THE ESSENTIAL TITLE IX ACTION PLAN FOR 2023

Webinar February 9, 2023

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THIS IS OUR AGENDA

- Why Are We Here?
- Your Action Plan in 5 Steps
- Step 1: Orient Yourself
- Step 2: Leadership Buy-In
- Step 3: Scheduling Training
- Step 4: Policies & Procedures
- Step 5: Templates
Why Are We Here?

• Current rules: Betsy DeVos & Donald Trump's 2020 Title IX Rules
• Effective August 14, 2020
• Address "sexual harassment" under Title IX with very prescriptive rules
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- **New proposed rules:** Catherine Lhamon & Joe Biden's proposed Title IX rules
  - Proposed June 23, 2022 on the 50th anniversary of Title IX
  - Will address "sex-based discrimination"
  - Expected to become final in May 2023

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- **New proposed rules:** Catherine Lhamon & Joe Biden's proposed Title IX rules
  - Proposed June 23, 2022 on the 50th anniversary of Title IX
  - Will address "sex-based discrimination," not just "sexual harassment" but with somewhat less prescriptive rules

- No one wants to do the "summer scramble" again
- But how do you tackle this issue when the rules aren’t even final yet?
- Today's goal: a practical action plan
1 Step One: Orient Yourself

Two grievance processes

1. 106.45 applies to all complaints of sex-based discrimination

2. 106.46 applies to Higher Education complaints of sex-based harassment

The Proposed Rules
“Sex-Based Harassment”

• Hostile Environment Harassment ("severe or pervasive" not "severe, pervasive, and objectively offensive" + "denies or limits" not "effectively denies"

• The Title IX "Big Five"
  ➢ Quid Pro Quo
  ➢ Sexual Assault
  ➢ Dating Violence
  ➢ Domestic Violence
  ➢ Stalking

“Education Program or Activity”

• Currently: “locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs”

• Proposed: “subject to the recipient’s disciplinary authority”

* Both include buildings owned or controlled by an officially recognized student organization at an IHE
• Current rules: mandate dismissal if conduct did not occur in an educational institution’s education program or activity or against a person in the U.S.

• Proposed rules: dismissal is permissive and must address conduct “even if sex-based harassment contributing to the hostile environment occurred outside of the recipient’s education program or activity or outside the U.S.”

• Is this a distinction with or without a difference?

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### General Grievance Process Hot Takes

<table>
<thead>
<tr>
<th>Evaluation</th>
<th>Investigation</th>
<th>Determination</th>
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</thead>
<tbody>
<tr>
<td>Supportive measures can temporarily burden the respondent</td>
<td>Oral complaints trigger the grievance process</td>
<td>Title IX Coordinator, investigator, and decision-maker can be the same person</td>
</tr>
<tr>
<td>ER for non-physical risk</td>
<td>Except for IHE sex-based harassment, can just provide description of relevant evidence (w/opportunity to request to review permissible evidence)</td>
<td>Live hearings not required; may allow decision-maker to ask questions if offered (consider local due process)</td>
</tr>
<tr>
<td>No complaint required for IR</td>
<td>Except for IHE sex-based harassment, written notice of interviews not required</td>
<td>New &quot;exclusionary rule&quot;</td>
</tr>
<tr>
<td>No more mandatory dismissal</td>
<td></td>
<td>Except for IHE sex-based harassment, limited notice of outcome required</td>
</tr>
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</table>
General Grievance Process Hot Takes

<table>
<thead>
<tr>
<th>Current: Appeals</th>
<th>Proposed: Appeals</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Required for all dismissals and determinations for all formal complaints of sexual harassment</td>
<td></td>
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<tr>
<td>• Decision-maker(s) for appeal cannot be decision-maker(s) that reached the determination or dismissal, the investigator(s), or the Title IX Coordinator</td>
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<tr>
<td>• Required for three bases; can offer for others, if equally offered</td>
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</tr>
<tr>
<td>• Required for all dismissals; required for three bases for IHE sex-based harassment decisions</td>
<td></td>
</tr>
<tr>
<td>• Does not identify required bases for appeal</td>
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<tr>
<td>• Decision-maker for appeal must be person who did not take part in an investigation or dismissal decision</td>
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<tr>
<td>• Decision-maker must be trained</td>
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</tbody>
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2 Step Two: Leadership
Your Leaders Matter BUT MAY NOT KNOW THEY DO

Ensuring your leadership understands you will need time and funding for training, policy updates, and creating necessary templates is essential to allowing you to effectively organize and implement the rest of your “action plan”

Action Plan Step

• Get on your leadership’s calendar in February or March

• Come prepared with a clear outline of budget and resources needed to effectuate the other steps of your plan

• Get buy-in on timing of your remaining action plan steps and a commitment to making them a priority within the institution
### Step Three: Training

#### Training Hot Takes

<table>
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<th>Current: Training</th>
<th>Proposed: Training</th>
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</thead>
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<tr>
<td>• Training for Title IX team on the grievance process for sexual harassment only</td>
<td>• Training for Title IX team on the grievance process for all types of sex-discrimination, including sex-based harassment</td>
</tr>
<tr>
<td>➢ Includes specific topics for Title IX investigators and decision-makers</td>
<td>➢ Includes specific topics for Title IX Coordinators and Designees and Informal Resolution Facilitators</td>
</tr>
</tbody>
</table>
Training Hot Takes

• NEW! Training for all employees on identifying and reporting sex-based harassment
• NEW! Training for “Confidential Employees”

Confidential Employees

Employee with duty of privilege under Federal or State law associated with their role

Employee designated as confidential due to their role in providing services to persons regarding sex discrimination

Postsecondary employee conducting certain approved research on sex discrimination (limited to information received in study)
Step Four: Policies & Procedures

Training on Rules
All Title IX Team Members
- Minimum 3-hour basic training for all
- Minimum 2-hour role training
- Recommend much more; consider 8-hour reference in 2020 rules

Identifying Sex Discrimination
All Employees
- Consider "small bites" for training
- Use non-traditional "training" for regular updates

Confidential Employee Duties
Confidential Employees + T9Cs & DCs
- Consider "small bites" for training
- Use non-traditional "training" for regular updates
Policies & Procedures

Begin reviewing and revising your policies, procedures, handbooks, and other documents to get a head start on the new rules.

1. Learn from our mistakes under the 2020 Title IX rules

2. Provide your community more than the bare minimum from the rules

3. Rather wait for a template? Identify your source now

Step Five: Templates
Begin Updating or Preparing Templates...

Examples:

1. CHECKLISTS
   - All Phases of the Process
   - Supportive Measure/Process Meeting

2. DECISION TREES
   - Evaluation Tools

3. LETTERS/NOTICES
   - Confirmation Letters
   - Notice of Allegations
   - Dismissal

4. OTHER DOCUMENTS
   - Intake Form
   - Complaint Form
   - Templates for Reports and Decisions
Join Us: Upcoming Webinars

What You Don’t Know Might Hurt You:
Surviving an OCR or DOJ Civil Rights Complaint

📅 March 2, 2023 @ 1:00 PM
🌐 bit.ly/T9Complaint

Say What?
First Amendment Limits on Addressing Disruptive Student, Parent, and Employee Speech in Public Schools

📅 April 13, 2023 @ 1:00 PM
🌐 bit.ly/T9saywhat

Thank You!

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