

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



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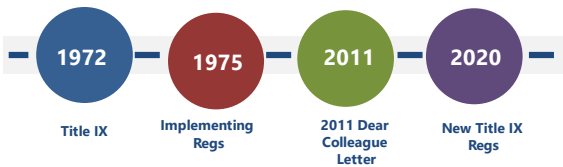
1. Brief Background
2. New Definitions
3. General Requirements
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5. Investigations
6. Hearings
7. Subsequent OCR Clarifications
8. Implementation Strategies



*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

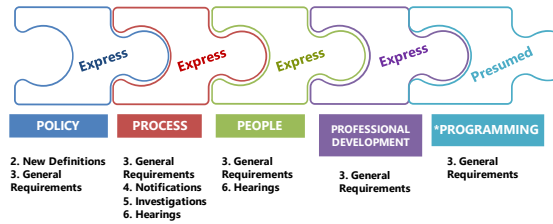
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1. Brief Background



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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



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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 PROCESS

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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) 🔄

PROCESS

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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 PROCESS

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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 🔄🔄

POLICY PROCESS

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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

PROCESS PEOPLE

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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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