

# Innovative Educators

Supporting Academic & Professional Growth In Higher Ed

## The New Title IX Regulations: Understanding the Changes and Requirements for Compliance



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## Today's Agenda

1. Brief Background
2. New Definitions
3. General Requirements
4. Notifications
5. Investigations
6. Hearings
7. Subsequent OCR Clarifications
8. Implementation Strategies

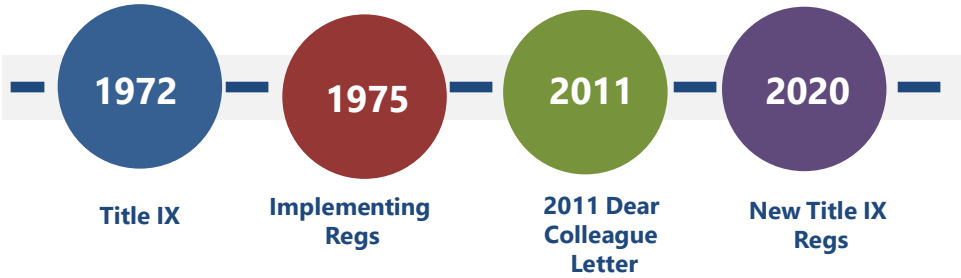


**\*This presentation is for general informational purposes only; it is not intended to be legal advice. Institutions should consult with their general counsel before implementing any changes**

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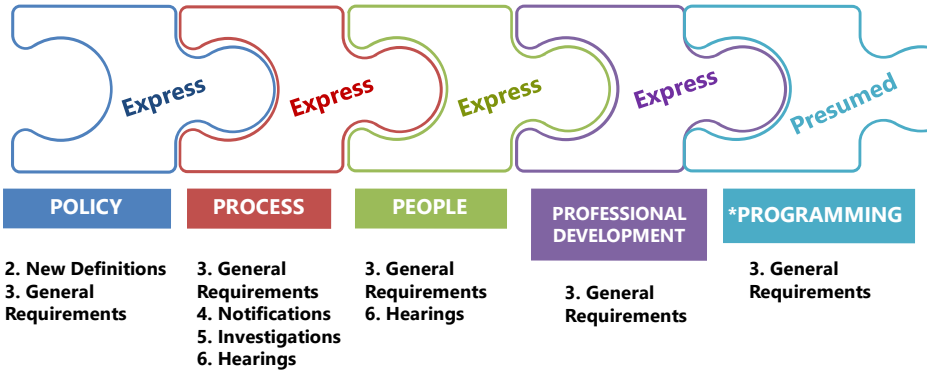
# 1. Brief Background



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# 5 P's of Title IX Compliance



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## 2. New Definitions



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## 3. General Requirements

- A. Equitable treatment of parties 🔄
- B. Objective evaluation of all evidence 🔄
- C. Train Coordinators, Investigators & Adjudicators 🔄🔄
- D. Presumption of innocence 🔄
- E. Reasonably prompt grievance process timeframes 🔄

POLICY

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### 3. General Requirements (cont'd)

- F. Describe or list possible sanctions or remedies-  
post finding of responsibility 🔄🔄
- G. Standard of evidence; process and permissible  
bases for parties to appeal 🔄🔄
- H. Range of supportive measures available to both  
parties 🔄🔄
- J. Emergency removal; "Immediate threat"  
assessment 🔄
- K. Recordkeeping 🔄🔄

POLICY

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### 4. Notifications

- A. Written notification of institution's grievance process  
and informal processes 🔄
- B. Notice of allegations of potential sexual harassment;  
sufficient details of the incident and involved parties  
(if known) 🔄
- C. Mandatory disclosure statements 🔄
- D. Parties' ability to have an advisor present (may be a  
lawyer) 🔄

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## 4. Notifications (cont'd)

- E. Ongoing notice (with sufficient information) if new allegations will be investigated 🔄
- F. Notice of dismissal, if applicable 🔄
  - Mandatory dismissal; "**must**" dismiss
  - Permissive dismissal; "**may**" dismiss
  - If dismissal, institution must promptly send written notice of the dismissal and reasons simultaneously to parties 🔄

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## 5. Investigations

- A. Responsibility for burden of proof and burden of gathering evidence; respect privileged info 🔄🔄
- B. Equal opportunity to present witnesses and evidence (inculpatory & exculpatory) 🔄🔄
- A. Restricts use of "gag orders" so parties can gather and present relevant evidence 🔄🔄
- D. Provide parties with the same opportunities to have advisors present for any meetings 🔄🔄

POLICY

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## 5. Investigations (cont'd)

- E. Provide expected advisors information and sufficient time to prepare for meeting dates, times and purpose 🔄🔄
- F. Opportunities for parties to inspect and review ALL evidence gathered relating to the formal complaint 🔄🔄
- G. Create an investigative report that fairly summarizes relevant evidence; provide the report 10 days prior to any hearing 🔄🔄

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## 6. Hearings

- A. Postsecondary institutions 🔄
  - Must provide for a live hearing
  - Decision Maker (DM) must permit advisors (never the parties) to ask the other party and witnesses relevant follow up questions, including those that challenges the credibility of a witness [aka "cross examination"] 🔄
  - If a party does not have an advisor, the institution must provide one who can engage in cross examination appropriately 🔄
  - Cross examination must be conducted at the hearing orally, and in real time
  - DM must make a determination regarding relevancy; if question will not be allowed, the DM must explain why on the record

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## 6. Hearings/Appeals (cont'd)

### B. K-12 institutions 🔄

- MAY provide for a live hearing (permissive)
- Must send the investigative report to both parties and allow each party to submit written relevant questions of any party or witness
- Must provide each of the parties/witnesses sufficient time to respond to the questions and provide each party with the responses
- If DM excludes any questions, the DM must explain to the party who asked the question why the question will not be sent to the party/witness 🔄

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## 6. Hearings/Appeals (cont'd)

### C. Written determination regarding responsibility must include: 🔄

- identification of allegations of potential of sexual harassment; and
- description of the procedural steps taken; and
- findings of fact supporting the determination; and
- conclusion regarding the application of the institution's code of conduct (policy) to the facts; and
- statement of (and rationale for) the result as to each allegation, including regarding responsibility and disciplinary sanctions imposed on the respondent; and

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## 6. Hearings/Appeals (cont'd)

- C. Written determination regarding responsibility must include:
- ↳ -whether remedies designed to restore or preserve equal access to the institution's education program or activity will be provided to the complainant; and
  - procedures and permissible bases for complainant and respondent to appeal
- D. -written determination must be delivered to both parties simultaneously; information as to when the determination becomes finalized (after appeals or when date for appeal has lapsed) ↳

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## 6. Hearing/Appeals (cont'd)

- A. Both parties can appeal a finding of responsibility or a dismissal of a formal complaint ↳
- B. Appeals must be for the following reasons: ↳
- Procedural irregularity; or
  - New information; or
  - Conflict of interest or bias

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## 7. Subsequent OCR Clarifications

- ✓ OCR's Outreach, Prevention, Education and Nondiscrimination (OPEN) Center
- ✓ Information & clarification regarding final regs
- ✓ Blog also addresses technical issues submitted to the OPEN center by institutions
- ✓ Training and informational videos
- ✓ 4 specific blogs have been posted since May 6th, 2020

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## 7. Subsequent OCR Clarifications (cont'd)

- ✓ Posting of important info on websites [20200518]
- ✓ Requirement to continue investigations during the pandemic [20200521]
- ✓ Use of information when a party does not submit to cross-examination [20200522]
- ✓ Final regs are not retroactive [20200805]

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## 8. Implementation Strategies

- ✓ Ensure policy & process is in compliance with new federal regs
- ✓ Check your Title IX webpage often for updates
- ✓ Be aware of how other federal reg requirements are affected (or not) by the new regs
- ✓ Redefine and identify new roles, structures and personnel. Get creative!
- ✓ Now that the institution is back in session (even if fully online), find ways to re-engage with your campus community
- ✓ Be able to show a good faith effort to comply.
- ✓ Always refer questions to your campus Title IX Coordinator.

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