



NACUA  
Webinar

Sponsored by

HM  
BR HOGAN MARREN  
BABBO & ROSE, LTD

# Title IX: Same Regulations, New Problems

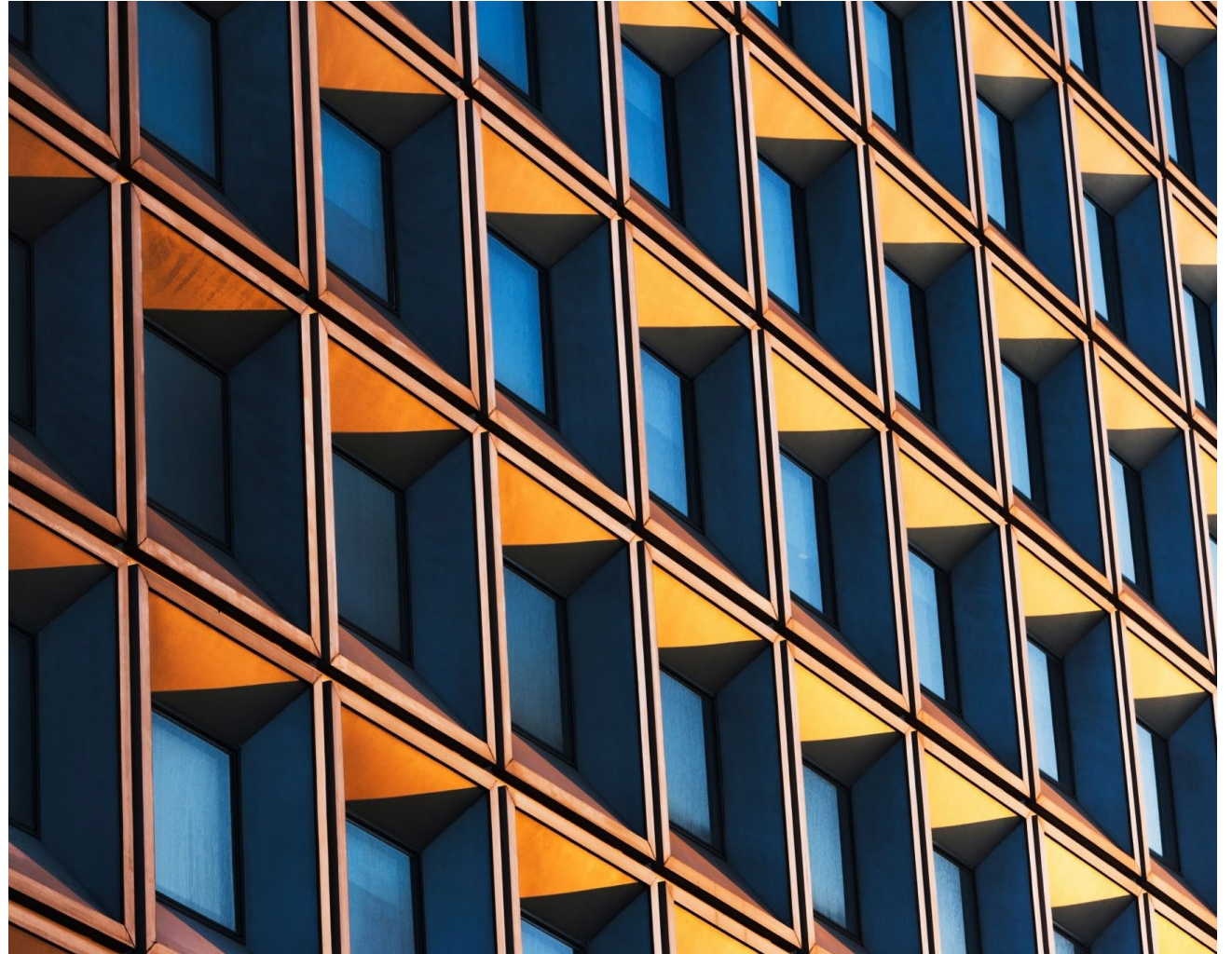
**Leora Freedman**, Assistant Vice Chancellor for Civil Rights,  
University of California, Los Angeles

**Maureen Holland**, Member, Cozen O'Connor

# Agenda

- **Introductions**
- **Part I: The Current Title IX Compliance Framework**
- **Part II: Putting the Framework Into Action**
- **Audience Q&A and Closing Remarks**

# Part I: The Current Title IX Compliance Framework



# Overview

- A. Return to the 2020 Regulations
- B. Executive Orders and Agency Guidance
- C. Federal Enforcement Actions
- D. State Law Conflicts and Considerations
- E. Case Law Update
- F. What This Means for Higher Education



A blurred background image showing the silhouettes of several people sitting around a table in a meeting room, with large windows in the background. The image is overlaid with a semi-transparent dark blue filter.

# Part I. The Current Title IX Compliance Framework

## A. Return to the 2020 Title IX Regulations



2020

## Sexual Harassment

Quid Pro Quo

Hostile Environment

Sexual Assault, Dating  
Violence, Domestic  
Violence, or Stalking

# 2024

## Sex Discrimination

*On the basis of:*

- Sex
- Sex stereotypes
- Sex characteristics
- Pregnancy or related conditions
- Parental, family, or marital status
- Sexual orientation
- Gender identity

## Sex-Based Harassment

Quid Pro Quo

Hostile Environment

Sexual Assault, Dating Violence, Domestic Violence, or Stalking

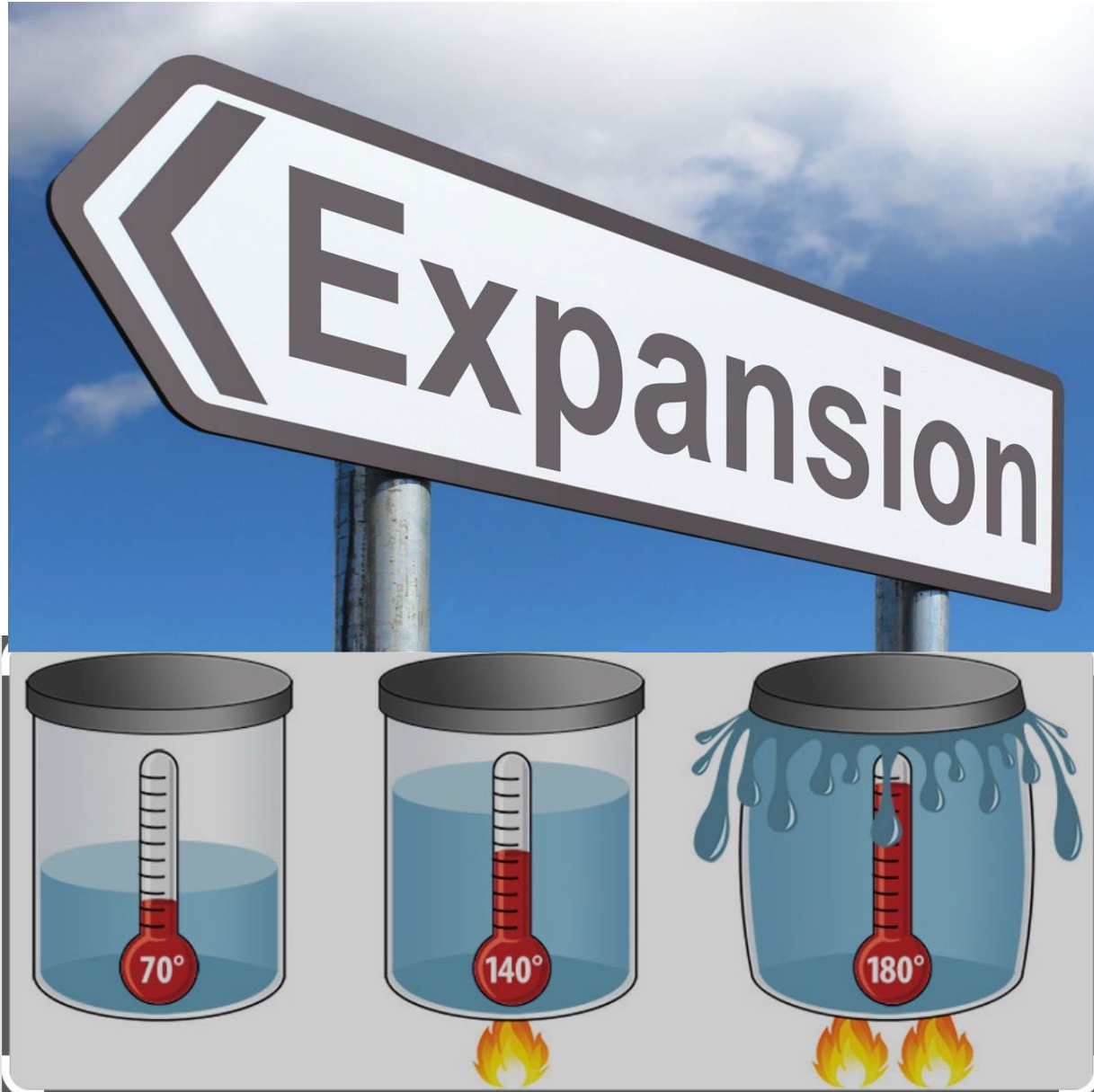
# 2025-Present

## Sexual Harassment

Quid Pro Quo

Hostile Environment

Sexual Assault, Dating  
Violence, Domestic  
Violence, or Stalking



- Definitions
- Complainants
- Jurisdiction
- Reporters
- Threshold for Reporting
- Training
- Record-keeping
- Title IX Coordinators
- TIX Coordinator Responsibilities
- Complaints

# 2020 Requirements – Changed in 2024

- Limited Jurisdiction and Scope – EXPANDED
- “Directly Related” – REMOVED
- Required a Live Hearing – REMOVED
- Required Cross Examination by an Advisor – REMOVED
- Required Cross-Examination of Complainant – REMOVED
- Required Online Posting of Training Materials – REMOVED
- No Supportive Measures that burden Respondents – REMOVED

# 2024 Changes – Undone in 2025

- Limited Jurisdiction and Scope – ~~EXPANDED~~ CONTRACTED AGAIN
- “Directly Related” – ~~REMOVED~~ REINSTATED
- Required a Live Hearing – ~~REMOVED~~ REINSTATED
- Required Cross Examination by an Advisor – ~~REMOVED~~ REINSTATED
- Required Cross-Examination of Complainant – ~~REMOVED~~ REINSTATED
- Required Online Posting of Training Materials – ~~REMOVED~~ REINSTATED
- No Supportive Measures that burden Respondents – ~~REMOVED~~ REINSTATED

# Notice and Institutional Obligation to Act

## 2020 (Current)

Notice to the Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary or secondary school

**Actual knowledge**, not constructive notice or vicarious liability

## 2024

A recipient with **knowledge of conduct that reasonably may constitute** sex discrimination in its education program or activity must respond promptly and effectively; and

A recipient must also comply with this section to address sex discrimination in its education program or activity.

# Jurisdiction: Education Program or Activity

## 2020 (Current)

- Locations, events, or circumstances over which the recipient exercised **substantial control over both**
  - the respondent and
  - the context in which the sexual harassment occurs, and
- Any building owned or controlled by a student organization that is officially recognized by a postsecondary institution
- Within the education program or activity and within the United States

## 2024

- Includes, but is not limited to conduct that:
  - occurs in a building owned or controlled by a student organization officially recognized by the institution, and
  - is **subject to the recipient's disciplinary authority**.
- Obligation to address a sex-based hostile environment under its education program or activity (EPA), even when some conduct alleged to be contributing to the hostile environment occurred **outside the recipient's EPA or activity or outside the United States**.

# Hostile Environment Harassment

## 2020 (Current)

Unwelcome conduct *determined by a reasonable person* to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the recipient's education program or activity

## 2024

Unwelcome sex-based conduct that, *based on the totality of the circumstances*, is *subjectively and* objectively offensive and is so severe **or** pervasive that it limits **or** denies a person's ability to participate in or benefit from the recipient's education program or activity

# Supportive Measures

## 2020 (Current)

- Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent.
- Designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.
- No appeal

## 2024

- Clarifies that this change **does not mean that a supportive measure provided to one party cannot impose any burden on the other party**; rather, that supportive measures cannot impose an unreasonable burden on the other party.
- May also be designed to provide support during grievance procedures or informal resolution
- Allows for **restrictions on contact to be applied to one or more parties**
- **Must provide appeal**
- May be delegated, but TIXC retains oversight

# Emergency Removal

## 2020 (Current)

- Must undertake an individualized safety and risk analysis and determine that an **immediate** threat to the **physical** health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal
- Must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal

## 2024

- Must undertake an individualized safety and risk analysis and determine that an **imminent and serious** threat to **the health or safety** of any student or other individual arising from the allegations of sex discrimination justifies removal
- Must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal

# Initiating an Investigation

## 2020 (Current)

- **Written** Formal Complaint - filed by a complainant or signed by the Title IX Coordinator
- At the time of filing a formal complaint, a complainant **must be participating in or attempting to participate** in the education program or activity of the recipient with which the formal complaint is filed
- **Mandatory** and discretionary dismissal grounds

## 2024

- An **oral or written** request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or its regulations.
- A Complainant may make a complaint **even if they have chosen to leave** the institution as a result of that discrimination or for other reasons.
- TIXC may initiate a complaint if the conduct presents **an imminent and serious threat to someone's health or safety or prevents the recipient from ensuring equal access based on sex** to its education program or activity.
- Discretionary dismissal grounds

# Grievance Procedures

## 2020 (Current)

- Notice
- Intake
- Formal Complaint
- Assessment
  - Mandatory/Discretionary Dismissal
  - Informal Resolution
  - Formal Resolution
- Investigation
- Hearing
- Opportunity to Appeal

## 2024

- Notice
- Intake
- Complaint
- Assessment
  - Discretionary Dismissal
  - Informal Resolution
  - Formal Resolution
- Investigation and Resolution
  - Single-investigator model permitted
  - No Hearing required
  - Must provide mechanism for decision-maker to question parties and witnesses regarding credibility, if at issue
  - Heightened requirements for Sex-Based Harassment cases where one or more parties is a student

# 2020 Regulations

## Investigation Requirements

### Investigation Requirements

#### Formal Complaint

Filed by Complainant or Signed by Title IX Coordinator

#### Notice of Allegations

With sufficient Detail and time for a party to prepare for an initial interview

#### Investigation

Thorough search for relevant facts and evidence  
Conducted by a trained investigator who is free from conflicts of interest or bias

#### Evidence Review

Of any evidence that is directly related to the allegations

#### Written Responses to Evidence

10-day review period  
Parties may submit written response

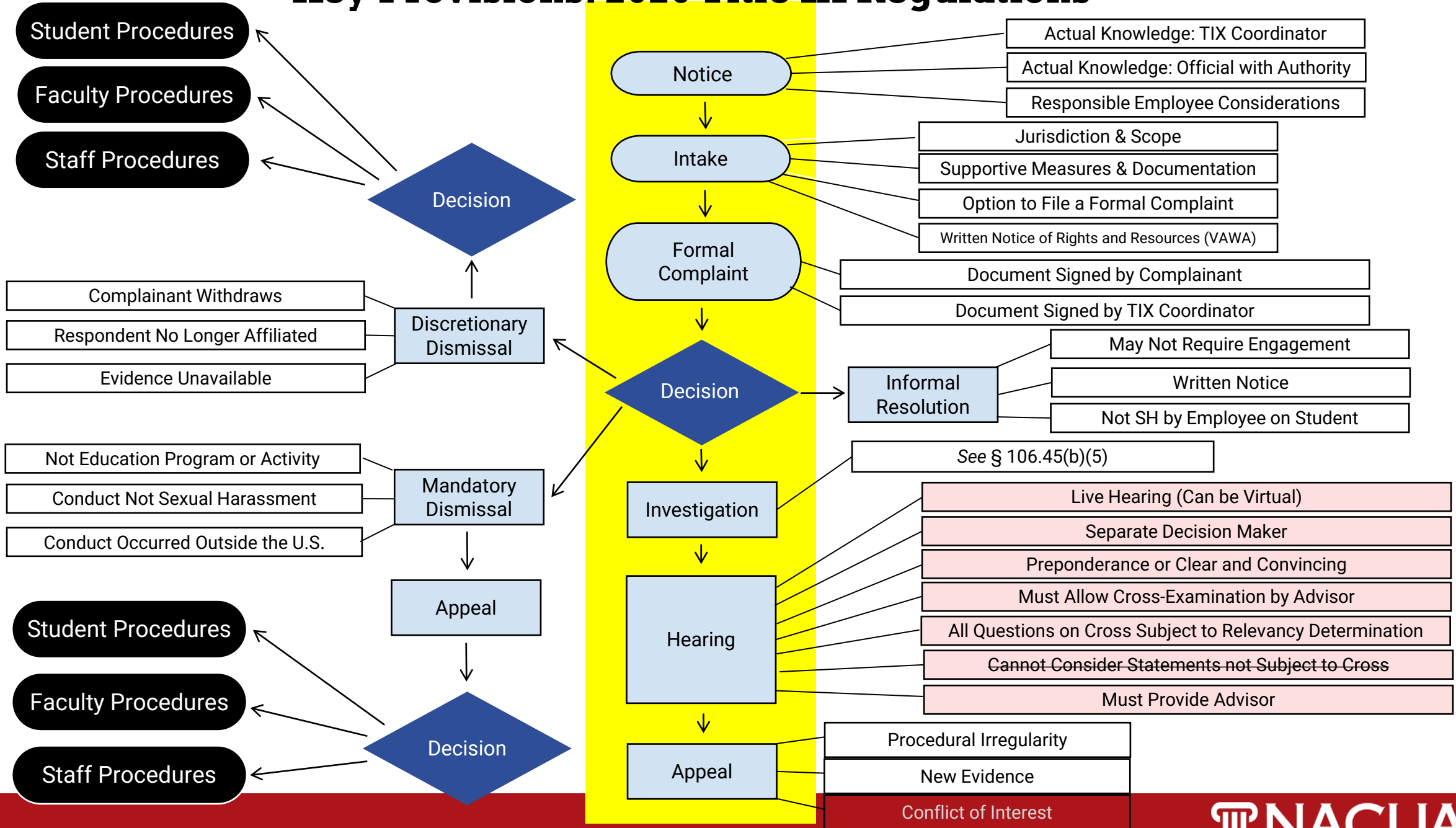
#### Investigative Report

Fairly summarizes relevant evidence  
Includes inculpatory and exculpatory evidence

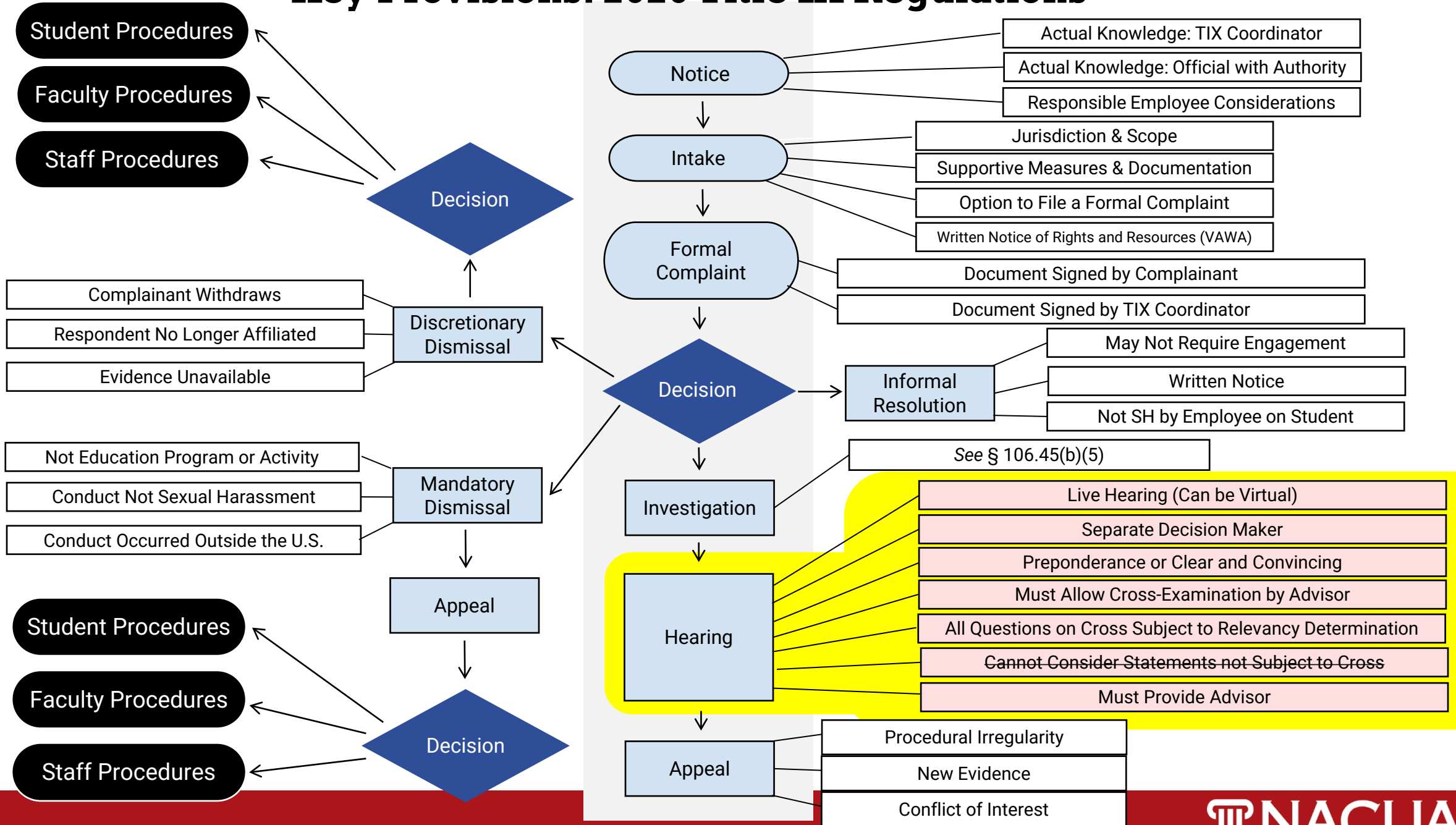
#### Written Responses to Report

10-day review period  
Parties may submit written response

# Key Provisions: 2020 Title IX Regulations



# Key Provisions: 2020 Title IX Regulations



## **Reminder: *Victim Rights Law Center v. Cardona* (U.S. District Court, District of Massachusetts, July 28, 2021)**

- Court found the prohibition on statements not subject to cross-examination to be arbitrary and capricious
- “Nothing in the administrative record demonstrates that the Department was aware of this result, considered its possibility, or intended this effect. Moreover, the construction of the Final Rule suggests that the Department failed even implicitly to recognize this result.”
- “To so carefully balance and craft the respondent’s safeguards, the definitions, the burdens, and the policies in the run-up to the hearing, just to have the prohibition and definition of absentee statements render the hearing a hollow exercise further demonstrates that the Department failed, even implicitly, to consider the consequences from the prohibition and definition of statements.”

*Victim Rights Law Center v. Cardona*, 552 F. Supp. 3d 104 (D. Mass. 2021)

# Hearings

- For postsecondary institutions, the recipient's grievance process **must provide for a live hearing**.
- At the request of either party, the recipient must provide for the live hearing to occur with the parties located in **separate rooms with technology** enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

Title IX Regulations May 19, 2020; § 106.45(b)(6)(i)

# Hearings

- Only **relevant** cross-examination and other questions may be asked of a party or witness.
- If a party does not have an advisor present at the live hearing, the **recipient must provide without fee or charge to that party**, an advisor of the **recipient's choice**, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

# Cross-Examination by Advisor

- [A] party's advisor may appear and conduct cross-examination **even when the party whom they are advising does not appear.**
- Similarly, where one party does not appear and that party's advisor of choice does not appear, **a recipient-provided advisor must still cross-examine the other, appearing party "on behalf of" the non-appearing party,** resulting in consideration of the appearing party's statements but not the non-appearing party's statements (without any inference being drawn based on the non-appearance).

Title IX Regulations May 19, 2020; Preamble at 85 F.R. 30346

# Determination of Responsibility

- Decision-maker(s), **cannot be the same person(s) as the Title IX Coordinator** or the investigator(s)
- Must issue a **simultaneous written determination** regarding responsibility, including
  - Identification of the allegations
  - Description of the procedural steps taken from the receipt of the formal complaint through the determination
  - Findings of fact supporting the determination
  - Conclusions regarding the application of the policy to the facts
  - **Sanction**, if any, and remedies for a Complainant
  - Rationale as to finding and sanction
  - Appeal procedures

Title IX Regulations May 19, 2020; § 106.45(b)(7)



# Refresh On How We Got Here

- 2024 Title IX Regulations were the subject of **immediate legal challenge**
  - Application of Title IX protections based on gender identity and sexual orientation
  - Movement away from heightened procedural requirements
- 2024 Regs were **enjoined** in many jurisdictions (and at some individual schools)
  - Statewide injunctions in **26 states**
  - Case filed in Kansas by states and associational plaintiffs (Moms for Liberty, Young America's Foundation, Female Athletes United) led to an **ever-growing injunction patchwork**
- January 9, 2025, the 2024 Regulations were **vacated nationwide**
  - *Tennessee v. Cardona*, No. 2:24-cv-00072, 2025 U.S. Dist. LEXIS 12345 (E.D. Ky., Jan. 9, 2025)
- The nationwide vacatur **effectively revived the 2020 Title IX Regulations**
- Inauguration Day

# The January 31 February 4, 2025, Letter



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE ACTING ASSISTANT SECRETARY

January 31, 2025

Dear Colleague:

This letter is to clarify the Education's (ED) Office for of the [2020 Title IX Rule](#). Accordingly, lawful Title I harassment, the procedur provision of supportive me the interpretation of "sex" t male or female as outlined

On January 9, 2025, the Kentucky issued a [decision enforcing it in any jurisd jurisdictions enjoined the 2 its enforcement in 26 stat \[2024 Title IX Rule\] has in](#)

In OCR's view, the Eastern and original meaning of T expanded "meaning of 'on t place, would "turn[] Title I Rule's statement that discr the basis of sex stereotypes

<sup>1</sup> *Tennessee v. Cardona*, No. 24-0  
<sup>2</sup> See *Alabama v. U.S. Sec. of Ed Oklahoma v. Cardona*, No. CIV-1 Dep't of Educ., No. 4:24-CV-636 States, No. 2:24-CV-86-Z, 2024 V 4041-JWB, 2024 WL 3273285 (D 2024 WL 2978786 (W.D. La. Jun <sup>3</sup> *Tennessee*, 2025 WL 63795, at <sup>4</sup> *Id.* at \*3.  
<sup>5</sup> *Id.* at \*6.

400 M

The Department of Education's mission



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE ACTING ASSISTANT SECRETARY

February 4, 2025

Dear Colleague:

This letter<sup>1</sup> is to clarify that, in light of a recent court decision, the United States Department of Education's (ED) Office for Civil Rights (OCR) will enforce under the provisions of the 2020 Title IX Rule,<sup>2</sup> rather than the 2024 T Accordingly, lawful Title IX enforcement includes, *inter alia*, the definit harassment, the procedural protections owed to complainants and resp provision of supportive measures to complainants, and school-level resp as outlined in the 2020 Title IX Rule.

On January 9, 2025, the United States District Court for the Eastern D Kentucky issued a decision that vacated the entirety of the 2024 Title I nationwide.<sup>4</sup> Prior to that decision, federal courts in other jurisdictions the 2024 Title IX Rule, which amounted to a prohibition against its enf states.<sup>5</sup> Although the United States Department of Justice is responsib determining whether to appeal the United States District Court for the District of Kentucky's vacatur order, that judgment was immediately e portion of the 2024 Title IX Rule is now in effect in any jurisdiction.

In addition, on January 20, 2025, President Trump issued an Executive [Defending Women from Gender Ideology Extremism and Restoring Bio the Federal Government](#). President Trump ordered all agencies and dep within the Executive Branch to "enforce all sex-protective laws to prom that there are "two sexes, male and female," and that "[t]hese sexes are and are grounded in fundamental and incontrovertible reality." ED and enforce Title IX consistent with President Trump's Order.

<sup>1</sup> This letter replaces and supersedes the January 31, 2025, letter issued on Title IX e <sup>2</sup> 85 Fed. Reg. 30026 (2020).  
<sup>3</sup> 89 Fed. Reg. 33474 (2024).  
<sup>4</sup> *Tennessee v. Cardona*, No. 24-0072-DCR, 2025 WL 63795, at \*6 (E.D. Ky. Jan. 9, 2025).  
<sup>5</sup> See *Alabama v. U.S. Sec. of Educ.*, No. 24-12444, 2024 WL 3981994 (11th Cir. Aug. 22, 2024); *Oklahoma v. Cardona*, No. CIV-24-00461-JD, 2024 WL 3609109 (W.D. Okla. July 31, 2024); *Arkansas v. Dep't of Educ.*, No. 4:24-CV-636-RWS, 2024 WL 3518588 (E.D. Mo. July 24, 2024); *Texas v. United States*, No. 2:24-CV-86-Z, 2024 WL 3405342 (N.D. Tex. July 11, 2024); *Kansas v. Dep't of Educ.*, No. 24-4041-JWB, 2024 WL 3273285 (D. Kan. July 2, 2024); *Louisiana v. Dep't of Educ.*, No. 3:24-CV-00563, 2024 WL 2978786 (W.D. La. June 13, 2024).

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-1100  
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE ACTING ASSISTANT SECRETARY

January 31 February 4, 2025

Dear Colleague:

This ~~letter~~ is to clarify that, ~~effective immediately in light of a recent court decision~~, the United States Department of Education's (ED) Office for Civil Rights (OCR) will enforce Title IX under the provisions of the ~~2020 Title IX Rule~~, ~~rather than the recently invalidated 2024 Title IX Rule~~, ~~rather than the 2024 Title IX Rule~~.<sup>2</sup> Accordingly, lawful Title IX enforcement includes, *inter alia*, the definition of sexual harassment, the procedural protections owed to complainants and respondents, the provision of supportive measures to complainants, and school-level reporting processes, ~~and the interpretation of "sex" to mean the objective, immutable characteristic of being born male or female~~ as outlined in the 2020 Title IX Rule.

On January 9, 2025, the United States District Court for the Eastern District of Kentucky issued a ~~decision vacating decision that vacated the entirety of the 2024 Title IX Rule, which prohibited ED from enforcing it in any jurisdiction nationwide~~.<sup>4</sup> Prior to that decision, federal courts in other jurisdictions had enjoined the 2024 Title IX Rule, which amounted to a prohibition against its enforcement in 26 states.<sup>5</sup> ~~Indeed, "every court presented with a challenge to the [2024 Title IX Rule] has indicated that it is unlawful."<sup>6</sup> Although the United States Department of Justice is responsible for determining whether to appeal the United States District Court for the Eastern District of Kentucky's vacatur order, that judgment was immediately effective and no portion of the 2024 Title IX Rule is now in effect in any jurisdiction.~~

~~In OCR's view, the Eastern District of Kentucky's decision expressed the proper textual and original meaning of Title IX, and it correctly repudiated the 2024 Title IX Rule's expanded "meaning of 'on the basis of sex' to include "gender identity," which, if left in place, would "turn[] Title IX on its head."<sup>7</sup> Likewise, the court rejected the 2024 Title IX Rule's statement that discrimination on the basis of sex also includes discrimination on the basis of sex stereotypes, sex characteristics, and sexual orientation.<sup>8</sup>~~

~~In addition, on January 20, 2025, President Trump issued an Executive Order, [Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government](#). President Trump ordered all agencies and departments within the Executive Branch to "enforce all sex-protective laws to promote [the] reality" that there are "two sexes, male and female," and that "[t]hese sexes are~~

<sup>1</sup> This letter replaces and supersedes the January 31, 2025, letter issued on Title IX e <sup>2</sup> 85 Fed. Reg. 30026 (2020).  
<sup>3</sup> 89 Fed. Reg. 33474 (2024).  
<sup>4</sup> *Tennessee v. Cardona*, No. 24-0072-DCR, 2025 WL 63795, at \*6 (E.D. Ky. Jan. 9, 2025).  
<sup>5</sup> See *Alabama v. U.S. Sec. of Educ.*, No. 24-12444, 2024 WL 3981994 (11th Cir. Aug. 22, 2024); *Oklahoma v. Cardona*, No. CIV-24-00461-JD, 2024 WL 3609109 (W.D. Okla. July 31, 2024); *Arkansas v. Dep't of Educ.*, No. 4:24-CV-636-RWS, 2024 WL 3518588 (E.D. Mo. July 24, 2024); *Texas v. United States*, No. 2:24-CV-86-Z, 2024 WL 3405342 (N.D. Tex. July 11, 2024); *Kansas v. Dep't of Educ.*, No. 24-4041-JWB, 2024 WL 3273285 (D. Kan. July 2, 2024); *Louisiana v. Dep't of Educ.*, No. 3:24-CV-00563, 2024 WL 2978786 (W.D. La. June 13, 2024).

~~not changeable and are grounded in fundamental and incontrovertible reality." ED and OCR must enforce Title IX consistent with President Trump's Order.~~

<sup>1</sup> This letter replaces and supersedes the January 31, 2025, letter issued on Title IX enforcement.

<sup>2</sup> 85 Fed. Reg. 30026 (2020); 89 Fed. Reg. 33474 (2024).

<sup>3</sup> *Tennessee v. Cardona*, No. 24-0072-DCR, 2025 WL 63795, at \*6 (E.D. Ky. Jan. 9, 2025).

<sup>4</sup> See *Alabama v. U.S. Sec. of Educ.*, No. 24-12444, 2024 WL 3981994 (11th Cir. Aug. 22, 2024); *Oklahoma v. Cardona*, No. CIV-24-00461-JD, 2024 WL 3609109 (W.D. Okla. July 31, 2024); *Arkansas v. Dep't of Educ.*, No. 4:24-CV-636-RWS, 2024 WL 3518588 (E.D. Mo. July 24, 2024); *Texas v. United States*, No. 2:24-CV-86-Z, 2024 WL 3405342 (N.D. Tex. July 11, 2024); *Kansas v. Dep't of Educ.*, No. 24-4041-JWB, 2024 WL 3273285 (D. Kan. July 2, 2024); *Louisiana v. Dep't of Educ.*, No. 3:24-CV-00563, 2024 WL 2978786 (W.D. La. June 13, 2024).

<sup>5</sup> *Tennessee*, 2025 WL 63795, at \*7 (collecting cases).

<sup>6</sup> *Id.* at \*3; *Id.* at \*6.

~~Equally fatal to the 2024 Title IX Rule, on January 20, 2025, President Trump issued an Executive Order, [Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government](#), that directly contradicts the vacated rule's novel and expansive meaning of "on the basis of sex." President Trump ordered all agencies and departments within the Executive Branch to "enforce all sex-protective laws to promote [the] reality" that there are "two sexes, male and female," and that "[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality." As a constitutional matter, the President's interpretation of the law governs because he alone controls and supervises subordinate officers who exercise discretionary executive power on his behalf. That unified control extends to ED and OCR; therefore, Title IX must be enforced consistent with President Trump's order.~~

~~In light of these federal court decisions and in light of the recent federal court decision vacating the 2024 Title IX Rule, and consistent with President Trump's [Defending Women Executive Order](#), the binding regulatory framework for Title IX enforcement includes the principles and provisions of the 2020 Title IX Rule and the longstanding Title IX regulations outlined in 34 C.F.R. 106 et seq., but excludes the vacated 2024 Title IX Rule. Accordingly, open Title IX investigations initiated under the 2024 Title IX Rule should be immediately reoriented/reevaluated to [comport fully ensure consistency](#) with the requirements of the 2020 Title IX Rule and the [preexisting regulations at 34 C.F.R. 106 et seq.](#)~~

~~Resources pertaining to Title IX and the 2020 Title IX Rule are available [here](#).~~

~~Sincerely,~~

~~/s/  
Craig Trainor~~





# Clear Memory

Are you sure you want to delete the 2024 Title IX Regulations from your brain?

Cancel

Delete

## Now What?

### Sex Discrimination

*On the basis of:*

- Sex
- Sex stereotypes
- Sex characteristics
- Pregnancy or related conditions
- Parental, family, or marital status
- Sexual orientation
- Gender identity

## Now What?

### **Sex Discrimination**

*On the basis of:*

- Sex
- Sex stereotypes
- Sex characteristics
- Pregnancy or related conditions
- Parental, family, or marital status
- Sexual orientation
- Gender identity

### **Sex-Based Harassment**

Quid Pro Quo

Hostile Environment

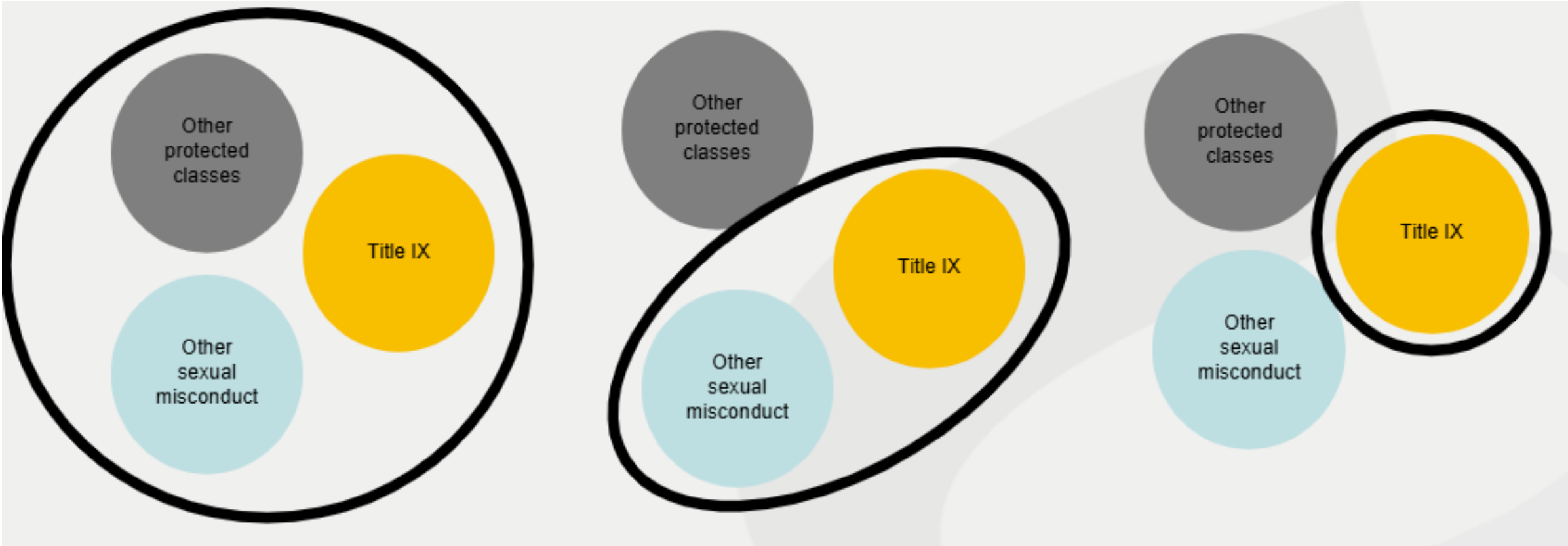
Sexual Assault, Dating  
Violence, Domestic  
Violence, or Stalking

# Policy Framework Options

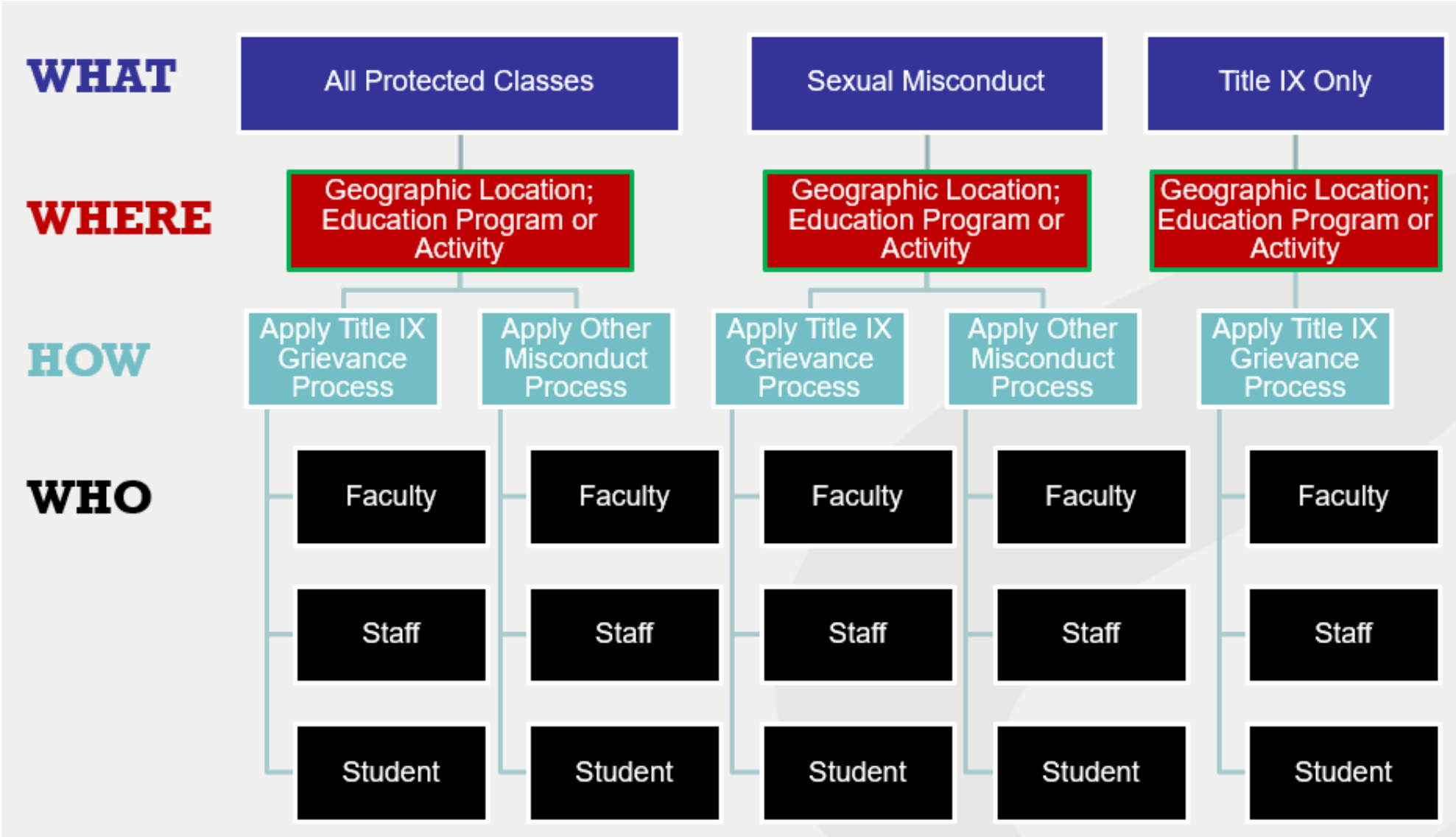
All Protected Classes

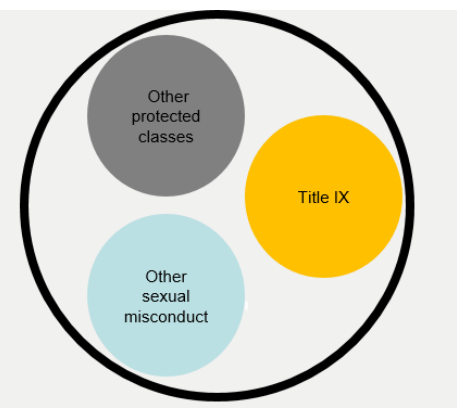
Sexual Misconduct

Title IX Only



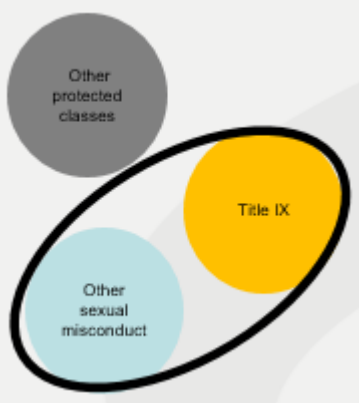
# Procedural Framework





# All Protected Class Misconduct

Challenges	Benefits
Additional process in cases where not legally required	Uniform approach to resolution for all civil rights and all sexual misconduct
Additional resources (e.g., advisors, hearing officers, appeal officers, time)	Message to community about equal importance of all forms of discrimination and harassment and awareness of intersectionality
Implications of expanded scope in terms of personnel (e.g., broader and more complex apparatus, timeliness of resolutions)	More streamlined process: fewer decision points
Elevates protected class misconduct over other misconduct (e.g., physical assault, honor code, other personnel matters)	Easier alignment when multiple protected classes are implicated

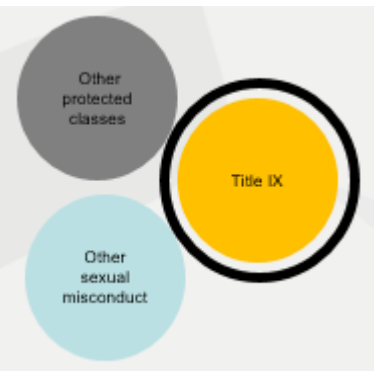


# All Sexual Misconduct\*

\*Whether or not the conduct qualifies as Sexual Harassment as defined by the regulations

Challenges	Benefits
Additional process in cases where not legally required	Uniform approach to resolution for all instances of sexual misconduct
Additional resources (e.g., advisors, hearing officers, appeal officers, time)	Message to community about equal importance of all forms of sexual misconduct
Implications of expanded scope in terms of personnel (e.g., broader and more complex apparatus, timeliness of resolutions)	More streamlined process: fewer decision points
Community perception that school is applying Title IX prescriptive regulations too broadly (extends to cover additional conduct than is required under the law)	Parity between Title IX sexual harassment and other sexual misconduct, regardless of jurisdiction; accessible and user-friendly
Distinguishes sexual harassment from other protected classes	Continuity of practices (i.e., messaging to the community that the conduct we are addressing has not changed)

# Only Title IX Sexual Harassment



Challenges	Benefits
Hyper-technical application of regulations that is inconsistent with value of treating all sexual misconduct equally	Ease of policy drafting
Less alignment with other processes; complex and discretionary decision-making throughout	Does only what is required under the law; narrowly tailored
Schools will need to determine how to regulate conduct beyond Title IX jurisdiction; continuing effects analysis	Narrows scope of changes needed; requires additional resources in the fewest number of cases
Still need to consider Title VII for employee conduct, necessitating parallel or tiered processes	Easier to explain changes to the community because changes are tied strictly to legal requirements

# Considering a Centralized Civil Rights Response

PROS	CONS
<ul style="list-style-type: none"><li>-Centralized resource, report &amp; response office</li><li>-More streamlined approach to addressing reports that reinforces a consistent, legally compliant response</li><li>-Easier alignment when multiple protected classes are implicated within one complaint/report</li><li>-Heightened coordination and communication by breaking down silos</li><li>-Reflects equal institutional commitment to all forms of discrimination and harassment</li><li>-Increased awareness of climate concerns and policy gaps that need to be addressed</li></ul>	<ul style="list-style-type: none"><li>-May require significant systems change</li><li>-Procedural requirements differ greatly between Title IX and all other forms of discrimination/harassment</li><li>-Can be challenging to centralize services traditionally housed in diverse departments<ul style="list-style-type: none"><li>-Depending upon state/federal laws, may still need to have additional titles</li></ul></li><li>-May require expanded training for students, staff, and faculty about reporting options and requirements</li><li>-Implications of expanded scope (broader and more complex apparatus, timeliness of resolutions)</li></ul>



# Care-Compliance Continuum

- Every compliance element can be tied to a duty of care
- Effective practices incorporate an understanding of the impacts of trauma on individuals and communities



# Building Policymaking Processes with Expansion Joints



# Consistent Elements Across All Matters

- Intake and outreach process
- Supportive measures
- Neutral, impartial and trained implementers
- Investigative protocols
  - Notice
  - Opportunity to be heard
- Documentation



A blurred background image showing the silhouettes of several people sitting around a table in a meeting room, with large windows in the background. The image is overlaid with a semi-transparent dark blue filter.

# Part I. The Current Title IX Compliance Framework

## B. Executive Orders and Agency Guidance

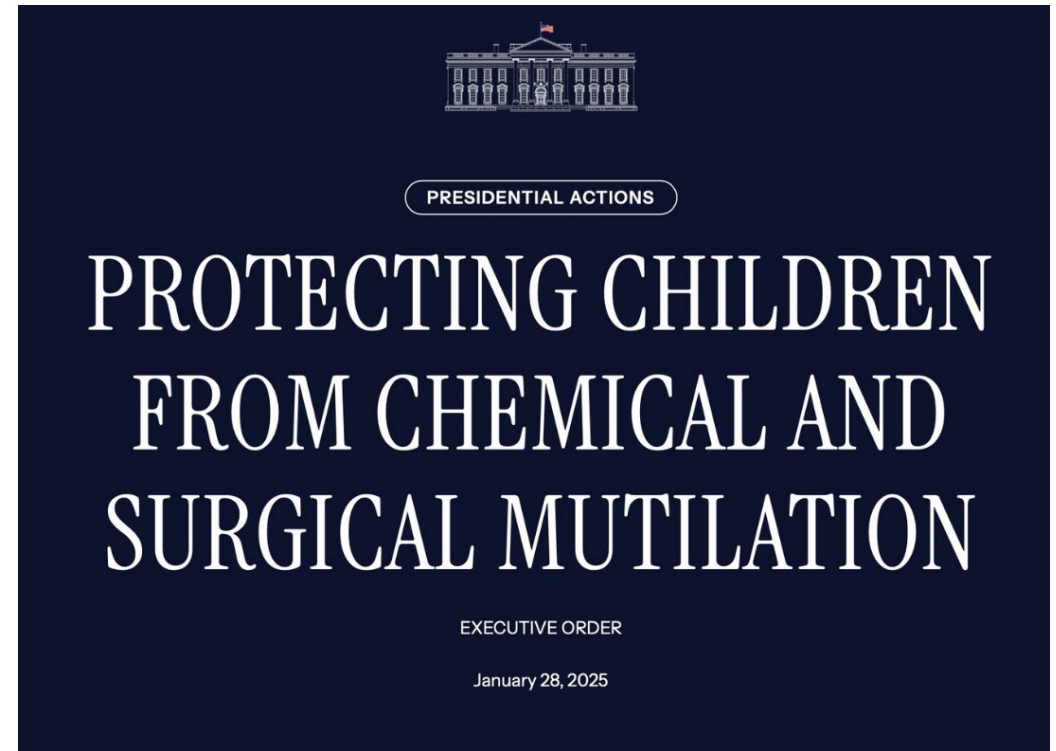
# EOs and Related Agency Actions

- [Executive Order 14168](#), “**Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government**” states that it is the “policy of the U.S. to recognize two sexes, male and female.” EO 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025)
  - **NIH** terminated grants for LGBTQ+ health research, including HIV (ordered reinstated)
  - **State Department** passport policy changes (initially enjoined by court order; injunction lifted by SCOTUS Nov. 6, 2025, in Orr v. Trump)
  - **HHS** removed health-related information referencing gender identity from their websites (ordered back online)
  - **ED** announced that FAFSA would not allow students to identify as nonbinary
  - **EEOC** halted new claims of discrimination based on transgender identity



# EOs and Related Agency Actions

- [Executive Order 14187](#), “**Protecting Children From Chemical and Surgical Mutilation**” prohibits gender-affirming treatments including surgeries, hormone therapy, and puberty blockers for people 19 years of age and under. EO 14187, 90 Fed. Reg. 8771 (Jan. 28, 2025)
  - **DOJ** issued highlighting enforcement priorities and ordering civil fraud enforcement
  - **HHS** rescinded existing guidance on gender affirming care, began reviewing grants, and issued a report questioning clinical basis for gender-affirming care
  - **DOJ** issued subpoenas and opened investigations in several states



# EOs and Related Agency Actions

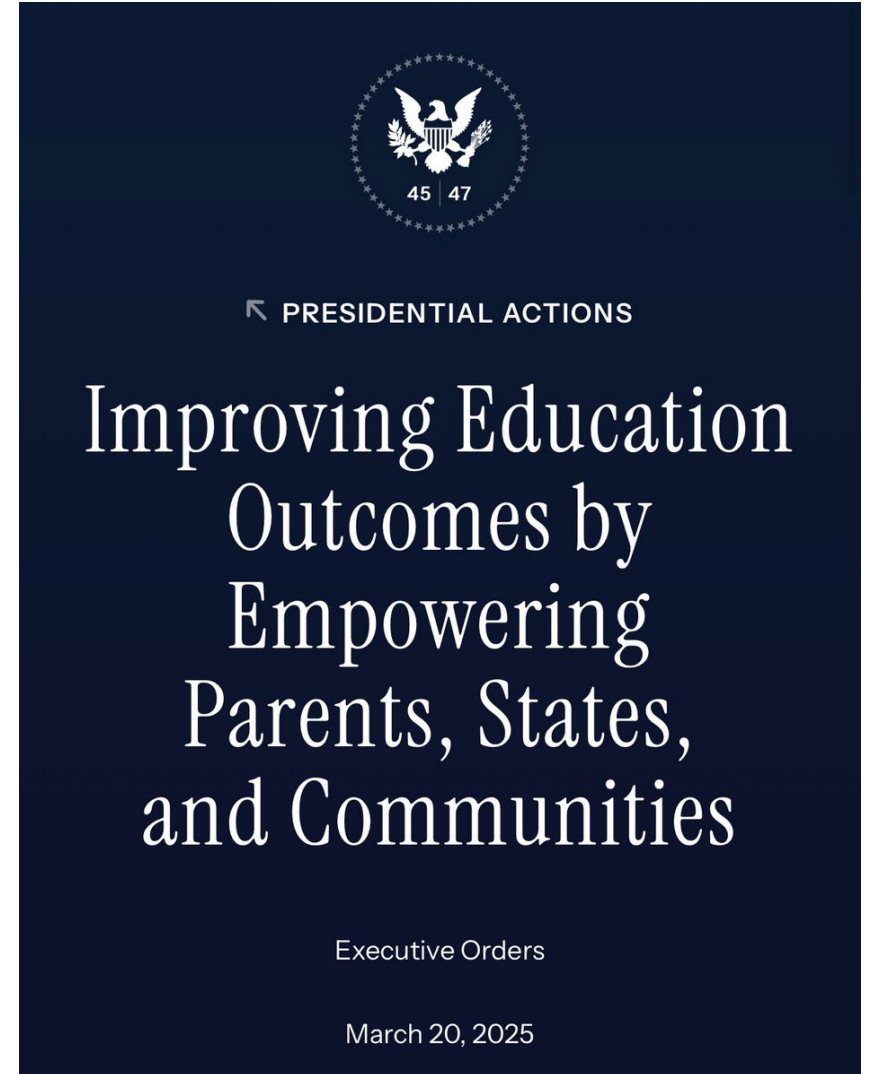
- [Executive Order 14201](#), “**Keeping Men Out of Women's Sports**” prohibits transgender women and girls from competing on sports teams in alignment with their gender identity, based on the sex-based binary classifications in EO 14168. EO 14201, 90 Fed. Reg. 9279 (Feb. 5, 2025)
  - **ED** opened directed investigations into educational institutions (discussed below)
  - **HHS** launched a website with sex-based definitions and information about sports-related conditions more common in women than men

Note: While not an agency action, the **NCAA** updated its participation policy on February 6, 2025, limiting participation of trans student athletes



# EOs and Related Agency Actions

- [Executive Order 14242](#), “Improving Education Outcomes by Empowering Parents, States, and Communities” communicates the federal government's intent to close the U.S. Department of Education. EO 14242, 90 FR 13679 (Mar. 20, 2025)
  - **ED** initiated a major RIF even before the EO
  - RIFs temporarily halted in fall 2025, after injunctions and government shutdown
  - Administration continued to pursue reassignment of staff and dismantling of operations
  - OCR closed 7 of 12 regional offices
  - Feb. 4, 2026 – U.S. Government Accountability Office (GAO): “...[I]t may have cost up to \$38 million to pay the salaries and benefits for Civil Rights staff who weren't working from March to December 2025.”



# Other Key Agency Actions

## Title IX Special Investigations Team

April 4, 2025 – Joint DOJ and Dept. of Ed. announcement – Formation of Title IX Special Investigations Team (Title IX SIT) for rapid response.

<https://www.ed.gov/about/news/press-release/us-department-of-education-and-us-department-of-justice-announce-title-ix-special-investigations-team>

<https://www.justice.gov/opa/pr/us-department-education-and-us-department-justice-announce-title-ix-special-investigations>

## Civil Rights Fraud Initiative

May 19, 2025 – DOJ Civil Rights Fraud Initiative – False Claims Act

<https://www.justice.gov/dag/media/1400826/dl?inline>





A blurred background image showing several people sitting around a table in a meeting room, with large windows in the background. The image is overlaid with a semi-transparent dark blue filter.

# Part I. The Current Title IX Compliance Framework

## C. Federal Enforcement Actions

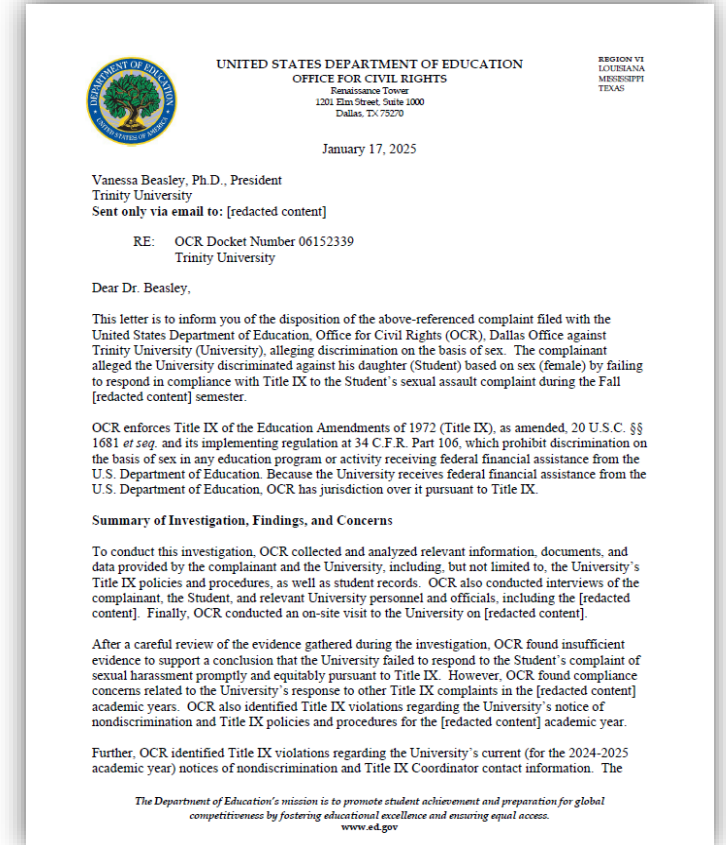
# Federal Enforcement Actions

- Sexual Harassment
- Athletics
- Bathrooms/Facilities



# Federal Enforcement Actions: Sexual Harassment

- No OCR Resolution Agreements publicly posted related to Sexual Harassment under new administration
- Last Sexual Harassment Resolution Agreement posted was from January 17, 2025
- K-12 case: ED found Loudoun County Schools (VA) in violation of Title IX.
  - Case related to a transgender student having access to boys' locker room. ED found that the school failed to treat the (cisgender) male students unfairly in the grievance process, which involved complaints of sexual harassment



# Federal Enforcement Actions: Athletics



- University of Pennsylvania
  - Found in violation: April 28, 2025
  - ED and Penn reached a **Resolution Agreement** on July 1, 2025, with the following elements:
    - UPenn will **restore records**, titles, or similar recognitions;
    - UPenn will issue a **public statement** to the University community stating that it will comply with Title IX, specifying that UPenn will not allow males to compete in female athletic programs or occupy Penn Athletics female intimate facilities;
    - (continued on next slide)

# Federal Enforcement Actions: Athletics

- University of Pennsylvania

(Elements, continued)

- The statement will specify that UPenn will **adopt biology-based definitions** for the words 'male' and 'female' pursuant to Title IX and consistent with EOs;
- UPenn will **post the statement in a prominent location** on its main website and on each of its websites for women's athletics;
- UPenn will rescind any guidance which violated Title IX, **remove or revise any internal and public-facing statements** or documents that are inconsistent with Title IX, and notify all staff and women's athletics of all such rescissions;
- UPenn will send a **personalized letter of apology** to each impacted female swimmer.

# Federal Enforcement Actions: Athletics

- Wagner College (NY)
  - ED and Wagner reached a **Resolution Agreement** on August 1, 2025, with the following elements:
    - Wagner will **amend its athletics policy** to adopt biology-based definitions for the words “male” and “female” pursuant to Title IX;
    - Wagner will **issue a public statement** to the college community stating that it will comply with Title IX, specifying that Title IX forbids Wagner from allowing male students to compete in female sports and occupying female intimate facilities;
    - Wagner will **rescind any guidance or communications** that authorized males to compete in women’s athletics; and
    - Wagner will issue **personalized letters of apology**.



# Federal Enforcement Actions: Athletics

- San Jose State University
  - ED **found SJSU in violation of Title IX** on January 28, 2026
  - OCR **proposed a Resolution Agreement** with the following elements:
    - Issue a **public statement** that SJSU will adopt biology-based definitions acknowledge that human sex is unchangeable;
    - Specify that SJSU will follow Title IX by **separating sports and intimate facilities based on biological sex**;
    - State that SJSU will not delegate compliance with Title IX to any external association or entity and will not contract with any entity that discriminates on the basis of sex;
    - **Restore records and titles**; and
    - Issue **personalized letters of apology** to student-athletes.

# Federal Enforcement Actions: Athletics

- Maine Department of Education
  - Investigation initiated: Feb. 21, 2025
  - Title IX violation found: Mar. 19, 2025
  - Final warning letter: March 31, 2025
  - Referral to DOJ: April 11, 2025
  - DOJ civil action filed: April 16, 2025
  - Last filing: February 11, 2026 – DOJ has moved for two judges' recusal
- Impetus:
  - Conflict between federal policy and state law (Maine Human Rights Act)
  - State officials' public statements criticizing federal policy



# Federal Enforcement Actions: Athletics

- January 14, 2026
  - **Investigations:**
    - Santa Monica College (CA), Santa Rosa Jr. College (CA), and University of Nevada – Reno (NV)
      - (Plus fifteen K-12 School Districts and State Departments of Education in CA, CT, HI, ME, MA, NY, PA, VT, and WA)
    - All related to trans-inclusive policies or practices generally, including athletics
    - Similar prior actions in Kansas (investigation announced 8/14/25), Oregon (investigations announced 7/25/25 and 3/25/25), California (found in violation 6/25/25), New York (investigation announced 5/6/25), Washington (investigations announced 4/30/25 and 3/3/25), Illinois (investigation announced 3/20/25), Minnesota (found in violation 9/30/25), and Massachusetts (investigation announced 2/6/25).
- January 15, 2025
  - **Investigation:** CA Community College Ath. Assoc. re: "Transgender Participation Policy"
- January 26, 2026
  - **Referral to DOJ for Enforcement:** Minnesota Department of Education
- February 13, 2026
  - **Investigation:** WA school district re: transgender student's participation in wrestling

# Federal Enforcement Actions: Bathrooms/Facilities

- Western Carolina University (NC)
  - Investigation opened: May 8, 2025
  - Basis – a student complaint alleging:
    - University allows transgender students to access bathrooms and housing in accordance with gender identity
    - University announced that it would not make any changes in response to the 2025 Executive Orders regarding gender identity
  - Remains open



# Federal Enforcement Actions: Bathrooms/Facilities

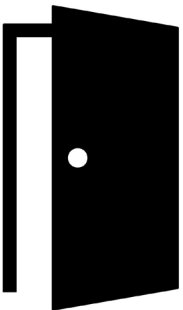
- Five School Districts in Virginia
  - Investigation opened: June 18, 2025
  - Found in violation of Title IX: July 25, 2025
  - Basis:
    - Policies and practices allowing students to access intimate facilities aligned with their gender identity
  - Enforcement Update: August 19, 2025
    - "U.S. Department of Education Places Five Northern Virginia School Districts on High-Risk Status and Reimbursement Payment Status for Violating Title IX" (ED Newsroom Press Releases, August 19, 2025)

# Federal Enforcement Actions: Bathrooms/Facilities

- Denver Public Schools
  - **Found in violation** of Title IX on August 28, 2025, after **converting a girls' bathroom into a gender-neutral bathroom**
    - Proposed Resolution Agreement with the following elements:
      - Convert and redesignate all multi-stall restrooms for use by both sexes back to sex-designated multi-stall restrooms;
      - Rescind any policies or guidance which allow students to access intimate facilities based on biological sex (including parts of the “LGBTQ+ Toolkit”);
      - Issue a memorandum to all District schools reiterating that schools must provide intimate facilities that protect the privacy, dignity, and safety of its students and are comparably accessible to each sex, and that Title IX compliance ensures female students may not be discriminated against in any education program or activity; and
      - Adopt biology-based definitions for the words “male” and “female” in all policies and practices related to Title IX.

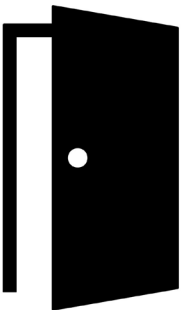
# Title IX Enforcement through Title VI

- Title IX elements included in recent Title VI resolution agreements
  - **Brown University**
    - **Resolution Agreement** reached July 30, 2025, with HHS and ED
      - Define “male” and “female” for the purpose of all University practices, policies, and procedures, including Brown athletics, consistent with the definitions adopted in gender identity Executive Orders.
      - Offer housing, shower, and restroom access in a manner that allows male-only and female-only options.
      - Not perform gender reassignment surgery or prescribe puberty blockers or hormones to any minor child for the purpose of aligning the child’s appearance with an identity that differs from their sex.



# Title IX Enforcement through Title VI

- Title IX elements included in recent Title VI resolution agreements
  - **Columbia University**
    - **Resolution Agreement** reached July 23, 2025, with HHS and ED
      - Uphold Title IX by providing safe and fair single-sex housing options and all-female sports, locker room, and showering facilities



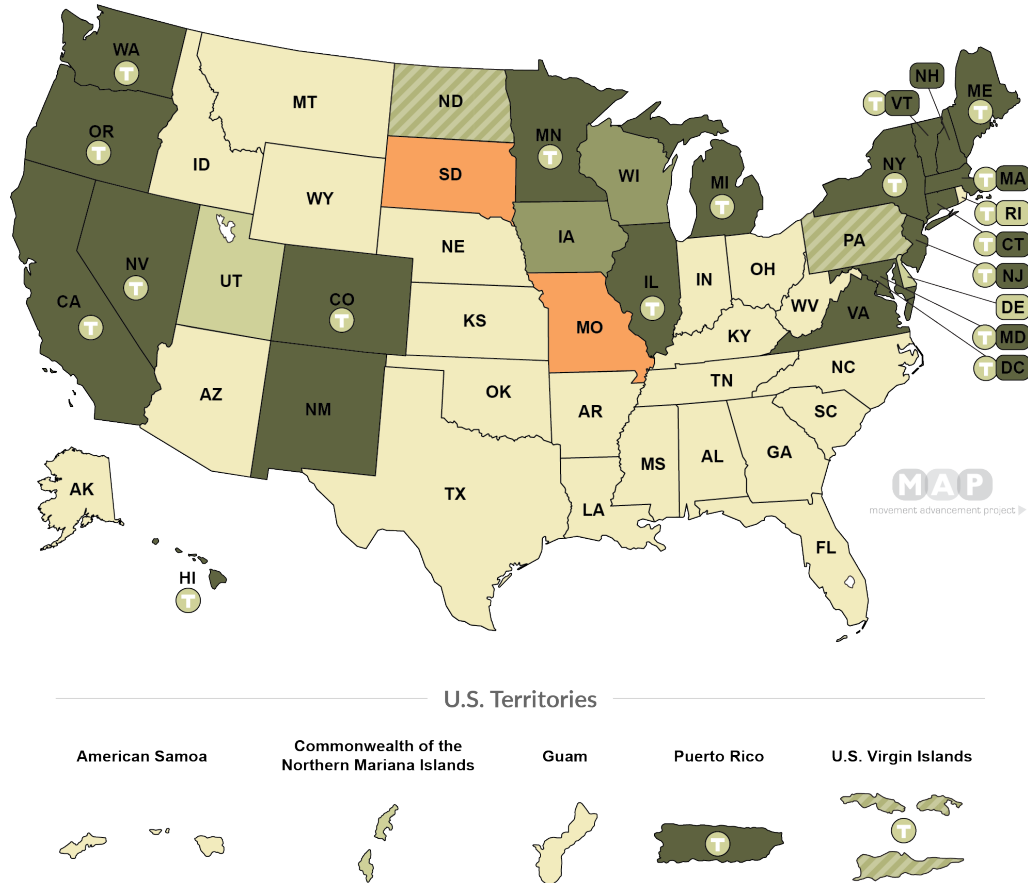
A blurred background image showing the silhouettes of several people sitting around a table in a meeting room, with large windows in the background. The image is dimly lit and serves as a backdrop for the text.

# Part I. The Current Title IX Compliance Framework

## D. State Law Conflicts and Considerations



# State Law Patchwork - Nondiscrimination in Schools



- 2 states have laws prohibiting schools or districts from adding LGBTQ+ protections to nondiscrimination policies (South Dakota and Missouri) - orange
- 24 states have no law against discrimination based on sexual orientation or gender identity - cream
- 19 states have statutory protections against discrimination based on sexual orientation and gender identity - dark green
- 5 states have regulatory or interpretive protections against discrimination based on sexual orientation and/or gender identity – light green and striped

Map and statistics: Movement Advancement Project - [https://www.lgbtmap.org/equality-maps/safe\\_school\\_laws](https://www.lgbtmap.org/equality-maps/safe_school_laws)

# Example of State and Federal Law in Tension

## **Pennsylvania Human Relations Act (“PHRA”)**

- Bans discrimination on the basis of “sex” in employment, in membership within labor organizations, the sale or rental of housing or commercial property, in public accommodations and in K-12 educational institutions.
  - *43 Pa.C.S. § 955*

## **Pennsylvania Fair Educational Opportunities Act (“PFEOA”)**

- Bans discrimination on the basis of “sex” in postsecondary institutions and any secondary or postsecondary secretarial, business, vocational or trade school subject to the visitation, examination or inspection of and/or actual or potential licensure by the Department of Education.
  - *24 Pa.C.S. § 5004*

# Example of State and Federal Law in Tension

## Pennsylvania Human Relations Commission (“PHRC”) Regulations (June 2023)

- Defines “sex” under the PHRA and the PFEOA to include:
  - Pregnancy;
  - Sex assigned at birth;
  - Gender, including a person’s gender identity or gender expression;
  - Affectional or sexual orientation, including heterosexuality, homosexuality, bisexuality and asexuality;
  - Differences of sex development, variations of sex characteristics or other intersex characteristics.
    - *16 Pa. Code § 41.206*

## Local Ordinances

- 50 municipalities in PA have passed ordinances banning discrimination on the basis of sexual orientation and/or gender identity

# Example of State and Federal Law in Tension

## Executive Orders signed by the Pennsylvania Governor

- Executive Order 1975-5 – prohibits employment discrimination on the basis of sexual orientation employees of the state government. (This order has been renewed by every governor since its initial issuance.)
- Executive Order 2016-04 – prohibits LGBTQ+ discrimination in state government employment.
- Executive Order 2016-05 – prohibits LGBTQ+ discrimination in the award, selection, and performance of any state contracts or grants.

A blurred background image showing the silhouettes of several people sitting around a table in a meeting room, with large windows in the background. The image is dimly lit and serves as a backdrop for the text.

# Part I. The Current Title IX Compliance Framework

## E. Case Law Update



AP Jacquelyn Martin

# The *Bostock* Impact

- 2020 Supreme Court decision on Title VII
- Held: Discrimination based on gender identity = sex discrimination under Title VII
- Created expectation of similar interpretation for Title IX
- Set stage for policy conflicts across administrations



# Examples of Litigation Landscape



# Part I. The Current Title IX Compliance Framework

## F. What This Means for Higher Education

# Practical Steps for Institutions



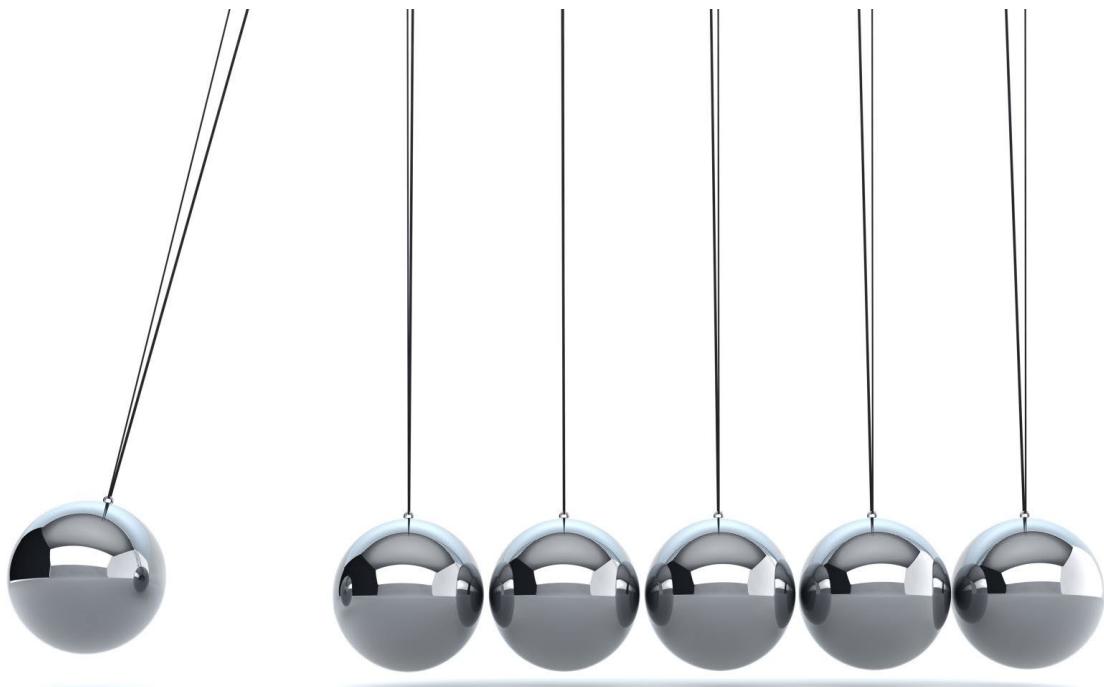
- Monitor regulatory changes actively
- Review and update policies regularly
- Conduct internal compliance audits
- Enhance training programs
- Strengthen complaint resolution processes
- Maintain comprehensive documentation
- Engage legal counsel and Title IX staff

# Strategic Considerations



- Align compliance with institutional mission
- Assess integrity-related risks
- Prepare for public scrutiny
- Develop clear communication strategies
- Engage stakeholders to inform decision-making
- Consider long-term implications

# Looking Ahead



- SCOTUS
- Political shifts every 4-8 years
- Congressional solution unlikely near-term
- Institutions must remain nimble and prepared
- Focus on supporting all students while addressing risks

# Key Takeaways

Title IX  
interpretation  
remains highly  
contested

Federal  
enforcement  
has become  
more aggressive

State laws  
create additional  
complexity

Institutions face  
"compliance  
paradox"

Proactive  
preparation is  
essential

Legal landscape  
will continue  
evolving

# Part II: Putting the Framework Into Action



# Scenario #1

Title IX,  
Academic Freedom,  
and Classroom  
Conduct



# Professor Morgan's Seminar

- Tenured philosophy professor known for encouraging open debate and critical thinking in their classroom.
- In Spring 2025, Dr. Morgan taught a seminar titled "Contemporary Ethical Dilemmas," which included a unit on gender identity and the law.
- During a class discussion, a student named Jordan expressed the view that "biological sex is immutable and should determine access to gendered spaces."
- Another student, Riley, who is transgender, responded that this view was harmful and invalidated their identity. The discussion became tense, and Dr. Morgan intervened to moderate, reminding students to be respectful of differing viewpoints.



# Meet Riley

- After class, Riley filed a Title IX complaint, alleging that Dr. Morgan created a hostile environment by allowing “transphobic rhetoric” to go unchallenged.
- Riley also claimed that Dr. Morgan’s syllabus included readings from authors who were “widely known for anti-trans views,” which they argued contributes to a pattern of marginalization.

# Dr. Morgan's Response to Riley's Complaint

- Dr. Morgan, in response, asserts that the readings were selected to expose students to a range of perspectives and that academic freedom protects their right to design the course content.

# The Title IX Office's Investigation

- Several faculty members express concern that the investigation could have a chilling effect on academic freedom.
- Others argue that the university has a duty to ensure that classroom environments are inclusive and affirming for all students, especially those from marginalized groups.



# Scenario 1:

## Considerations from Various Perspectives

**Riley**

**Dr. Morgan**

**University  
Counsel**

**Title IX  
Coordinator**

# Scenario 1: Discussion Topics

1

- How should the university balance its obligations under Title IX with its commitment to academic freedom?

2

- Does the inclusion of controversial readings in a syllabus constitute a Title IX violation?

3

- What steps, if any, should the university take to support Riley while the investigation is ongoing?

# Scenario #2

## Title IX and Gender Identity in University Athletics



# Meet Mimi

- Mimi is currently a junior math major and a midfielder on the university's women's soccer team.
- Mimi was assigned male at birth.
- When Mimi was in sixth grade, she and her parents legally changed her name and gender markers to reflect her identity as female. Mimi has undergone hormone replacement therapy (HRT) for the past five years.

# Meet Paige

- In late 2024, a new player named Paige expressed discomfort with Mimi being on the team, claiming that Mimi's participation was unfair.
- Paige said Mimi's presence on the team violated Title IX protections for women and created an "unlevel playing field."
- Paige repeatedly told her coaches and teammates that she was uncomfortable using the locker room when Mimi was present. Mimi has also heard Paige refer to her with transphobic slurs.
- Lately, Paige has started referring to Mimi using male pronouns. One day in practice, Mimi outran Paige to score a goal. Paige was so upset that she screamed at Mimi that she should go play on the men's team. None of the coaches heard the statement, and, at Mimi's request, nobody told the coaches about it at the time.

# NCAA Policy

- February 6, 2025 – NCAA Participation Policy for Transgender Student-Athletes
- <https://www.ncaa.org/sports/2022/1/27/transgender-participation-policy.aspx>
- Applies to “all practice and competition in NCAA sports in which the NCAA conducts championships separated by gender. This includes all NCAA competition (regular season, conference championships, post-season, scrimmages and exhibitions).”

**Tip: also look at state Athletic Association rules**





# State Law and University Policy

## State Laws

**States that restrict participation** e.g., Idaho, Florida, Texas, etc.

- Require competition based on birth-assigned sex
- Penalties for non-compliance

**States that permit and protect participation** e.g., California, New York, Illinois, etc.

- Protect against discrimination based on LGBTQ+ status
- Permit sports participation aligned with gender identity
- Conflict with current federal directives

## University Policy (hypothetical):

Prohibits discrimination and harassment based on protected characteristics including sex, gender, gender identity, and gender expression.

## Scenario 2:

# Considerations from Various Perspectives

Mimi

Paige

Attorney  
for  
University

Title IX  
Coordinator

# Title IX Disciplinary Process: Initial Steps

Supportive Measures

*34 C.F.R. § 106.44(a), 106.30*

Formal Complaint

*34 C.F.R. § 106.30(a)*

Gatekeeping Function/Referral

Dismissal of Complaint

*34 C.F.R. § 106.45(b)(3)(i), (3)(ii)*



# Definition of Sexual Harassment

**Conduct on the basis of sex that satisfies one or more of the following:**

1. School employee conditions the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct.
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a personal equal access to the school's education program or activity.
3. Sexual assault, dating violence, domestic violence, or stalking.  
[As defined by the Jeanne Clery Act and the Violence Against Women Reauthorization Act]

*34 C.F.R. § 106.30(a)*

## Scenario 2:

# Considerations from Various Perspectives

Mimi

Paige

Attorney  
for  
University

Title IX  
Coordinator

# Informal Resolutions

## (Adaptive/Alternative/Facilitated Resolutions)

Both parties must agree.

A formal written complaint must be filed.

Limits:

- Not available when student files complaint against employee.
- Prohibited in some states (depending on underlying conduct alleged).

*34 C.F.R. § 106.45(b)(9)*



# Steps in the University's Title IX Disciplinary Process

- Notice of Allegations (and Supplemental Notice of Allegations)
- Investigation: Interviews and Evidence Collection
- Evidence Review
- Investigation Report
- Live Hearing
- Appeal

# Scenario 2: Discussion Topics

1

- Mimi's ongoing participation on the team, either for practice and/or competition, and/or student-athlete status, generally

2

- Paige's complaint about an uneven playing field and her discomfort using the locker room when Mimi is present.

3

- Paige's derogatory comments to and about Mimi

# Scenario #3

## Sex-Restricted Scholarships and Financial Awards



# Meet Lydia Kibodeaux

- When Lydia earned her engineering degree in 1976, she couldn't help but think about how she had been the only girl in her high school to take advanced science and math classes. Why was that?
- Years later, after building a successful career in plant-based biofuels, she decided she wanted to change that experience for the next generation.
- Lydia contacted the University where she earned her degree. She created a scholarship dedicated to supporting young women pursuing degrees in STEM fields. The scholarship didn't just cover tuition, it also paired each student with a mentor, provided funding for summer research, and created a small but powerful network of women determined to lift one another up.



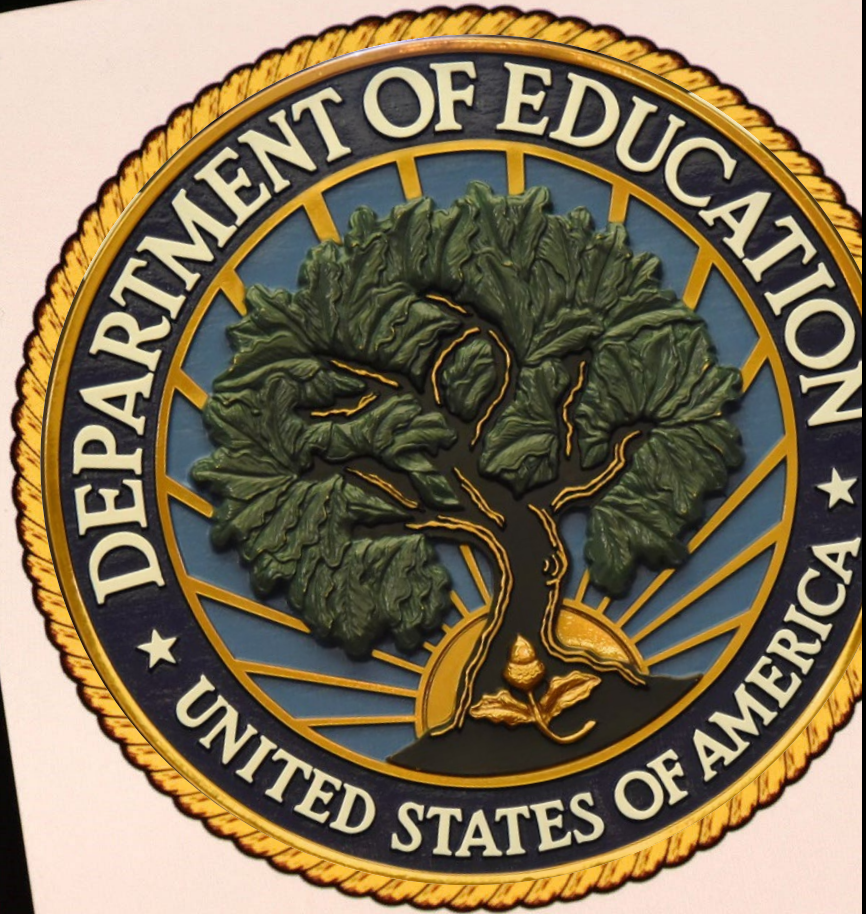
# U.S. Department of Education, Office for Civil Rights Letter

## That letter reads:

This letter is to advise you of a complaint filed with the U.S. Department of Education, Office for Civil Rights against your University. The complaint alleged that the University discriminates against students on the basis of sex by offering at least one scholarship restricted to students of a specific sex. The complaint also alleges that, related to the subject scholarship, the University offers related benefits restricted to students of a specific sex. Those benefits are alleged to include mentorship, summer research funding, and networking opportunities.

Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations at 34 C.F.R. 106.37(a) prohibit a recipient institution from discriminating on the basis of sex in providing financial assistance. OCR will initiate an investigation to review the University's scholarship listings, including but not limited to the **Lydia Kibodeaux Women in STEM Scholarship**.

While the University's website indicates that it established this scholarship at the request of donor Lydia Kibodeaux, under Title IX, the University cannot assist in the administration of scholarships that discriminate based on sex, even if the funds originate from a private donor.



# University Response

- In response to the letter, the University contacted Lydia via her last known email address. Lydia quickly responded and set up a phone call with the Director of Advancement.
- Lydia is dismayed to hear that the Department of Education is investigating the University because of her scholarship. Lydia does not want to change the eligibility requirements of her scholarship as that would run contrary to her purpose—increasing opportunities for women in STEM.
- Lydia asks the Director of Advancement to put together a written overview of options.



# Scenario 3:

## Considerations from Various Perspectives

**Lydia**

**Attorney  
for  
University**

**Director of  
Advancement**

# Scenario 3: Discussion Topics

1

- What can the university do if Lydia declines to change the eligibility criteria for her scholarship?

2

- How should the University select among the current applicants for Lydia's scholarship?

3

- Can a donor and/or University provide support for women in STEM within the current legal framework? If so, how?

# Scenario #4

## Title IX and Gender Identity in Campus Housing



# Meet Eden

- Eden, a nonbinary student, has recently completed their first year.
- During their first year, they lived in the “Lavender Wing” – a gender inclusive wing in a large residence hall. They liked their housing arrangement.
- However, in July 2025, the school received a letter from the U.S. Department of Justice regarding the initiation of a False Claims Act investigation.

# U.S. Department of Justice Letter

**That letter reads:**

As a recipient of federal funds, the university must follow all federal civil rights laws. The university has certified its compliance with Title VI, Title VII, Title IX, and other federal civil rights laws, including most recently in May 2025.

Despite the university's assurances, it has been reported that the university is knowingly permitting biological men who self-identify as women to gain access to intimate single-sex spaces and activities designated for women, such as residence hall rooms, bathrooms, shower facilities, and locker rooms (hereinafter, "shared intimate spaces"). It has been reported that this opposite-sex intrusion has sometimes been achieved by converting single-sex shared intimate spaces into "gender neutral" spaces. It is the policy of this administration—and, therefore, it is the law under Title IX—that colleges and universities are prohibited from creating or maintaining "gender neutral" shared intimate spaces. All bathrooms, locker rooms, shower facilities, and residence hall rooms designed for simultaneous use by more than one person must be designated as single-sex. Access to those facilities must be made available to either men or women, not both.



# University Response

- In response to the letter, in July 2025, the university's board of directors passed a resolution requiring the university to eliminate the Lavender Wing. Over August 2025, the University plans to convert the rooms and bathrooms back to single-sex facilities.
- In late July, Eden received an email from the university that they needed to select new housing for the upcoming academic year. When Eden went to the online housing portal to select new housing for 2025-2026, they were directed to select among options for women. Eden suspected that was because they were assigned female at birth.



# Eden's Response

- Eden has asked to meet with the Director of Residence Life to discuss their desire to continue to live in gender inclusive housing. They are planning to meet today.
- About an hour before the meeting, the Director of Residence Life calls to tell you that they heard approximately 60 former Lavender Wing residents are planning to come to campus for a sit-in immediately outside the Director's Office, timed to coincide with Eden's meeting, in an effort to implore the university to better support its trans and nonbinary students.

# Scenario 4: Considerations from Various Perspectives

**Eden**

**Attorney  
for  
University**

**Title IX  
Coordinator**

# Scenario 4: Discussion Topics

1

In the fifty-five minutes between now and the meeting which campus partners should be consulted about this issue?

2

Should anyone else attend the meeting with Eden and the Director?

3

What advice do you have for the Director in advance of the meeting?

4

There's a limited number of single rooms + suites with private bathrooms. Should the university give Eden priority access to those options? What if all these options are already taken by other students?

5

Should the university offer Eden the single and/or suite options at full price, even though the (former) Lavender Wing was less expensive?

6

What obligations does the university have, if any, to affirmatively offer other former Lavender Wing residents singles or suites?

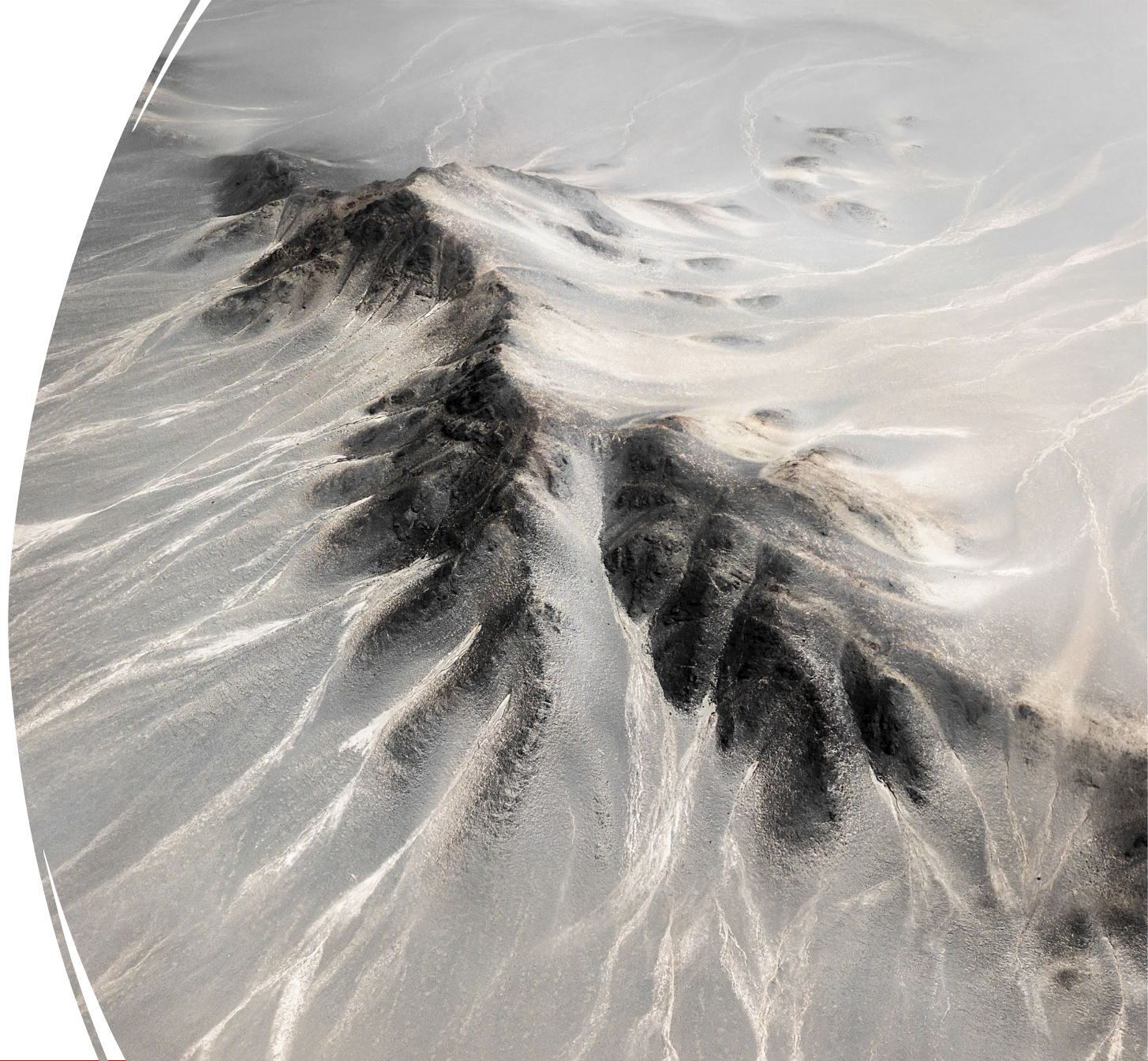
# Common Themes Across Scenarios

- Competing legal obligations (federal/state/institutional)
- Individual dignity and autonomy AND regulatory compliance
- Financial implications (funding, scholarships, housing costs)
- Campus climate and community response
- Documentation critical for all decisions
- Proactive communication with affected parties

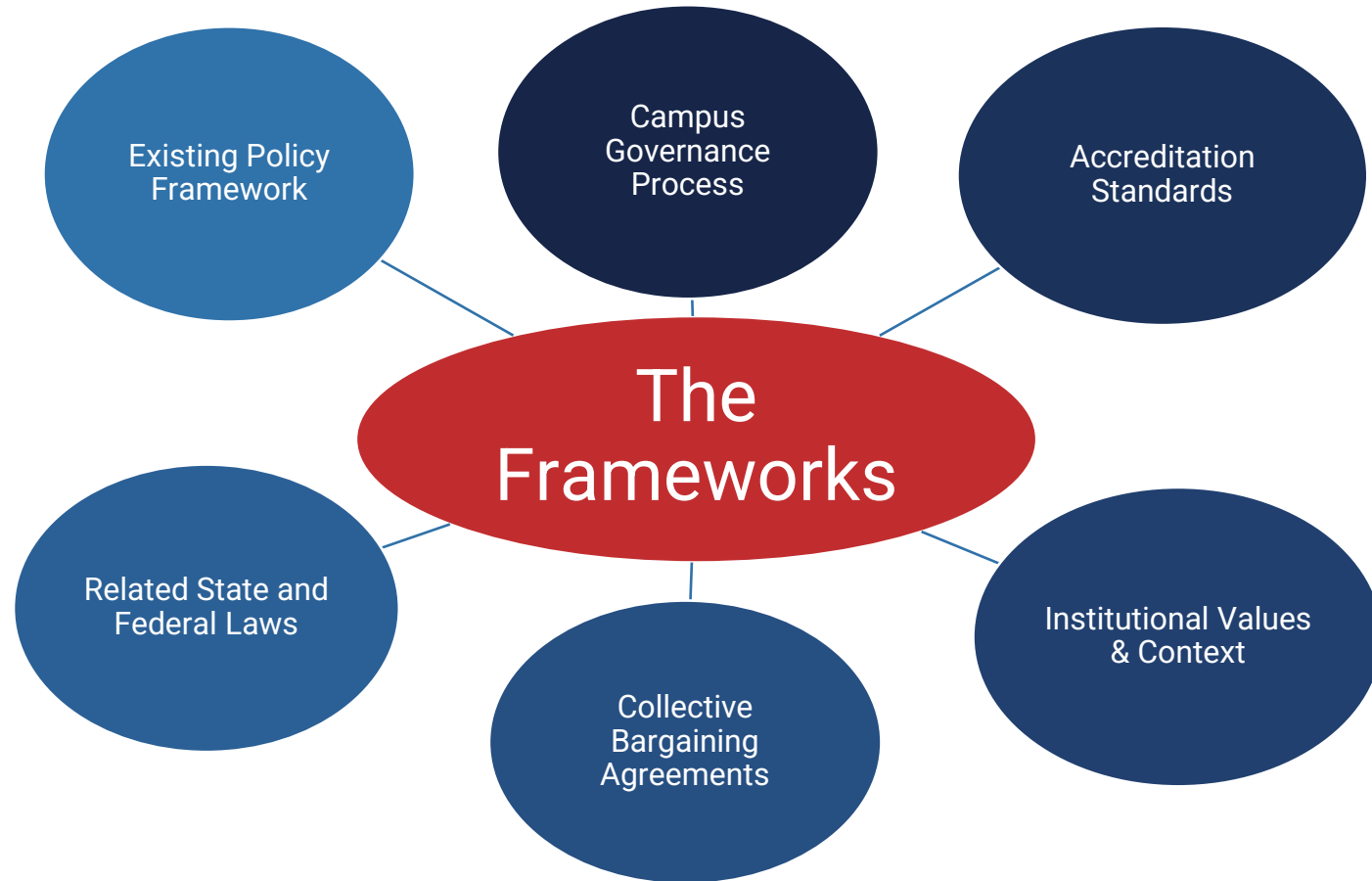


# Navigating Risk

- Map all applicable laws and policies
- Identify conflicts and compliance risks
- Document decision-making rationale
- Implement least restrictive alternatives
- Maintain supportive measures throughout
- Prepare for multiple forms of challenge



# Mapping the Frameworks





# Communication Considerations

- Communicate directly with affected students
- Explain constraints with candor
- Explore creative solutions within legal bounds
- Provide mental health and support resources
- Message non-retaliation obligations and reporting channels
- Monitor for retaliation or ongoing harassment



**Questions?**

NACUA materials, PowerPoint slides and recordings available as part of this program are offered as educational materials for higher education lawyers and administrators. They are prepared by presenters and are not reviewed for legal content by NACUA. They express the legal opinions and interpretations of the authors.

Answers to legal questions often depend on specific facts, and state and local laws, as well as institutional policies and practices. The materials, PowerPoint slides and comments of the presenters should not be used as legal advice. Any hypothetical scenarios presented are based on fictional facts and persons. Legal questions should be directed to institutional legal counsel.

Those wishing to re-use the materials, PowerPoint slides or recordings should contact NACUA ([nacua@nacua.org](mailto:nacua@nacua.org)) prior to any re-use.