



Technical College System of Georgia

Title IX Update (7.16.24)

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Title IX Statute

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

20 U.S.C. 1681

Title IX Timeline

1972



1970's and 1980s:
Early focus was on
gender equity in
intercollegiate sports

1998-2001



- 1998: U.S. Supreme Court issues companion decisions in *Davis* and *Gebser*, recognizing private right of action under Title IX
- 2001: U.S. Department of Education under Bush Administration adopts *Davis* and *Gebser* standards in sub-regulatory guidance
- 2001: The Education Department issues landmark guidance connection sexual harassment, discrimination, and assault.

2011



2011: Obama administration issues "Dear Colleague" letter detailing institutional obligations with respect to sexual misconduct under Title IX; a wave of students file lawsuits alleging that their respective universities were "deliberately indifferent" to their reports of sexual harassment

Title IX Timeline (Cont'd)

- **2011 – 2017**

- Respondents begin to file lawsuits alleging that College process is unfair (ongoing)

- **2020**

- May: Trump Administration publishes Final Rule on Title IX Sexual Harassment
- June: Supreme Court issues Bostock decision holding that discrimination on the basis of sexual orientation or gender identity is discrimination “because of sex”
- August 14: Final Rule Takes Effect
- September: All other guidance regarding Title IX withdrawn

Title IX Timeline (Cont'd)

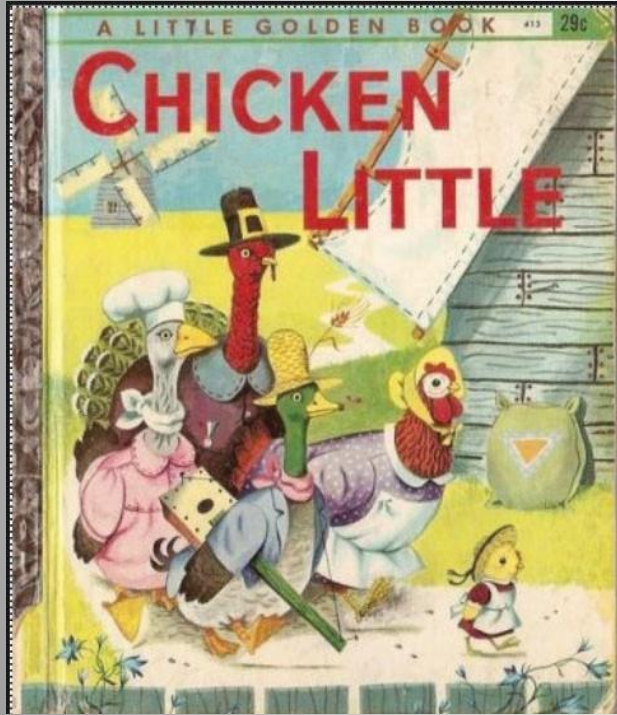
- **2021-2022**

- January: Biden Administration directs Department of Education to review Trump Administration regulations and announces intent to publish a new notice of proposed rulemaking in Spring 2022
- March: Biden Executive Order on Guaranteeing Educational Environment Free From Discrimination on the Basis of Sex (SOGI)
- June: Department of Education issues guidance explaining it will enforce Title IX prohibition on sex discrimination to include SOGI
- December: Department of Education issues advisory that NPRM will move up to April 2022
- June 23, 2022: NPRM issued by Department of Education

Title IX Timeline (Cont'd)

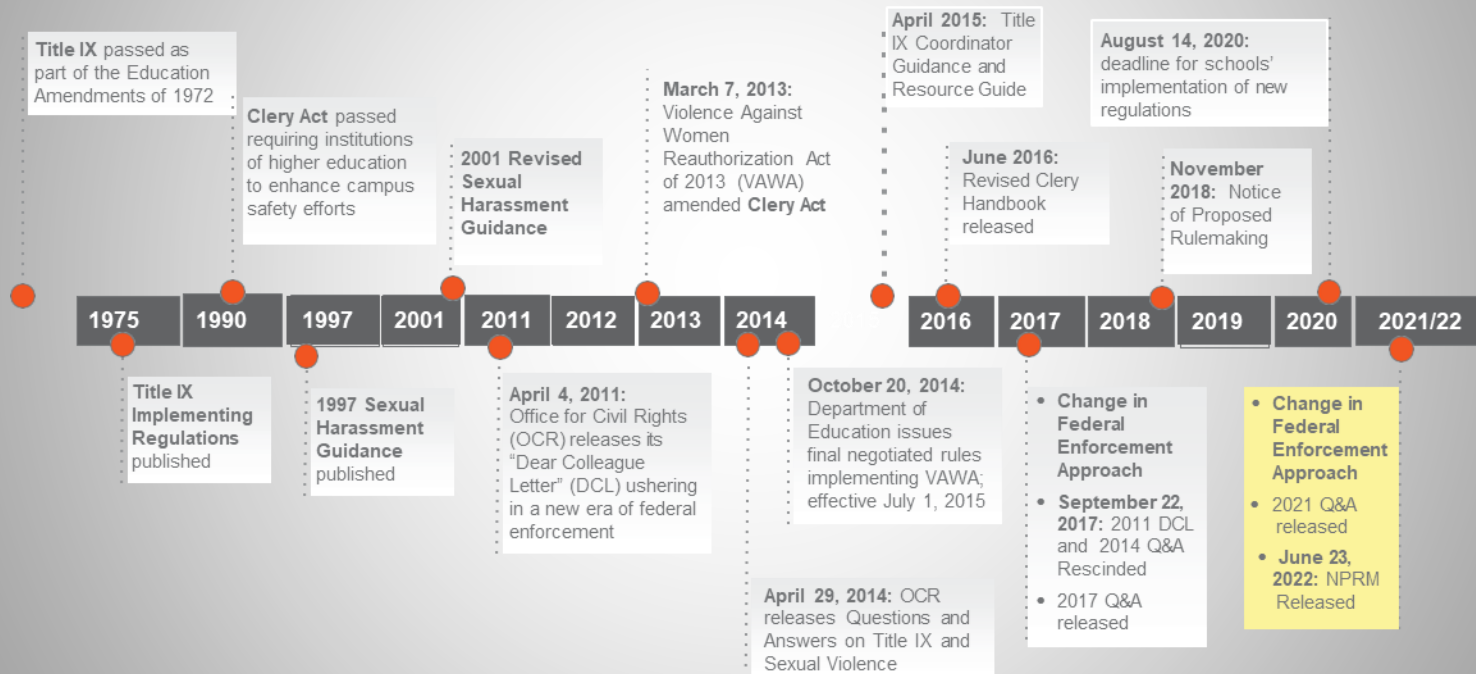
- September 22, 2022 – Public Comment Period Closes with over 240,000 public comments submitted
- March 2023 – Original target for release of Final Rule
- October 2023 – Revised target for release of Final Rule
- April 19, 2024 – Final Rule Released by U.S. Department of Education
- April 29, 2024 – Attorney General Carr files suit to enjoin enforcement of Final Rule
- To date, no update indicating injunction against enforcement
- **August 1, 2024 – Deadline for implementation of Final Rule by TCSG**

The Sky Is Not Falling

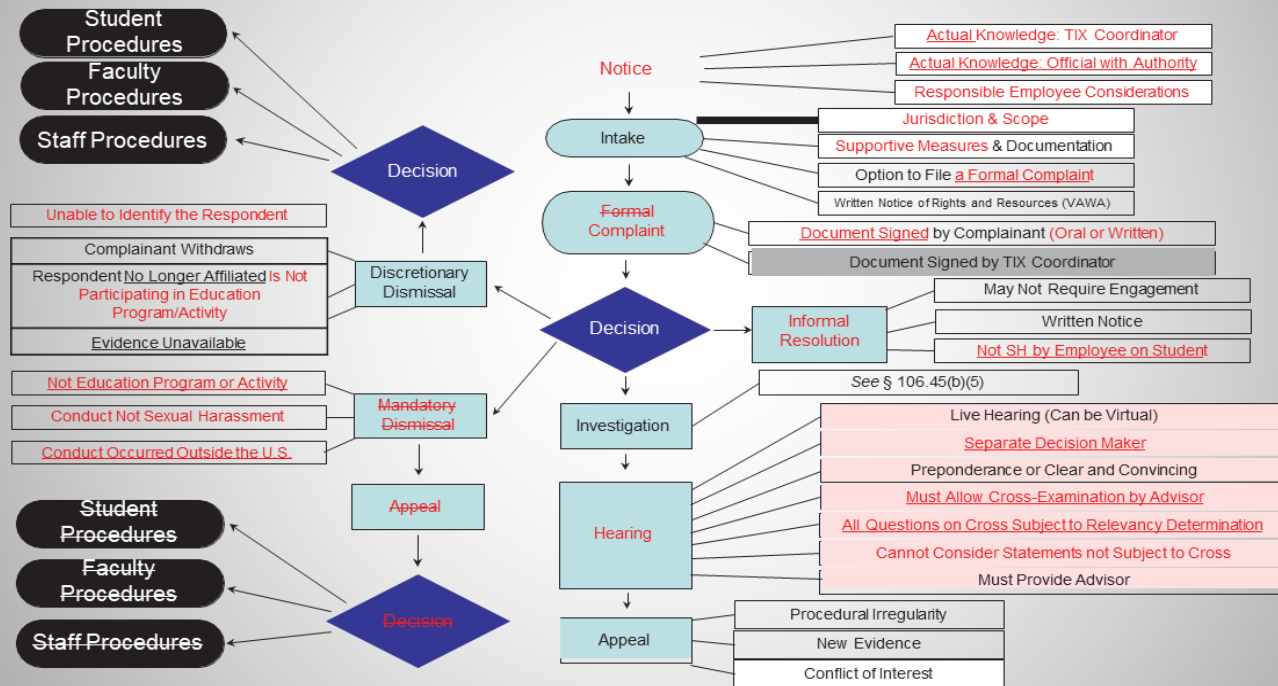


TCSG will train your Title IX Coordinators on July 30.

Title IX/Related Authority at a Glance



Title IX Obligations: A Diagram



Key Procedures from Title IX Regulations May 19, 2020

Final Rule – Expanded Scope

- Final Rule **broadens** the scope of: **WHO, WHAT, and WHERE**
 - Who is protected
 - What conduct is covered
 - Expanded definitions of discrimination and harassment
 - Where covered conduct can occur
 - Expanded territory covered
- Final Rule requires institutions to take prompt and effective action to end any sex discrimination that has occurred, prevent its recurrence, and remedy its effects

Final Rule – Who is Protected?

- Students
- Employees
- Third parties who participated or **attempted to** participate in the school's educational program or activity at the time the alleged sex discrimination occurred
- Current religious exemptions would apply

Final Rule – What Conduct is Covered?

- Sexual harassment
 - Quid pro quo harassment
 - Hostile environment harassment
- Sexual violence
 - Sexual assault
 - Dating violence
 - Domestic violence
 - Stalking
- Discrimination based on:
 - Sex stereotypes or characteristics
 - Pregnancy or related conditions
 - Sexual orientation or gender identity
 - Parental, family, or marital status
- Retaliation

Hostile Environment Harassment

- Current standard
 - “Severe, pervasive, **and** objectively offensive”
- Expanded definition
 - “Unwelcome sex-based conduct that is sufficiently severe **or** pervasive, that, based on the totality of the circumstances and evaluated subjectively and objectively, denies or limits a person’s ability to participate in or benefit from the recipient’s education program or activity”
 - New standard captures more claims.

Sexual Orientation and Gender Identity

- In addition to the general prohibition, the Final Rule:
 - Would prohibit differential treatment that causes “more than de minimis harm” in sex-segregated programs or activities
 - Specifically references gender identity and sexual orientation
- Would not amend the regulations governing athletics
 - Separate rulemaking planned

Pregnancy or Related Conditions

- Final Rule would:
 - Cover pregnancy, termination or lactation
 - Require same treatment as other temporary disabilities
 - Require reasonable modifications, including voluntary leave of absence
 - Require notification of Title IX Coordinator
 - Require clean and private lactation room

Parental, Family, or Marital Status

- Final Rule would:
 - Clarify current regulatory prohibitions
 - Prohibit pre-employment inquiries regarding a job applicant's marital status

Expansion of Jurisdiction (Where)

- Final Rule covers all sex discrimination in the program or activity, including conduct that:
 - Occurs in a building owned or controlled by an officially recognized student organization
 - Is subject to an institution's disciplinary authority
 - Occurs outside the educational program or activity or outside the U.S. if it contributed to a hostile environment within the program or activity

Procedural Obligations

- Final Rule details numerous procedural obligations regarding:
 - Title IX Coordinator Duties; Supportive Measures;
 - Confidentiality; Nondiscrimination Policy
 - Training; Informal Resolution;
 - General Grievance Procedures; Notice
 - Dismissal of Complaints; Investigations; Assessing Credibility
 - Sexual Harassment Grievance Procedures;
 - Evidence; Hearings;
 - Appeals; Enforcement
 - Barrier Analysis

What's the Same (Mostly)?

- Supportive measures still available:
 - May burden a respondent
 - Can be appealed
- More training requirements
- Informal resolution at institution's discretion
 - Now allowed at any point before determination
- Access to evidence
 - Written summary allowed
- Advisors
- Emergency removal allowed
- Appeals
- Retains enforcement standard
- Weaker state laws preempted

What's Different?

- Optional live hearing
 - Must have process to assess credibility and allow some form of cross X
- Single-investigator/decision-maker model allowed—but not required.
- Preponderance of the evidence standard is encouraged.
 - Clear and convincing allowed if used in all comparable proceedings
- Nondiscrimination policy
- Confidential vs. non-confidential employees
- No mandatory dismissal
- Consolidation of complaints allowed
- General requirements for grievance procedures and separate ones for sexual harassment claims involving students

Next Steps

- 1) TCSG System Office will collaborate with Title IX Coordinators to begin discussions on these changes and developing training for populations impacted by them. **First Training Date: July 30.**
- 2) Prepare and circulate changes to TCSG Procedure 6.1.2p and other relevant TCSG Policies and Procedure to be in compliance
- 3) Monitor Court Action for change in implementation schedule/other changes

Additional Resources

- U.S. Department of Education Summary of Key Provisions of the Final Rule:
- <https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-summary.pdf>
- U.S. Department of Education Fact Sheet on the Final Rule:
- <https://www2.ed.gov/about/offices/list/ocr/docs/t9-final-rule-factsheet.pdf>
- U.S. Department of Education Fact Sheet on Title IX Athletics NPRM:
- <https://www.ed.gov/news/press-releases/fact-sheet-us-department-educations-proposed-change-its-title-ix-regulations-students-eligibility-athletic-teams>

Questions?

