



TITLE IX AND FEDERAL CASELAW UPDATE

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**BUCKLE UP
LADIES AND
GENTLEMEN,
BECAUSE TIMES
ARE CHANGING.**

NEW TITLE IX REGULATIONS ARE COMING ONLINE, AND THERE'S A NEW SUPREME COURT CASE OF NOTE FOR EMPLOYERS.



TITLE IX REGULATIONS: THE CAST

- It's quite a cast of people you're going to have to enlist on this one. You need to have a Title IX Coordinator, an investigator, and a decisionmaker.
 - If these individuals have conflicts, you'll need others to fill in.
- Also, you'll need a different person to serve as the decisionmaker if there is an appeal.
- The informal resolution process may be facilitated by a trained educational professional, consultant, or other individual selected by the Title IX Coordinator, but it would also seem this would likely not be the same individual as any of the aforementioned ones.





AND THEN THERE WILL BE TRAINING

- The Title IX Coordinator, any investigator, decision-maker, or any person who facilitates an informal resolution process shall not have a conflict of interest or bias for or against the complainant or respondent.
- These individuals shall receive training on the definition of sexual harassment; the scope of the education program and activities; how to conduct an investigation, including appeals and informal resolution processes; and how to serve impartially, including by avoiding prejudgment of the facts, conflicts of interest, and bias.
- Decision-makers shall receive training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
- Investigators shall receive training on issues of relevance of questions and evidence in order for them to create investigative reports that fairly summarize relevant evidence.

HOW DO WE GET THE PROCESS STARTED?

- Report is made to or forwarded to Title IX Coordinator
- Title IX Coordinator must **promptly** contact the complainant:
 - To discuss the availability of supportive measures
 - Consider the complainant's wishes with respect to supportive measures
 - Inform the complainant of their availability of supportive measures with or without the filing of a formal complaint
 - Explain the complaint process for filing a formal complaint
- If no formal complaint, supportive measures provided to both parties, document, and close
 - Title IX Coordinator can be the filer
- If formal complaint is filed:
 - Provide written notice to known parties
 - Dismissal: Recipient can dismiss at this stage (p. 2021-2022 of the regulations)



INVESTIGATION

- Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and **the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.** The recipient must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination
- Create an investigative report that fairly summarizes relevant evidence and, **at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility,** send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.





WHEN THE DECISIONMAKER RECEIVES THE INVESTIGATIVE REPORT

- With or without a hearing, **after the recipient has sent the investigative report to the parties pursuant to paragraph (b)(5)(vii) of this section and before reaching a determination regarding responsibility**, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
- Determination of Responsibility
 - The recipient must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the **date on which an appeal would no longer be considered timely**.

APPEALS

- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- Issue a written decision describing the result of the appeal and the rationale for the result; and
- Provide the written decision simultaneously to both parties.



INFORMAL RESOLUTION

- Provides to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared



BOSTOCK V. CLAYTON COUNTY, GEORGIA

- The U.S. Supreme Court this week ruled that civil rights laws protect LGBT people from job discrimination.
- In a 6-3 decision, the court said a key provision of the 1964 Civil Rights Act known as Title VII that prohibits discrimination in employment because of sex, also prohibits discrimination against workers based on sexual orientation or transgender status.
- “An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex,” Justice Neil Gorsuch wrote for the majority. “Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.”
- Title VII of the Civil Rights Act prohibits employers from discriminating against employees based on sex, race, color, national origin and religion. While the court decision doesn’t directly impact Title IX, which applies to students, the ruling could affect student protections.

QUESTIONS?

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