

Now What? OCR Just Delayed Two Major Title IX Rules... Here's Your Gameplan

Webinar: June 1, 2023

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Meet Your Hosts



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T&H Title IX Thought Leadership



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Title IX Leadership Alliances

K-12 Title IX Leadership Alliance

Community Colleges Title IX Leadership Alliance

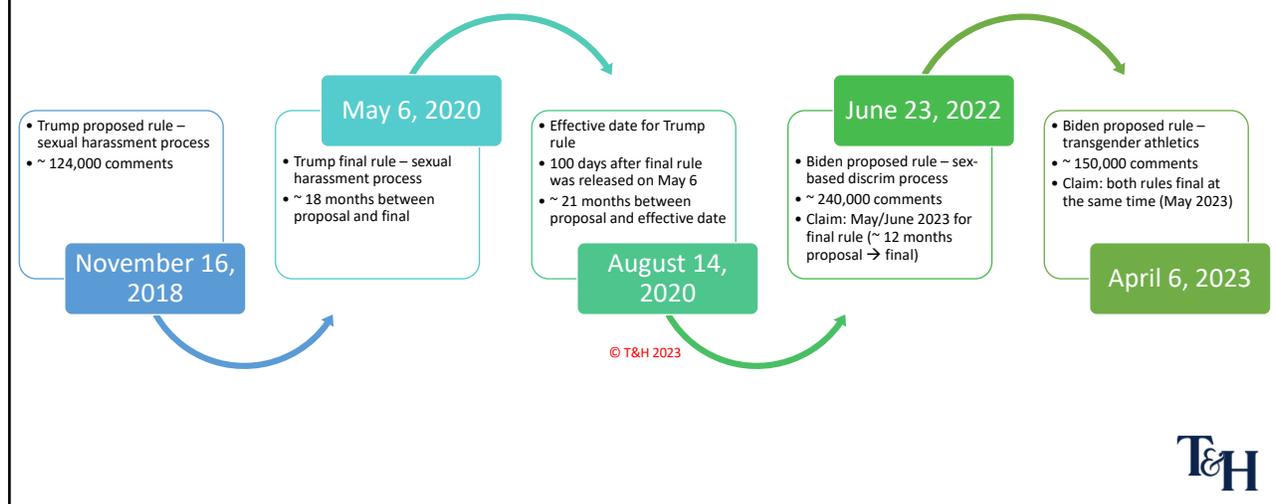
NEW! 4-Year Institutions
Title IX Leadership Alliance

Email titleIX@thlaw.com to join



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Where Are We & How Did We Get Here?



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EDUCATION K-12 education

Biden administration will release new Title IX rules in May. What to expect.

 **Kayla Jimenez**
USA TODAY

Published 12:00 p.m. ET Feb. 8, 2023 | Updated 5:13 p.m. ET Feb. 9, 2023

A long-awaited [Title IX rule](#) directing how federally funded schools and colleges handle sex and gender [discrimination](#) will become public in May, the Education Department said, though it's unclear when it would take effect.



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ED.gov | From the Secretary

A Timing Update on Title IX Rulemaking

Posted by U.S. Department of Education | 2/9/23 | 2/9/23 | Headlines, News, Title IX

The Biden-Harris Administration is committed to ensuring all students are guaranteed an educational environment free from discrimination on the basis of sex. To that end, amending the Department of Education's (Department's) regulations that implement Title IX of the Education Amendments of 1972 (Title IX) is a top priority to ensure full protection against sex discrimination for all students in federally funded education programs and activities.

The Title IX proposed regulations that the Department released in July 2022 are historic. They would strengthen protections for students who experience sexual harassment and assault at school, and they would help protect LGBTQ+ students from discrimination. The Department received more than 240,000 public comments on the proposed rule – nearly twice as many comments as the Department received during its last rulemaking on Title IX. Carefully considering and reviewing these comments takes time, and is essential to ensuring the final rule is enduring. That is why the Department is updating its Spring Unified Agenda to now reflect an anticipated date of October 2023 for the final Title IX rule. In addition, the Department is updating its Spring Unified Agenda to reflect an anticipated date of October 2023 for its proposed Athletics regulation, which received over 150,000 comments during its recent public comment period from April 12 – May 15, 2023. The Department is currently reviewing each of these comments, and is grateful for the extensive public participation and comments received in this rulemaking process.

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Where Are We Going?

- Blog post is silent about effective date
- We will at least be living with the current (2020) Title IX rules for fall semester of the 2023–24 academic year

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What Are They Doing, Anyway?

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If you could get rid of one change in the proposed Title IX amendments, what would it be?

The change from "severe, pervasive, and objectively offensive" to "severe or pervasive"

The references to addressing off-campus and extraterritorial conduct under Title IX

The two processes for higher education institutions

Oral complaints

Increased training requirements

Other (tell us in the chat)

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Reading the Tea Leaves

What **likely will not** change?

- Prevention efforts
- Processes covering all forms of sex-based discrimination and not just sexual harassment
- "Severe or Pervasive" (SoP/Hostile Environment Sexual Harassment)
- Pregnant/parenting focus
- Confidential employee requirements
- Increased training



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Reading the Tea Leaves

What **likely will not** change?

- Expanded supportive measures
- Expanded emergency removal
- Expanded informal resolution (no complaint required)
- Expanded focus on credibility
- Expansion to off-campus (but see later slide)



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Reading the Tea Leaves

What **probably** will not change?

- Toned down K-12 process
- Two processes for PSI
- Single investigator/decision-maker model
- Flexibility on higher ed hearings (though remember due process cases for PSE)



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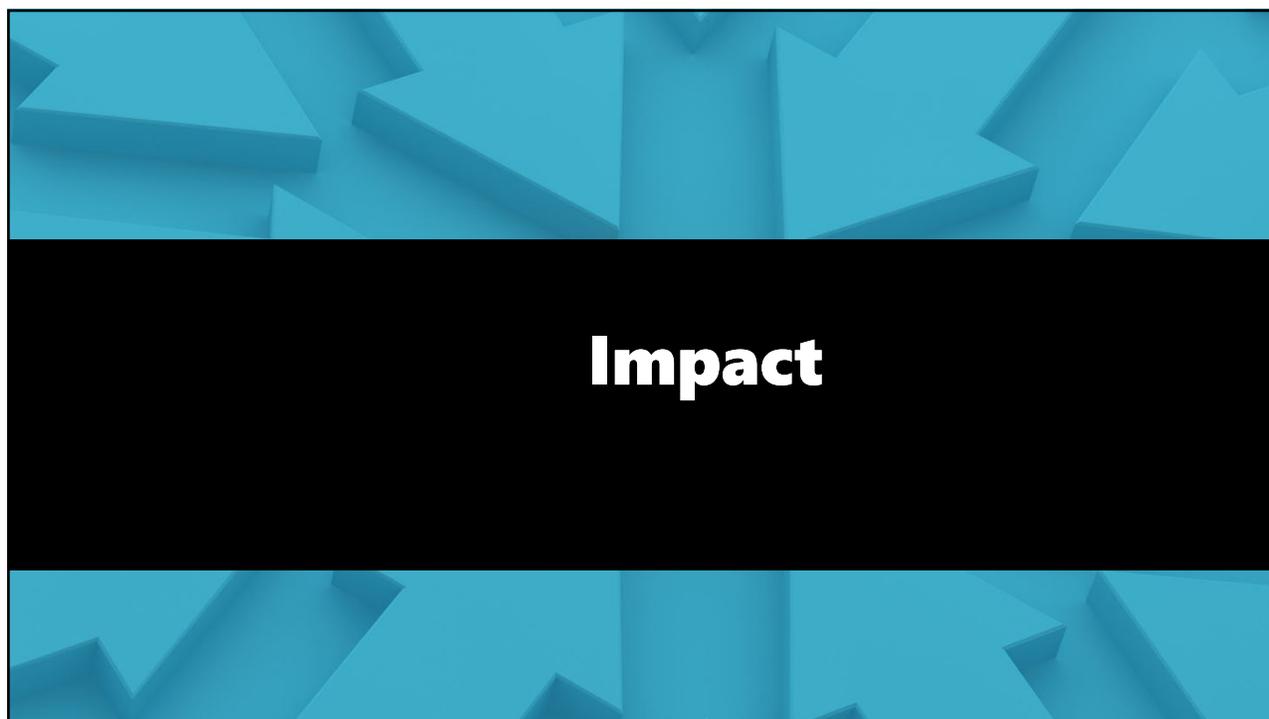
Reading the Tea Leaves

What **might** change?

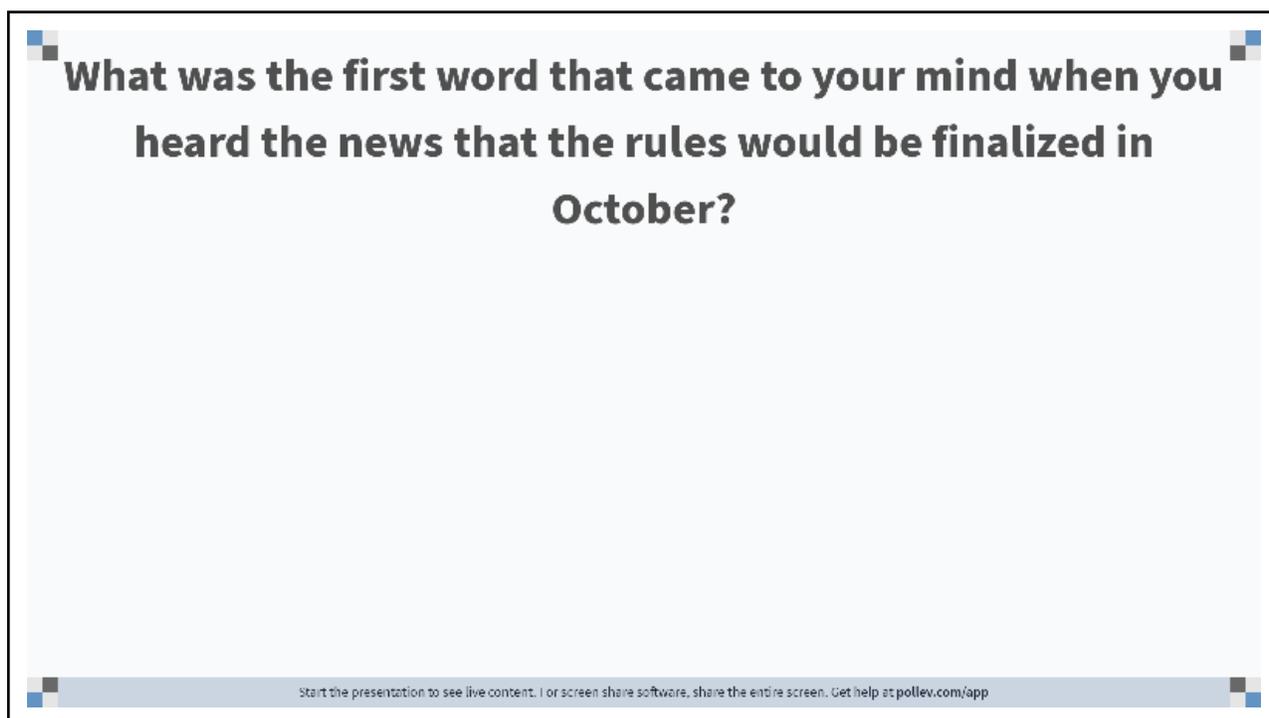
- Appeals
- Clarification of requirements for off-campus/abroad
- Special education and disability "collaboration" requirements
- Interplay with Title VII
- Oral complaints (wishful thinking?!)



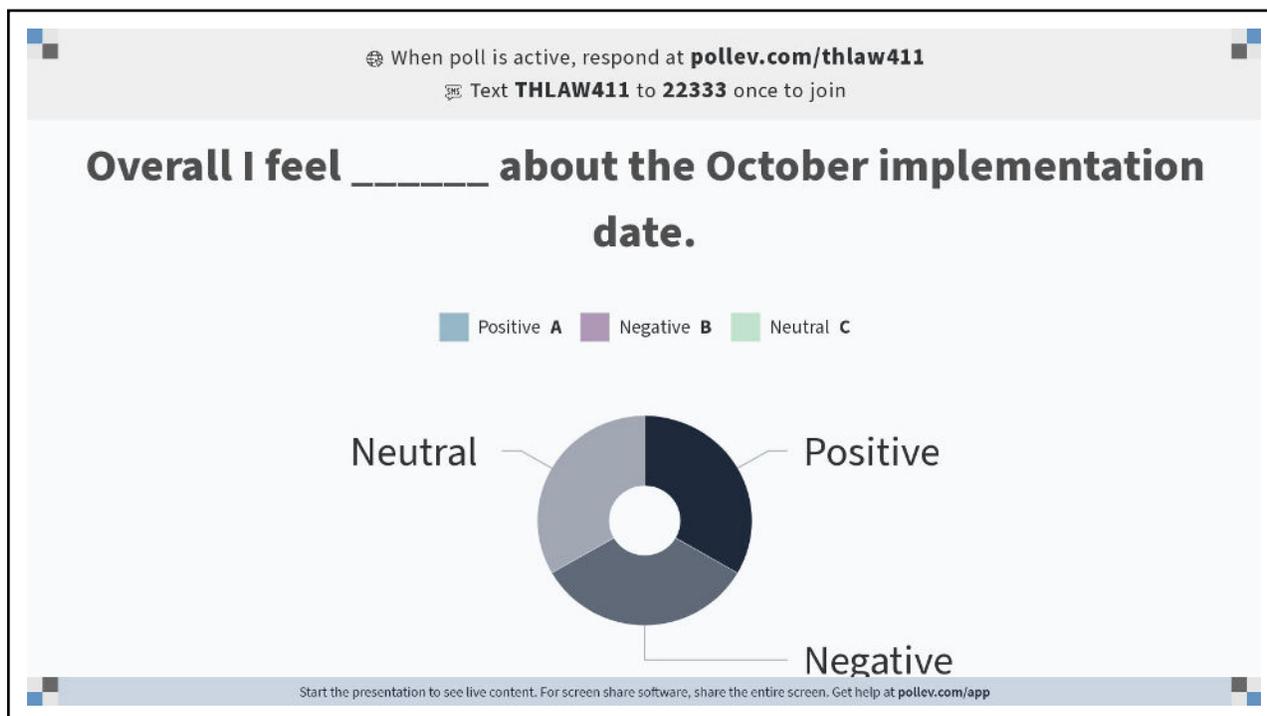
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Title IX Tips

How to Make—and Keep—a Resolution to Prepare for the New Title IX Rules

© JANUARY 18, 2023

We are barely into 2023, and it's shaping up to be the biggest year yet for Title IX. From transgender [bathroom bans](#) and [athletic participation](#) battles to growing scrutiny on general [athletics equity](#) and [pregnant and parenting students](#), Title IX will continue to have its moment in the sun in 2023 as it has for the past few years. Of course, the biggest news for Title IX in 2023 will undoubtedly be the issuance of the Biden administration's new Title IX rule. The Department of Education recently [confirmed](#) that it intends to hoist the new regulation on schools in May 2023. Schools, colleges, and universities will once again have to comply with an entirely new grievance structure quickly over the summer.

Those who spent the summer of 2020 scrambling to prepare for the 2020 Title IX rules know that implementing new rules over the summer is a huge feat. If you haven't already resolved to begin preparing now to be ready for that process when it comes, you should! Like any other New Year's resolution, there is a [risk of giving up](#) without a plan. Don't have one? Don't worry. The Thompson & Horton Title IX team has you covered. Keep reading for the essential action plan to help you achieve your Title IX goals in the New Year.



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My educational institution has already taken steps to prepare for the 2023 amendments by....

Scheduling a meeting with leadership to discuss resources for implementation	A
Scheduling training for Title IX "team" members on the 2023 amendments	B
Scheduling training for all employees on the 2023 amendments	C
Revising policies and procedures	D
Revising templates (checklists, decision trees, letters, forms) for the processes under the 2023 amendments	E
Researching third party options training, policy revisions, and/or templates under the 2023 amendments	F
Something else (tell us in the chat!)	G
None of the above	H

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The Good News...

- Steps you have already taken are not a waste because the rules (presumably) will go into effect (eventually)
- The delay provides us more time to think about changes to be made—if we use that time!
- Nothing prevents you from updating policies this summer to implement elements of the amendments that seem likely to be finalized as proposed, are non-controversial in your community, and make sense for your institution



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The Bad News...

- We may be looking at a mid-year rollout which will be even more challenging than a summer one
- We are stuck with the 2020 amendments, many of which are inefficient and ineffective
- You should consider policy updates to your current policies, procedures, and other materials under the 2020 amendments
- Your Title IX "team" and employees need to keep up their training on the current rules



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Effective Date



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What is an appropriate effective date if the final rules are released in October?

December 1, 2023
January 1, 2024
July 1, 2024
August 14, 2024
Something else (tell us in the chat)

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The Hard Facts

- For a significant or major rule, 60 days is required
- ED need not tell us the effective date until the final rule
- We only got 40 extra days in 2020 for a global pandemic



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Let's Do (Some More) Math

- The 2020 Title IX Amendments were released on **May 6, 2020** with an **August 14, 2020** effective date giving educational institutions **100 days** to implement the final rule (with an extra 40 days for COVID)
- The 2023 Title IX Amendments would have to be finalized by **October 3, 2023** to even give educational institutions **90 days** before a **January 1, 2024** implementation deadline
- As long as the rules are published by **October 31, 2023**, educational institutions would have at least **60 days** before a **January 1, 2024** release date



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Mid-Year Implementation

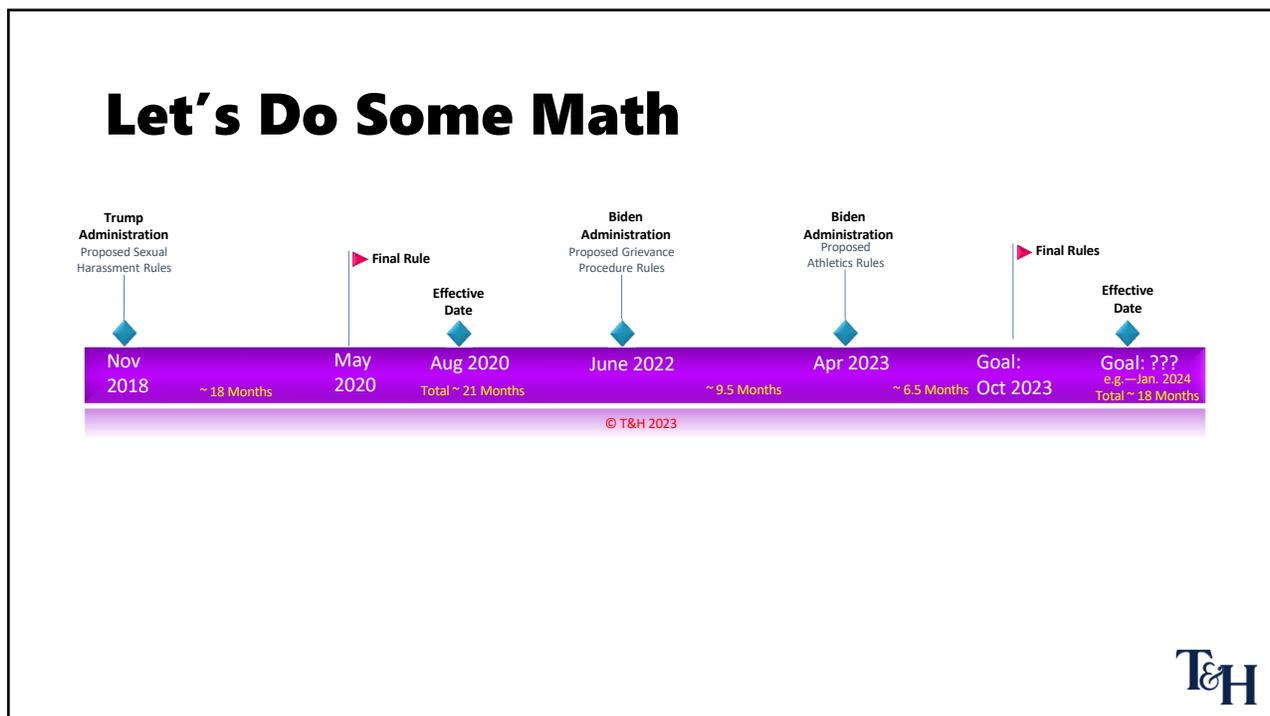
- The preamble to the 2020 Title IX Rules recognized that a mid-year implementation would be difficult for schools
- Some commenters requested that the rule be released in the summer "so that the requested 90-day implementation window takes place over the summer, when recipients have more time and ability to implement the changes constructively"
- Some commenters "asserted that requiring changes to be made in the middle of a school year will raise problems with applying two different sets of rules to sexual misconduct incidents occurring in the same school year based on an arbitrary cut-off date"



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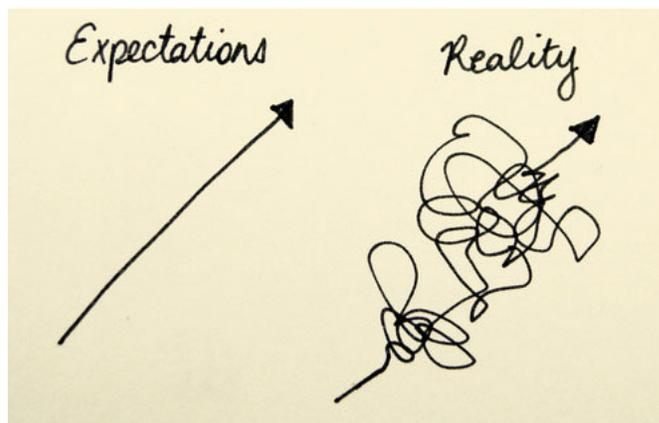
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Our Quick Take(aways)

- Is anything worse than the "COVID summer"?
- Perhaps the winter holidays will buy us some time?
- Hope for the best, but prepare for the worst



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Preemptive Policy Changes?

- Preventative Measures
- Independent Informal Resolution Facilitator
- All-Employee Training
- Certain Process Requirements (e.g., appeals for supportive measures)
- Pregnancy & Parenting Requirements
- Title IX & Special Education/Disability Collaboration



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What Can't Change (For Now)....

- Different investigator, initial decision-maker, and appellate decision-maker
- Cumbersome decision-making process still required (hearings for higher ed and written Q&A for K-12)
- Appeals still broadly required for three required reasons



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A white alarm clock with two bells and a silver handle, set against a bright yellow background. To the right of the clock is a yellow sticky note with the letters 'T' and 'H' written on it in black marker.

No Time To Slow Down

- Meet with leadership to obtain needed resources
- Pencil in training for November, December, or January
- Begin preparing policies and procedures
- Prepare necessary templates

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Know Your Policy Process

- Where does your policy come from?
- Will stakeholders be available?
- Interim policies?
- Remember distinctions of policies vs. procedures

The logo for Thompson & Horton, consisting of the letters 'T' and 'H' in a stylized, serif font, with an ampersand between them.

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Our Quick Take(aways)

- Now is not the time to take your foot off the gas
- Particularly with the uncertainty regarding mid-year implementation, the more you can do this summer, the better



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T&H Webinars & Blogs

- "An Attempted Compromise? Breaking Down the Proposed Title IX Rule for Transgender Athletes"
- "The Essential Title IX Action Plan for 2023"

vimeo.com/thompsonhorton

- Title IX Tips Blog
www.titleXtips.com



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Settle Into the 2020 Rules

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The 2020 Rules Are Here to Stay

- Your Title IX team should be well-trained on the current (2020) rules
- Your policies and procedures should be updated for the new academic year based on lessons learned under the current rules
- Consider changes to structures (e.g., deputy Title IX Coordinators)



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K-12 June Title IX Certification

- June 13, 2023 via Zoom
- 11:00 a.m. to 4 p.m. Central (12 p.m. to 5 p.m. Eastern)
- Hot topics K-12 coordinators, deputy coordinators, and administrators need to know

For more info & to register
bit.ly/K-12Certification



PSE certification info: titleix@thlaw.com



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While You're At It....

- OCR Guidance on Title VI/Discriminatory Discipline
- OCR's Fact Sheet on DEI Efforts
- Athletics Equity (Female vs. Male Teams)
- Pregnancy & Parenting Requirements

Read more at www.titleXtips.com



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Thank You!
Questions?

Email titleix@thlaw.com for more information on our Title IX services

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