

Title IX New Regulations



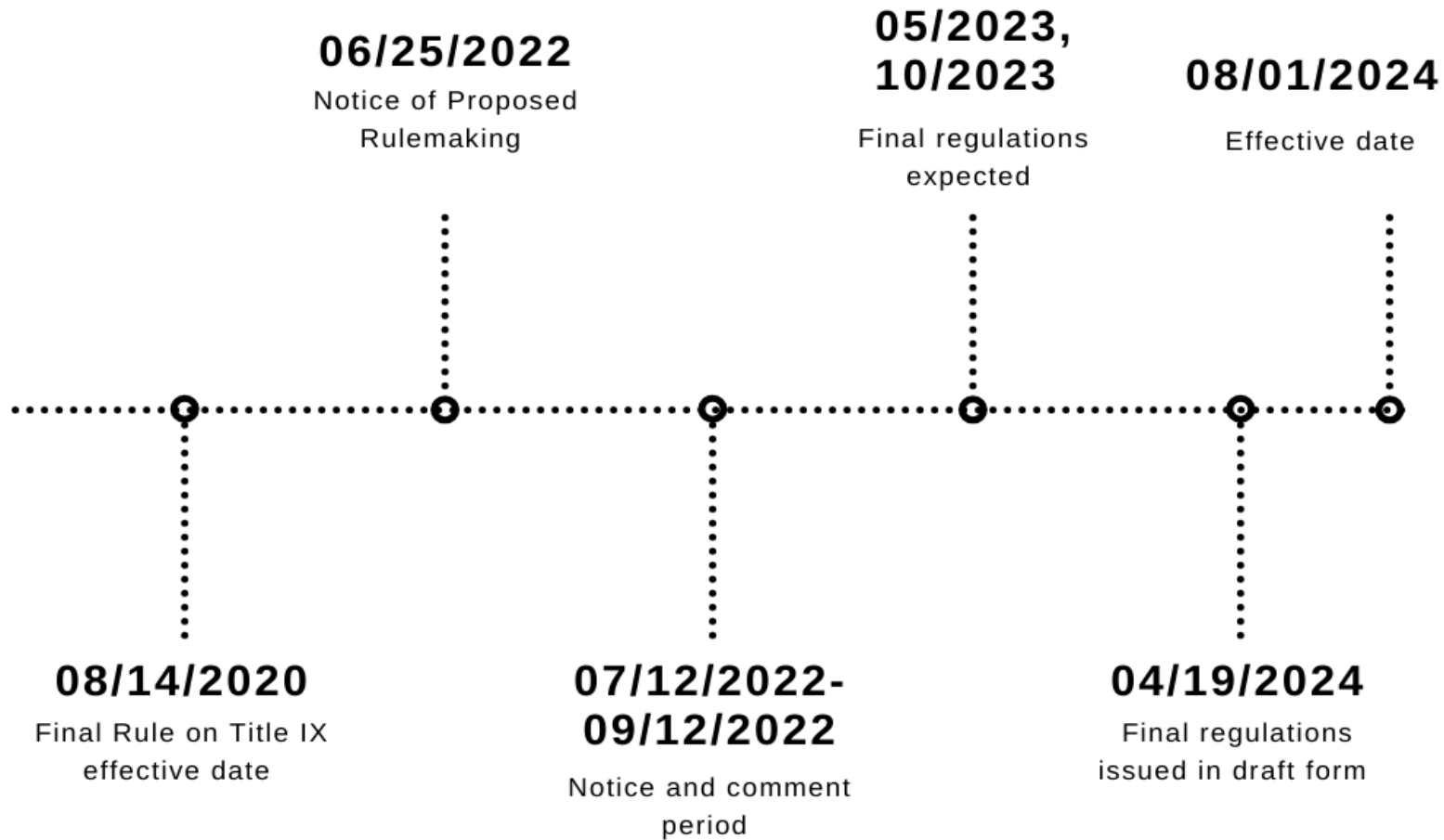
Disclaimer

- Not legal advice
- Not comprehensive of all changes necessary
- Copies and distribution of this presentation outside of your district is not permitted without the express agreement of Title IX Consult, LLC

Overview of Today's Presentation

- Title IX New Regulations – How did we get here?
- Changes in the scope of Title IX claims
 - Broaden scope -
 - Broadened jurisdiction
- Preliminary issues
 - School's obligation to students under Title IX
 - Employee's obligations to report sex-based discrimination and harassment
- New and (improved?) grievance process
- Training requirements for staff
- Interactions with California Education Code

Timeline Diagram



Title IX Covers

Sex-Based Discrimination

- Sexual discrimination
 - Discrimination/harassment based on:
 - sex stereotypes
 - sex characteristics
 - sexual orientation
 - gender identity
- Pregnancy (or related conditions)
- Peer retaliation

Sexual Harassment

- Quid pro quo
- Hostile environment
 - Totality of circumstances
 - Subjectively and objectively offensive
 - Severe or pervasive
 - Limits or denies ability to participate in or benefit from education program or activity
- Sexual assault
- Dating violence
- Domestic violence
- Stalking

Jurisdiction

- Off-campus conduct may create a sex-based hostile environment
- Even when alleged conduct occurred outside of the scope of K12 jurisdiction
 - Potentially conflict with California Education Code
 - In some ways, similar to nexus analysis used for bullying
- Impact of the off-campus conduct will be considered in the analysis
- The definition of Complainant has been expanded
 - No longer needs to be enrolled or seeking enrollment to file complaint

Reports of Sex-Based Discrimination/Harassment

- Notice
 - When a non-confidential employee has information about conduct that *may reasonably be* sex discrimination in violation of Title IX
 - Written and verbal reports
 - No formal complaint is required

Required Response by District

- *Prior required response under 2020 Regulations*
 - *Respond in a manner that is not deliberately indifferent*
 - *Derived from the legal standard set forth in Title IX Supreme Court case from 1998 (Gebser v. Lago Vista Independent School District)*
- New Regulations Required Response:
 - Prompt and effective action to end discrimination and prevent its recurrence
- Title IX Coordinator must:
 - Treat parties equitably
 - Provide supportive measures (and ability to appeal measures)
 - Notify Complainant of procedures
 - Initiate grievance process or informal resolution procedures, if requested
 - Evaluate report and decide whether to initiate an investigation

Employee Reporting Obligations

Non-Confidential Employees

- Must report to Title IX Coordinator
- Information about conduct that may reasonably be sex discrimination in violation of Title IX
- Distinguish MANDATORY REPORTING obligations from Title IX reporting obligations

Confidential Employees

- Ability to identify who will be confidential employee for the purposes of Title IX
 - Not only mental health professionals holding a license
- Possibilities include:
 - Wellness staff
 - Counselors
 - Designated administrator
- Should clearly articulate this in the policy and trainings

Grievance Procedures

- Informal process permitted prior to formal complaint
 - Never offered if Complainant is student and Respondent is employee
- Notice of Allegations
- Conduct an adequate, reliable, and impartial investigation
- Duty on district to investigate and gather sufficient information
- Parties have the opportunity to provide relevant evidence
- Parties receive access to relevant evidence and report
- Parties given a reasonable opportunity to respond to evidence
- Provide written outcome
- Performed over a reasonable period of time

Dismissals

- District may dismiss a complaint of sex-based discrimination and/or harassment if:
 - District cannot identify Respondent after taking reasonable steps to do so
 - Respondent is no longer enrolled in or employed by district
 - Complainant voluntarily withdraws the complaint
 - Alleged conduct would not constitute discrimination, if proven
- Dismissals can be appealed by either party to a Decision-Maker not previously involved in the matter

Appeals of Decisions

- Appeal grounds remain same as 2020 Regulations for sexual harassment
 - Procedural error
 - New information
 - Bias or conflict of interest
 - Materially affected the outcome
- Appeal process for sex-based discrimination matter that is similar to other proceedings related to discrimination complaints

Notable Comparisons from 2020 Regulations

Single investigator model is allowed

Advisors for parties not required at K12 districts

Removal process required (not suspension; similar to 2020 Regs)

Guidance for Title IX Coordinators on when to initiate investigations

Required outreach to IEP team member

Training

- Title IX Coordinator
- Title IX Investigator
- Title IX Decision-Maker/Appeal Officer
- Title IX Informal Resolution Officer

Training

- All employees
 - Annually
 - Obligations to address sex-based discrimination
 - Definitions of sex-based discrimination/harassment
 - Sexual harassment
 - Scope of Title IX
 - Notification requirements

Training

- Posting requirement has been removed
- However, training materials must be supplied to a requestor

New Regulations – Legal Challenges

- Athletics are specifically excluded from the New Regulations
- Federal law takes precedence over state law under Supremacy Clause
 - Article VI, Paragraph 2 of the U.S. Constitution
- New regulations explicitly state
- Litigation currently pending
 - overstep the president's authority and undermine the Title IX anti-discrimination law
 - Conflict with state law around bathroom and locker room use and athletics
 - Tennessee, West Virginia, Kentucky, Ohio, Indiana, Virginia, Alabama, Louisiana and Texas

Comparisons to CA Education Code

- Expanded coverage incidents of discrimination and harassment under Title IX that require districts to follow the Title IX process
- Under 2020 Regulations, Office for Civil Rights(OCR) faulted a CA district for using the Uniform Complaint Procedures (UCP) rather than following the strict procedures set forth in Title IX
- Grievance procedures outlined in the new regulations will require a process that is different from UCP
- A new Title IX grievance policy is necessary to replace 5145.71 and revisions to multiple other policies will be required
- Effective date of 8/1/24 requires action during the summer to ensure compliance for the 2024-25 school year

Next Steps

- Alerting leadership and key staff members
- Creating a timeline for completion of key compliance areas
- Developing policy and finalizing prior to 8/1/24
 - CSBA draft policy
- Advising staff, students, and parents (K12s) about the changes
- Training
 - Members of Title IX team
 - All employees
 - Students
 - Parents

Upcoming Live Virtual Trainings

- Title IX Coordinator
 - July 17, 2024 – 10:00AM-1:30PM
 - <https://zoom.us/meeting/register/tJlodemprij4vHNTWs-eiQjYq4M2biHkFfJgs>
- Title IX Investigator
 - July 24, 2024 – 10:00AM-1:30PM
 - https://zoom.us/meeting/register/tJEoduCgqD4iE9I-QX5RiKgPnPU_o6N94aKp
- Title IX Decision-Maker/Appeal Officer
 - July 31, 2024 – 10:00AM-1:30PM
 - <https://zoom.us/meeting/register/tJ0pc-6qqDIIsHNanzMcISeOA501WVw9lmzdf>

Resources

OCR has also released the following helpful information:

- [Unofficial Version of the New Title IX Regulations](#)
- [Brief Overview of the New Regulations](#)
- [Fact Sheet](#)
- [Resource for Drafting New Policies](#)

QUESTIONS?

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