can always outsource if necessary

# Tip: Analyze & Socialize Decision Points

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- Standard of Proof
- To Whom to Report
- Definition of Consent
- Process for Non-Title IX Misconduct
- Informal Resolution
- Participation of Advisors
- Hearing Format & Protocols
- Discretionary Dismissal
- Allowable Bases of Appeal

## Q&A

Do the rules apply to distance education or “online” classes or activities? Can you provide examples?

## Q&A

Can schools contract with an outside party to investigate Title IX complaints or to act as the decision maker in hearings? It would be helpful to hear any “best practices” around outsourcing – what was outsourced, how it went, how they found the consultants to do that work.

## Q&A

The rules say that the materials used to train Title IX personnel must be posted on website. Does this mean the actual training needs to be posted, or could the institution post a summary of the training. For example something like, “The school’s Title IX personnel are certified by <<insert training vendor name>> to appropriately respond to, investigate and adjudicate Title IX violations...”

## Q&A

If a respondent is charged with a crime and convicted, can the school defer to the police investigation and forego conducting its own investigation?

## Q&A

Can you talk about the role of Advisors? I know Advisors have to conduct cross-examination, but I'm unclear about how they participate in the process otherwise, i.e. during the investigation for example. If a party does not have one, what is the school's obligation to provide one?

Thank You!

Presentation & Q&A will be posted at  
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