



# Title IX Tactical Maneuvers: Building Capacity

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# Presenters



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# A Cruel Summer is Coming Are You Ready for It?

January 31, 2024 Webinar

## RECAP

- ▶ Steps to Take Before the Release of the Final Regulations
- ▶ Overview of Key Changes
- ▶ Decision Points

[thlaw.com/CruelSummer](https://thlaw.com/CruelSummer)

# Preparation



# Some Key Changes



- ▶ Expansion of scope
  - ▶ Sex discrimination + **sex-based** harassment
  - ▶ Expanded definition of hostile environment harassment
  - ▶ Expanded jurisdiction
- ▶ When and who must report
- ▶ Separate tracks for the grievance process
  - ▶ Different process (including process for live hearing) for sex-based harassment for higher ed

# Decision Points

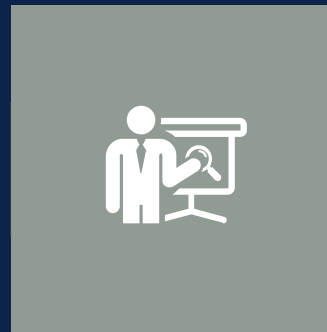


1. Will you change your “disciplinary authority”?
2. Do you or will you have confidential employees?
3. Will you offer informal resolution?  
When?
4. Must or will you offer hearings?
5. When and how will you provide training?

# Today's Discussion



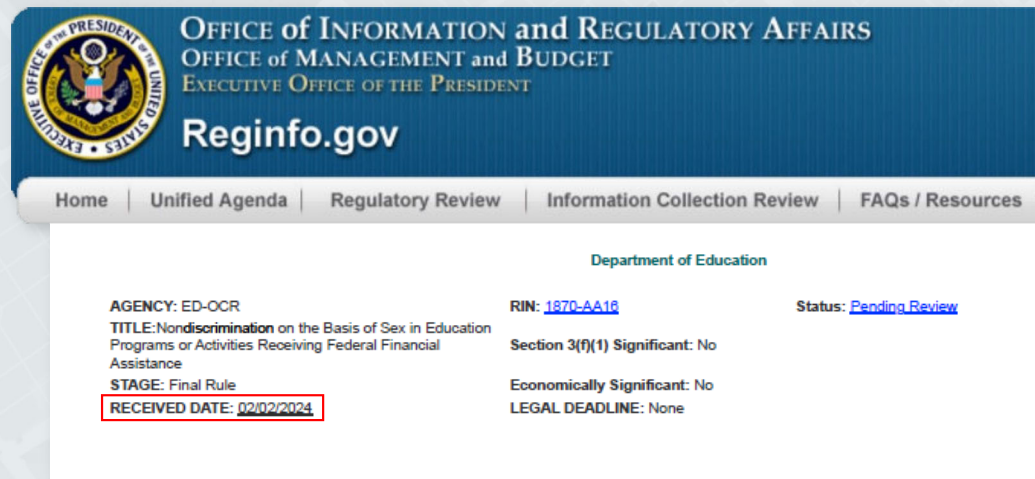
Leadership



Training

# Where We Are Now

- ▶ Title IX proposed regulations submitted to OIRA on February 2, 2024
- ▶ OIRA has 90 days to review (and can request an additional 30 days)
- ▶ 90 days = May 2; 120 days = June 3
- ▶ Could be further review and change from Department of Education
- ▶ Speculation about release of new regulations in early May 2024 (???)



The screenshot shows the Reginfo.gov website header with the seal of the Executive Office of the President. The main content area displays the following information:

Department of Education		
AGENCY: ED-OCR	RIN: <a href="#">1870-AA18</a>	Status: <a href="#">Pending Review</a>
TITLE: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance	Section 3(f)(1) Significant: No	
STAGE: Final Rule	Economically Significant: No	
RECEIVED DATE: <u>02/02/2024</u>	LEGAL DEADLINE: None	



# Leadership

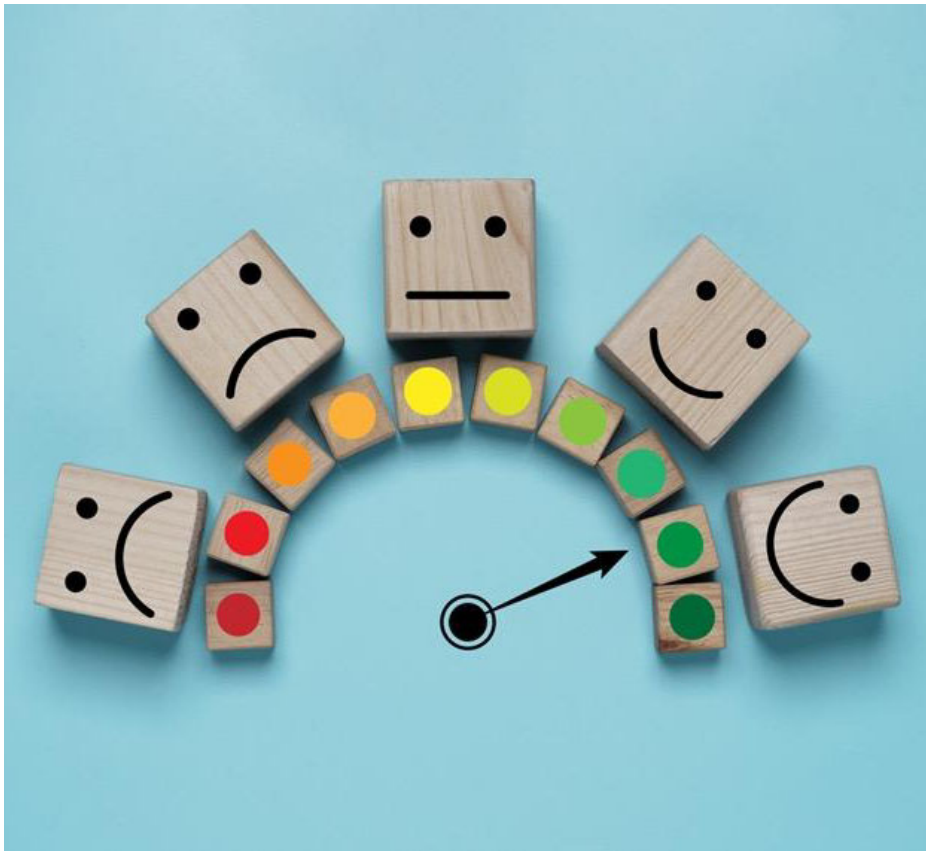




# Get Leadership on Board

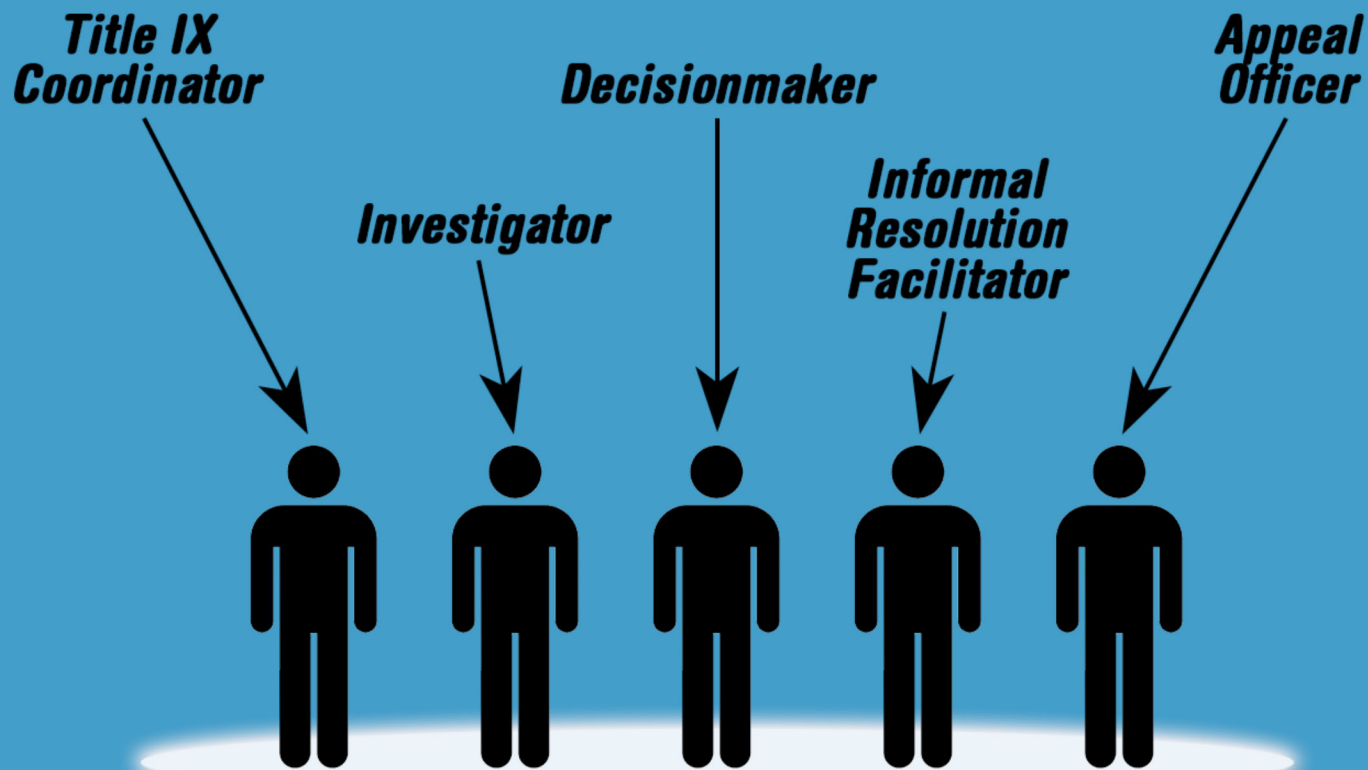
- ▶ Educate your institution's leadership on the expected changes
  - ▶ How the changes could impact the institution's policies and procedures
  - ▶ How the changes could impact key departments / personnel
- ▶ Ensure leadership knows the importance of compliance
- ▶ Discuss any resources needed to comply

# Consider Your Title IX Team



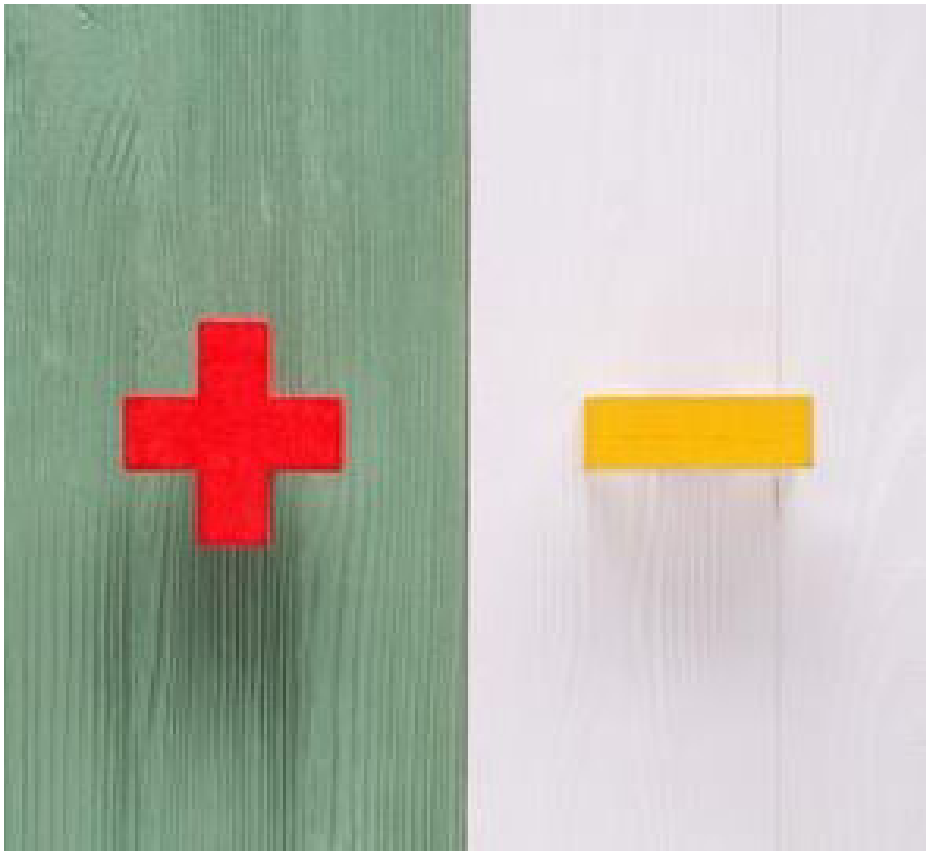
- ▶ Evaluate your current Title IX team
- ▶ Consider your institution's needs
- ▶ Evaluate if any changes to your Title IX team—including consolidation or addition—are necessary

# Title IX Team Under Current Rules





# Potential Changes to Title IX Team



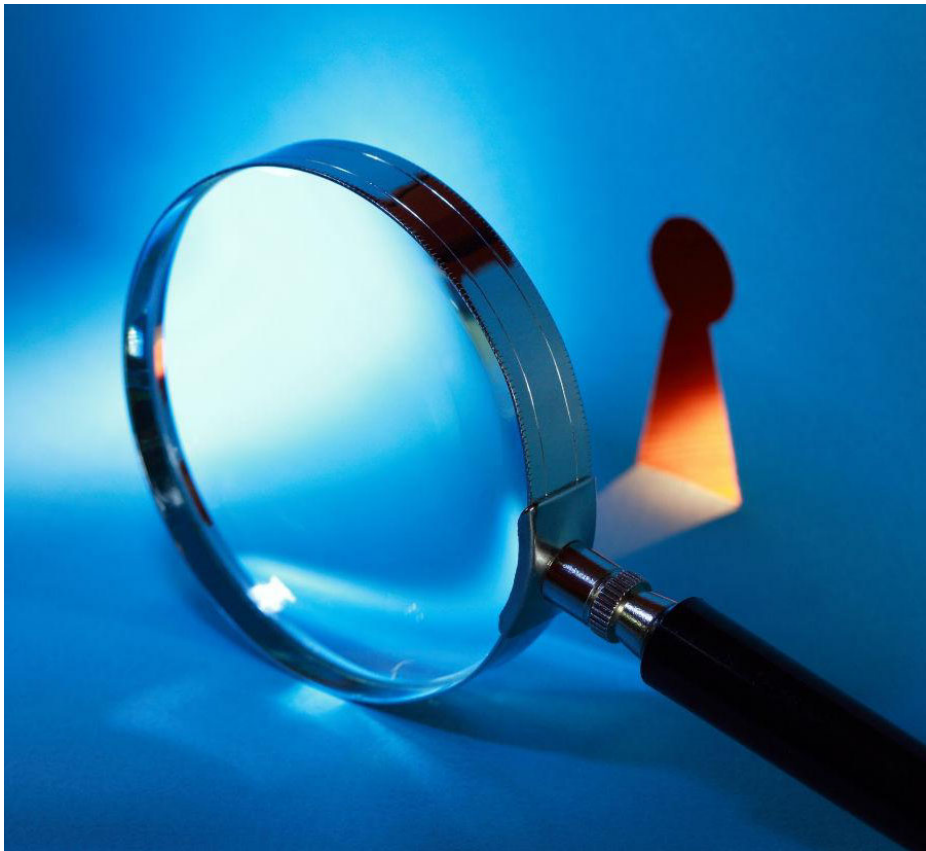
- ▶ Title IX Coordinator “designees”
- ▶ For K-12 and sex discrimination in higher education, Title IX Coordinator, investigator, and decision-maker can be the same person
- ▶ Appeal officer(s)
- ▶ Informal resolution facilitator
- ▶ Confidential employees

# Title IX Coordinator Designees

- ▶ **Deputy Coordinators**
  - ▶ HR / Student Affairs
  - ▶ Campus based
  - ▶ Department / program based (i.e., athletics, pregnancy or related conditions)



# Title IX Investigator as Decision-Maker



- ▶ Applies to K-12 and allegations of sex discrimination in higher ed
- ▶ Investigator is not limited to summary of the relevant evidence
- ▶ Investigator evaluates credibility
- ▶ Investigator can determine whether a violation has occurred
- ▶ The institution, not the investigator/decision-maker, determines any sanction or remedy

# Title IX Investigator / Decision-Maker

- ▶ Designated investigator / investigative team or certain types of personnel
- ▶ Different or same investigators for sex discrimination and sex-based harassment
- ▶ Use of specialized or same investigators for specific types of sex discrimination (i.e., athletics/pregnancy)
- ▶ Skillset of investigators, if also serving as decision-maker
- ▶ New and additional training for investigators and decision-makers





# Confidential Employees



- ▶ Make certain you know the “confidential employees” within your institution
- ▶ Determine whether to designate any personnel as “confidential employees”
- ▶ Be prepared to **communicate** and **formalize** those decisions



**What's Your Plan?**

# Now—Release of Final Rules



- ▶ Meet with leadership regarding anticipated changes
- ▶ Seek input from your Title IX team regarding what has worked and what needs improvement
- ▶ Make decisions regarding your Title IX team
- ▶ Identify what policies, procedures, and notices will need to be updated and who will update them
  - Handbooks, website, etc.
- ▶ Create your training plan and start scheduling training

# When Rules are Released (May/June?)



- ▶ Orient yourself with any changes between the proposed regulations and the final regulations
- ▶ Begin updating your Title IX policies and procedures
- ▶ Begin updating required notices
- ▶ Schedule and begin training

# June—July



- ▶ Effectuate any changes to your Title IX team
- ▶ Train all Title IX personnel
- ▶ Make decisions regarding other Title IX training
- ▶ Make final determinations regarding policies and processes your institution will adopt
- ▶ Complete policy and process revisions
- ▶ Complete updates to materials provided to employees, students, and others before the academic year



# August—Early September



- ▶ Ensure all necessary campus-based and department leadership are aware of the new requirements and changes to your institution's Title IX personnel, policies, and processes
- ▶ Make certain all employee and student orientation materials include new Title IX information
- ▶ Train all employees before the school year
- ▶ Train students at the beginning of the year regarding any changes to your Title IX process

# Training



# Required Training



**Title IX Team**



**All Employees**



**Confidential Employees**



# All Employee Training

- ▶ Obligation to address sex discrimination in education program or activity
- ▶ The scope of conduct that constitutes sex discrimination and the definition of sex-based harassment
- ▶ Duty to report / how to report
  - ▶ Including a student's pregnancy or related condition
  - ▶ Duty to take prompt and effective action to end any sex discrimination, prevent its recurrence, and remedy its effects



# All Employee Training

## When and How?

- ▶ In-person
- ▶ Video/online training
- ▶ Test for Understanding?

## By Whom?

- ▶ External trainer / video
- ▶ Title IX Coordinator and Designees

*"Train the Trainer" for Title IX Coordinators and Designees*



# Investigators, Decision-Makers, Appeal Officers

- ▶ Obligation to address sex discrimination
- ▶ Scope of prohibited conduct
- ▶ Notification / reporting requirements
- ▶ Action to operate education program or activity free from sex discrimination
- ▶ Your institution's grievance procedures
- ▶ How to serve impartially
- ▶ Issues regarding relevant evidence and types of impermissible evidence



Requirements



# Investigator, Decision-Maker, Appeal Officer Training

- ▶ **New!** training regarding sex discrimination (including discrimination against students who are pregnant or have related conditions)
- ▶ **New!** training for investigations and determinations regarding disparate impact discrimination
- ▶ **New!** training for Title IX standards related to athletics



# Consideration for Texas K-12 Schools

- ▶ Title IX appeals *may* proceed under your DGBA employee grievance or FNG student complaint / appeal process
- ▶ DGBA and FNG hearing officers, including your school board, will likely need to receive the Title IX training required for appeal officers



# Informal Resolution Facilitator

- ▶ Training required for all employees
- ▶ Rules and practices of your institution's informal resolution process
- ▶ How to serve impartially



Requirements





# Title IX Coordinator and Designees

- ▶ Training required for all employees
- ▶ Training required for other Title IX personnel
- ▶ Training regarding their specific responsibilities under the proposed regulations
- ▶ Your recordkeeping system and required recordkeeping
- ▶ Any other training necessary to coordinate your institution's compliance with Title IX



# Recommended Training



**Students**



**Campus  
Administrators**



**Designated  
Personnel**

- Student Services/Student Affairs
- Human Resources
- Athletics
- Counselors & MH personnel



# Keep Calm



# “Take A Bow”



# Title IX Leadership Alliances

Email us at [titleix@thlaw.com](mailto:titleix@thlaw.com) to join one of our monthly Title IX Leadership Alliances:

- ▶ K-12 Title IX Leadership Alliance
- ▶ Community Colleges Title IX Leadership Alliance
- ▶ 4 Year Institutions Title IX Leadership Alliance





**STAY**

**TUNED!**

# THOMPSON & HORTON RESOURCES



Blog

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## Title IX Tips

▶ [titleixtips.com](https://titleixtips.com)



Social Media

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## T&H on X (Twitter)

▶ [twitter.com/THSchoolLaw](https://twitter.com/THSchoolLaw)

**Follow us for upcoming webinars, alerts, and posts as we await the 2024 Title IX Rules**



**DON'T  
FORGET!**

**UPCOMING WEBINAR**

**Join us for the  
third TacTIXs  
Webinar on  
April 24, 2024**

# Thank You



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