

# 2020 Regs Rapid Response R<sup>3</sup>

## 2020 Title IX Regulations Overview

Introductory Webinar for  
K-12 Schools and Districts

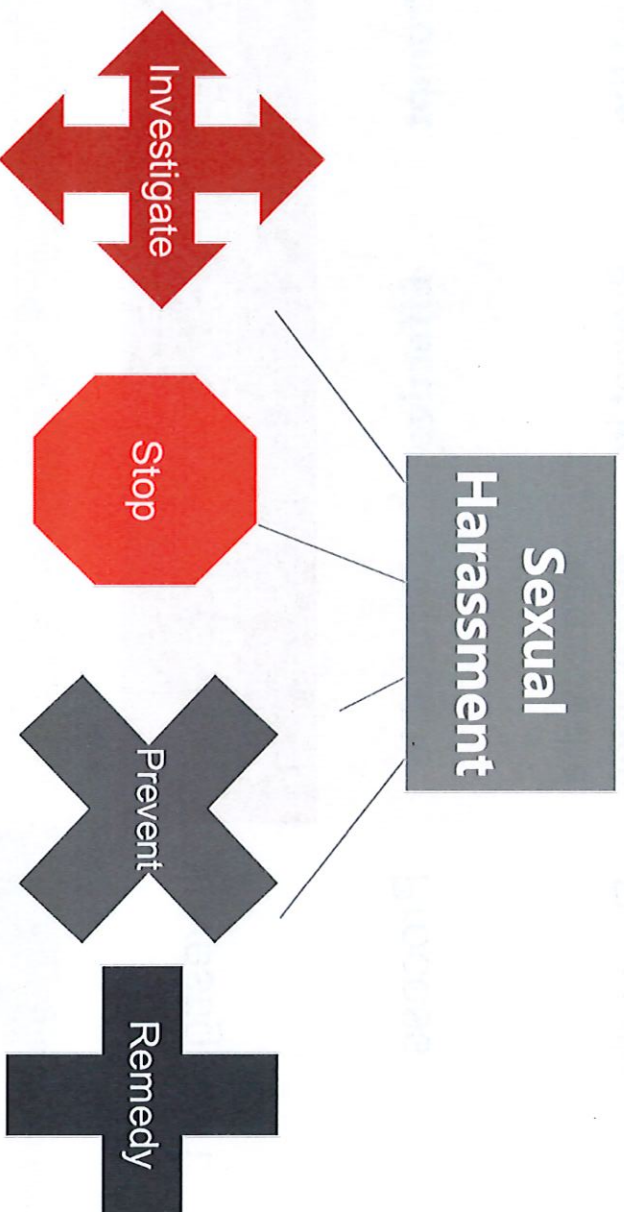
May 2020

# How Did We Get Here?

- What is Title IX?
- Obligations Under Title IX?
- History of Title IX?
- OCR and Title IX
- Lessons Learned from Higher Ed
- Overview of Regulatory Changes?
- Changes for K-12 Moving Forward
- Additional Resources



# School Obligations Under Title IX



## A Brief History of Title IX

- Title VI of the Civil Rights Act of 1964 (42U.S.C. §2000d et seq.)
  - “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” (“Sex” added by Executive Order in 1965)
- Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e-2)
  - Prohibits discrimination in the terms, conditions or privileges of employment on the basis of an individual’s race, color, religion, sex, or national origin.
- 1972: Title IX passed and signed into law by President Nixon



## Franklin v. Gwinnett Public Schools 503 U.S. 60 (1992)

- Adult-on-student sexual harassment
- Supreme Court held:
  - Sexual harassment constituted sex discrimination under Title IX.
  - Private right for recovery of monetary damages under Title IX.
- *Franklin* did not address issues concerning the educational institution's liability.

# Davis v. Monroe County Bd. Of Ed. 526 U.S. 629 (1999)

- Student-on-student sexual harassment
- Finding in favor of Davis, the Supreme Court applied same standards to find the institution liable for damages as in the *Gebser* case:
  - The institution must have “actual notice” of the harassment; and the institution must have responded to the harassment with “deliberate indifference.” Additionally, court held:
    - Harassment must be “severe, pervasive, and objectively offensive,” and the indifference “systemic,” to the extent that the victim is deprived of educational opportunities or services.
    - Justice O’Connor added a framework to determine deliberate indifference – stating that deliberate indifference constitutes a response that is “clearly unreasonable in light of the known circumstances.”



## A Brief History of Title IX: OCR and Title IX

- The Office for Civil Rights (OCR) under the Department of Education is responsible for establishing the compliance standards to be applied in investigations and enforcement of Title IX regarding sexual harassment.
- Provides regulatory and sub-regulatory guidance.

## OCR Enforcement Mechanisms

- OCR administratively enforces Title IX by:
  - Conducting investigations of complaints filed with the U.S. Dept. of Education.
  - Engaging in “voluntary compliance” investigations.
- Technical Assistance
  - To help institutions, students, and parents understand their rights and responsibilities.



## Increased Focus on Due Process

- The pro-complainant imbalance prompted hundreds of lawsuits by respondents
  - Wave of John Doe cases with unfavorable findings toward schools
  - Rise in lawsuits alleging selective enforcement, negligence, deliberate indifference, etc.
- Courts began requiring heightened levels of due process
  - Sixth Circuit leads this revolt
- Trump-era OCR shifting imbalance back toward respondents, using courts and due process as their rationale
  - Impetus for new regulations
- Again, all primarily focused on higher ed, but creating conditions that have resulted in slew of new regulations impacting K-12

# Overview of 2020 Regulatory Changes

- Overview of Regulatory Process
- Key Regulatory Changes
- OCR Enforcement
- Changes for K-12 Moving Forward



## Overview of Regulatory Process

- Impose new requirements on K-12 schools that were previously only required for higher ed
- Amendments are significant, legalistic and very due-process heavy
- Amendments to Title IX regulations become effective August 14, 2020
  - Amend the Code of Federal Regs.
  - Have the force of law
  - Enforceable by OCR and the courts (although not bound to do so)
  - Some provisions already mandated by courts in some jurisdictions
  - Intervening variables
    - Impending lawsuits and injunctions
    - Election year
    - Conflicts with State law

## Changes For K-12 Moving Forward

- You are now in the “hot seat”
- More formal organizational structure
  - Title IX Coordinator, investigator, decision-maker(s)
- Greater investment – financial, personnel, time
- Recognize difference between what is required to be covered under Title IX versus what is discretionary/what is covered under your school policy
  - i.e. off-campus conduct; signed complaint; definition of sexual harassment, etc.
- Incorporating a “hearing” with cross examination into each formal resolution
- Advisors of choice for parties



## Additional Resources

- A Deeper Dive: Regulations Overview Webinar for K-12 Schools and Districts, Friday, May 22, 2020 at 11 am ET
- ATIXA's 2020 Regs Rapid Response (R<sup>3</sup>) Resource Center – <https://atixa.org/r3/>
- Joining ATIXA is your BEST option to access R<sup>3</sup> content. For more information about ATIXA membership, please visit <https://atixa.org/r3-membership/>