



Relationships



Communication



Budgeting
and Staffing



Know-How



Results

The New Title IX Guidance: Now What?

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Overview

- Historical Context
- 2017 Actions
- Impact of 2017 Q&A on TIX Processes
- The Future at U.S. DOE
- Recommended Steps on Campus



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Historical Context



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Results

- Statute
- Regulations
- Pre-2017 Guidance
 - 2001 Guidance
 - Largely Overridden by Subsequent Guidance
 - Hostile Environment Aspects Always Operable
 - 2011 Dear Colleague Letter
 - 2014 Questions & Answers
 - 2015 Title IX Coordinator Guidance
 - 2016 Transgender Guidance

TITLE IX

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.

2017 Actions

- February 22 - Transgender Guidance Repeal
- September 22 – Q&A
 - Repeals 2011 and 2014 Guidance
 - Resurrects Much of 2001 Guidance
 - Limits Impact of Resolution Agreements
 - Defers Appropriately to VAWA Regs
 - Establishes Notice and Comment Approach for Permanent Rules
 - Establishes Rules to Apply Until Permanent Rules Adopted



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Impact of 2017 Q&A on TIX Processes

- Mediation Allowed
- Preponderance of Evidence Standard Not Required
 - Clear & Convincing Standard Now an Option
 - Impact of Footnote 19
- No 60-day Rule



Impact of 2017 Q&A on TIX Processes

- More Flexible Appeal Options

- None
- Respondent Only
- Both Parties Equally

**KNOW
YOURIX**

- Emphasis on equal access to information and procedural rights and protections to both parties



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The Future at U.S. DOE

- Modifications to Case Processing Manual and Other Internal Processes
- Shorter VRAs
- Notice and Comment Period
 - Start Date Still Uncertain
 - Channel Comments through ACE and Affiliates
- Key Principles Likely to Be Implemented
- Resurrection of 2001 Guidance



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Equitable Grievance Procedure Elements



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- Notice to students . . . and employees of the procedure, including where complaints are filed
- Application of the procedure to complaints alleging harassment by employees, students or third parties
- Adequate, reliable, and impartial investigations, including opportunity to present witnesses and other evidence
- Designated and reasonably prompt timeframes for the major stages of complaint process
- Notice to the parties of the outcome of the complaint
- Assurance school will take steps to prevent recurrence of any harassment and to correct discriminatory effects on complainant and others

2001 Revised Sexual Harassment Guidance, p. 20; 2017 Q&A, p. 3.

Recommended Steps on Campus

- Short Term Tweaking
 - Consider Modifications Necessary to Permit Mediation and/or Informal Resolutions
 - Implement requirement that agreements for informal resolution be in writing and signed by both parties
 - Consider Implications of Footnote 19 on Your Policy
 - Train Title IX Coordinators regarding any change in the applicable standard of proof



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Recommended Steps on Campus

- Intermediate Term Modifications
 - Consider Substantial Policy Modifications with Input from Campus Stakeholders
 - Use 2001 Guidance to Identify Minimum Standards



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Recommended Steps on Campus

- Long Term
 - Monitor Notice and Comment Process
 - Keep in Contact with DC-Based Advocates
 - Revise Policy to Reflect Whatever Regulations May Be Adopted



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Impact on Respondent Litigation

- Most Potent Claim -- Breach of Contract
 - Broadly recognized by courts
 - Complexity of process required by Obama era guidance created multiple opportunities for mistakes
- Other Claims
 - High variability among USCA circuits
 - Increased USDOE emphasis on due process
 - Notice and comment results could materially alter



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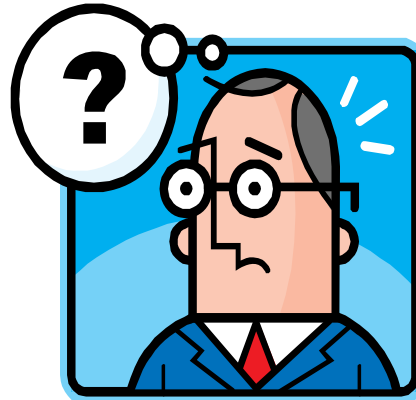
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QUESTIONS?



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Material Disclaimer



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